



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU**

**CAUSE NO.200 OF 2016**

**PATRICK O OLUOCH.....CLAIMANT**

**VERSUS**

**ERETO BOOKSHOP LIMITED.....RESPONDENT**

**JUDGEMENT**

On 1<sup>st</sup> December, 2014 the claimant was employed by the respondent as a Shop Steward until 25<sup>th</sup> November 2015 when his employment was terminated without notice. The claimant was earning Ksh.11, 623.00 per month.

The claim is that the claimant was dismissed from his employment unfairly as there was no notice, hearing or reasons given to him. no terminal dues were paid. The claimant is seeking compensation.

The claimant testified that on 28<sup>th</sup> November, 2015 while at work the respondent's director called him with allegations that several things had been stolen from the shop but there was no evidence. The allegations that bags, mattresses, and other items had been stolen were without any justification.

The claimant testified that he was paid for the 28 days of work, notice pay as terminal dues.

The claimant also testified that he was paid Ksh.21, 000.00 upon termination of his employment but such was unfair as there were no valid reasons given.

In response the respondent has admitted the claimant was an employee and following discovery of mass losses of stock within the claimant's department and following investigations it was established that he was involved. The claimant was invited to show cause and in response he wrote an apology admitting responsibility for the losses and asked for forgiveness.

The defence is also that following the admissions by the claimant, there was trust lost and he was thus issued with letter of termination and paid Ksh.24, 409.00 in terminal dues which he accepted.

Mr Simon Masikonde testified that the claimant was dismissed following massive loss of stock in his areas of work and despite being called to explain on several occasions and efforts to ensure he was diligent all failed to bear fruits. Upon being invited to show cause, the claimant admitted to acts of theft and leading to the losses and this justified his dismissal from employment but he was paid for days worked and for notice.

An admission by an employee to theft or loss of an employer's property is subject to summary dismissal under the provisions of section 44(4) (g) of the Employment Act, 2007. Such an admission where done under the hand and without protest by the employee is acceptable as a valid grounds leading to dismissal from employment.

In this case, the claimant testified that on 28<sup>th</sup> November, 2015 he was called by the respondent director to the office and questioned about various losses and as the section/department supervisor noted that several items were missing. He admitted to these losses.

Such evidence on its own justified summary dismissal. The claimant was given a hearing and paid in lieu of notice which should not be the case where summary dismissal is justified.

**Accordingly, the claim for compensation where summary dismissal is justified is found without merit. The payment in lieu of notice was generous. Claim dismissed with costs to the respondent.**

**Delivered at Nakuru this 31<sup>st</sup> day of January, 2019.**

**M. MBARU JUDGE**

**In the presence of: .....**