



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO 675 OF 2013**

**GEORGE KIGAMBA NJOROGE.....1<sup>ST</sup> CLAIMANT**

**MARGARET WANJIRU NJENGA.....2<sup>ND</sup> CLAIMANT**

**RICHARD NGABURI MWANGLI.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**KAMINDI SELFRIDGES (SUPERMARKETS) LTD.....RESPONDENT**

**J U D G M E N T**

1. The Claimant pleaded that on diverse dates between 1999 and 2009 they were employed by the respondent willfully as general workers but later rose to become supervisors.
2. According to them their contracts were terminated wrongfully and unlawfully without due regard to the Employment and Labour Laws. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Claimants had by the time of termination worked for the respondent for 8,5,14 and 14 years respectively and their monthly salaries at the time of termination was Kshs. 14,840/=, 15,834/=, 12,724/= and 14,700/= respectively. The Claimant's further pleaded that during the contracts period they never went on leave and were never paid in lieu thereof.
3. The respondent on its part pleaded that the Claimants were initially employed as general workers between 2000 and 2009 and not 1999 to 2009 as alleged.
4. According to the respondent, it was an express and or implied term of the contract that the Claimants would perform their duties diligently, honestly and faithfully.
5. On several occasions' goods were stolen from the supermarket by customers and sometimes by the employees themselves. The respondent further pleaded that it relied on staff and especially supervisors in the maintenance of security of its goods and care of customers.
6. The respondent averred that despite having a number of supervisors, incidences of theft of the respondent's goods remained unabated .
7. Sometimes in the year 2012 the 3<sup>rd</sup> Claimant a customer to leave with two packets of maize flour without paying for the same.
8. The respondent therefore averred that in the circumstances the management lost faith in the Claimant's and decided to terminate their employment. At the termination, the Claimants were paid their terminal dues which included service pay despite the Claimants being members of NSSF. Further at the time of termination the Claimants had taken all their leave.
9. When the matter came for hearing on 10<sup>th</sup> July,2018 only the Claimant was present. The Court being satisfied that the respondent was properly served and noting that on most occasions when the matter came up in court the respondent has never appeared. On the request of counsel for the Claimant the court gave directions that the suit be decided based on the pleadings filed and invited counsel for the respondent to file submissions.
10. In their pleadings the Claimants averred that they were wrongfully, illegally and unlawfully terminated. They however did not give particulars of why they thought their termination of employment was wrongful, illegal and unlawful. The Claimants in their witness statements did not attempt to allude to any reason why they thought their services were terminated even if they disputed the validity of such reason.
11. The termination letters attached to memo of claim however refers to a letter that was received by the claimants and responded to in which the Claimants were implicated in a syndicate that was stealing products from the respondent's supermarket.

12. An accusation of theft is justifiable ground for termination of service if proved. Whereas the respondent did not attend Court to give evidence or participate much in the proceedings after filing the memorandum of response, that did not lessen the burden of proof cast upon the Claimants to prove that the termination was unfair. The Claimants never filed any response to the very serious allegations made against them by the respondent. It was also dishonest on their part to claim they were terminated for no lawful reason yet the termination letters clearly gave reason why they were terminated even if they disagreed with the reason.

13. This Court by consent of the parties or of its own motion can dispose of a matter without calling oral evidence. This is usually in cases where documents and pleadings are comprehensive enough and calling oral evidence would amount to an exercise in repeating what is already on record. In the case before me the pleadings and supporting document filed by the parties especially the respondent clearly discharges the burden placed on it by the Employment Act to justify or prove reasons for termination of employment.

14. Further the respondent has ably demonstrated that upon termination the Claimants were duly paid their termination benefits.

15. In conclusion the Court finds the Claimants claim unjustified hence without merit and the same is hereby dismissed with no order as to costs since the respondent never actively participated in the proceedings.

16. It is so ordered.

**Dated at Nairobi this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**

**Delivered this 20<sup>th</sup> day of September, 2019**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha J. N.**

**Judge**