



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 2162 OF 2014**

**DANIEL ODHIAMBO OWINO.....CLAIMANT**

**v**

**BRINKS SECURITY SERVICES LTD.....RESPONDENT**

**JUDGMENT**

1. Daniel Odhiambo Owino (Claimant) instituted legal proceedings against Brink Security Services Ltd (Respondent) alleging *unfair and unlawful termination of employment and refusal to pay terminal benefits* (an *Amended Statement of Claim* was filed on 20 February 2019 after grant of leave).

2. Although the Respondent was granted liberty to file an *Amended Response*, none was filed, and the Court will therefore rely on the earlier *Amended Response* filed on 23 July 2018.

3. The parties filed *Agreed List of Issues* on 26 February 2019, and the Cause was heard on 5 April 2019. The Claimant and the Respondent's Assistant Human Resources Manager testified (they also adopted filed witness statements).

4. The Claimant filed his submissions on 3 May 2019 while the Respondent filed its submissions on 3 June 2019.

5. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

6. Issues 1 and 2 raised the question of the fairness of the termination of the Claimant's employment.

7. The Respondent's case was that the Claimant was *summarily dismissed* from work under section 44(4)(g) of the Employment Act, 2007 after admitting that he had stolen a mobile phone at his place of assignment.

8. To demonstrate that the Claimant had admitted to the theft of the phone, the Respondent produced a copy of a statement recorded by the Claimant on 28 March 2013.

9. The Court has keenly looked at the statement. The Claimant admitted therein having found the phone in question on the evening of 20 March 2013 in the sales area of the shop he was guarding, and that he had kept the phone while carrying out investigations to find out the owner/person who lost it.

10. The Claimant was guarding a Safaricom shop whose primary business included sell of mobile phones. He *found* a phone in the shop sales area, and kept the phone for over 8 days allegedly while carrying out *investigations* to find the owner.

11. If the Claimant was true and honest to his duties as a security guard, part of his investigations should have included making inquiries with the Safaricom sales staff. There was no suggestion that he inquired from the sale staff in the shop. He should have handed over the phone to the sales staff.

12. In the view of the Court, the Claimant had no intention of establishing the *owner* of the phone. The *conducting* investigations story was simply that, a story, an afterthought after having been tracked using the phone.

13. Under the circumstances, the Court finds that the summary dismissal of the Claimant was fair.

14. *Salary in lieu of notice* and *compensation* are therefore not available as remedies.

