



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF**  
**KENYA AT NAIROBI**

**CAUSE NUMBER 1731 OF 2013**

**PATRICK WAMBULWA.....CLAIMANT**

**VERSUS**

**SCHENKER LIMITED.....RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on 28<sup>th</sup> October, 2013 the claimant pleaded that he was employed on 1<sup>st</sup> January, 1993 as a messenger/rider at a monthly salary of Kshs.31,866 as at the date of termination of his contract.
2. According to the claimant, he appeared before a disciplinary committee on unfounded allegations of flouting company rules and regulations over improper recording of mileage and fuel consumption of his motor bike. In his view he gave satisfactory explanations which were confirmed by the company's authorized petrol station attendant yet the respondent proceeded to summarily dismiss him.
3. The respondent on its part pleaded that the claimant was a former employee employed on 1<sup>st</sup> September, 1993 as a messenger/rider. His duties included collecting letters from the post office, posting letters, banking and collecting cheques.
4. The respondent provided the claimant with a motor cycle registration number KMCA 998P with a fuel capacity of 13.39 litres and fuel card number 13614 which allowed the claimant to fuel at any shell petrol station.
5. Sometimes in May, 2018 the respondent received an invoice from Shell Company and it was discovered that the amount of fuel dispensed into the motor cycle was more than it's capacity and further that the mileage could not tally with fuel obtained in any of the petrol station outlets.
6. Investigations were commenced and it was found that the claimant was conniving with some of the petrol station attendants to defraud the respondent. On 24<sup>th</sup> May, 2013 George Wahome the warehouse supervisor and one Naomi did a physical test on the tank capacity of the motor cycle that was being used by the claimant in his presence and it was established that the tank capacity plus reserve filed with 13.39 litres of fuel.
7. The claimant was asked to give an explanation which he did in writing on 24<sup>th</sup> May, 2013 in which he alleged that whenever he went to the petrol station he could not ascertain the amount of fuel consumed by the motorcycle and that he only came to realize that they had put more than the motorcycle capacity later when asked about it. His explanations according to the respondent were found wanting.
8. The matter was thereafter reported to the Human Resource Manager who suspended the claimant pending further investigations. The claimant was subsequently issued with a show cause letter on 3<sup>rd</sup> June, 2013 in which he was asked to explain the irregular recording of mileage covered vis-à-vis the amount of fuel consumed. The claimant responded to the show cause letter on 4<sup>th</sup> June, 2013 and admitted that he used to fuel without the fuel card but could later present the same for recording the transaction which was irregular. Further that he never used to read the mileage whenever he fuelled the bike.
9. The claimant's explanation was found wanting and he was invited to a disciplinary hearing by a letter dated 17<sup>th</sup> June, 2013 and was notified of his right to be accompanied by a fellow colleague of his choice. The claimant appeared before the committee accompanied by one Isabella Nganga on 2<sup>nd</sup> July, 2013 the respondent informed the claimant that his services had been terminated.
10. Concerning leave, the respondent stated that the claimant used to proceed on his annual leave and that in the years 2009, 2010 and 2012 it could be demonstrated that the claimant utilized all his leave days. Concerning rest days and public holidays, the respondent stated that the claimant used to work only six days a week and the 7<sup>th</sup> day was his rest day and further that he never used to work on public holidays.

11. In his oral evidence the claimant further stated that every rider was allocated Kshs.10,000 per month for fuel and that they were each issued with a fuel card from shell, Uhuru highway. It was fuel cash when he did not have the card.

12. Concerning leave he stated that he used to proceed on annual leave and sometimes he would work on public holidays. In cross-examination he stated that he never used to wait until fuel ran out, that he would top up and further that he used to leave the fuel card in the office after fueling. In re-examination he stated that shell used to deduct fuel including the fuel he got without the card.

13. The respondent's first witness Mr. George Mburu informed the court that he was the respondents transport officer. It was his evidence that the finance department raised issues with shell bills. According to finance department the claimant's bike was consuming more than the rest. It was his evidence that every rider was assigned a fuel card from shell and that one did not have to fuel at a particular shell station. If the card money was exhausted approval was sought to fuel cash. It was further Mr. Mburu's evidence that the fueling was itemized per fuelling and that card had to be produced before fueling hence it was not possible to combine difference fuelling's. Each visit had its own itemized bill.

14. Regarding public holiday he stated that the respondent never opened during public holidays. In cross-examination he stated that most fuelling's by the claimant were done at shell uhuru highway yet the claimant could fuel at any shell station.

15. The respondent's second witness Mr. Moses Nzuya stated he was the respondent's Human Resource Manager and that each rider had their own bike. It was his evidence the riders were not allowed to exchange bikes. According to him they received complaints from finance department over fuel consumption of the claimant's bike. The claimant never used to record mileage. The claimant was called upon to explain the anomaly, it was his evidence that they received communication from the supervisor at shell that the claimant was irregularly fueling at shell as most time the claimant would fuel without presenting his card. It was further his evidence that cash fuelling was done using the office cash not the rider's personal money.

16. Concerning terminal dues he stated that claimant was paid as per his termination letter and further that service pay was for the two years when the respondent had established a pension scheme. Regarding leave he stated the claimant regularly went on leave and that the leave that was paid upon termination was for 11 days. The reasons for which the claimant's service was terminated is not in dispute. The claimant complaint seems to be that they did not constitute valid or justifiable reasons for terminating his services.

17. Under the Employment Act the burden of proof of reasons for termination of an employee's service is on the employer. The reasons for termination shall be such matters that an employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.

18. The respondent in order to properly manage and control the fueling and use of its vehicles including motor bikes entered into an agreement or arrangement with Shell petroleum that it would issue the respondent's drivers and riders with fuel cards specific to the vehicles there were assigned to. The riders and drivers were required to present these cards at any shell station to receive services and log-in mileage each time after fueling. This requirement or procedure was not denied by the claimant. All he said he could sometimes fuel without the card and present it later when next fuelling. Concerning mileage, the claimant just said he simply forgot to log in mileage each time he fueled. This according to the respondent, created inconsistency between the fuel consumed and the mileage covered.

19. The claimant did not offer any reason why he frequently flouted this prudence policy of the respondent. His act of fuelling without the card was obviously open to abuse and worked against the respondent's effort to have a structured fuel management system.

20. In the court's view this constituted a valid reason for terminating the claimant's service. Concerning the procedure for termination the court as summarized from the pleadings earlier in this judgment is persuaded that the respondent followed the procedure contemplated under the **Employment Act** while terminating the claimant's service.

21. In conclusion the court finds the claimant's claim without merit and the same is hereby dismissed with costs.

22. It is so ordered

**Dated at Nairobi this 8<sup>th</sup> day of February, 2019**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 8<sup>th</sup> day of February, 2019**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.