



**REPUBLIC OF KENYA**

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

**CAUSE NO. 1990 OF 2016**

**NELLY ADAGI.....CLAIMANT**

**-VERSUS-**

**BASF EAST AFRICA LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 8th November, 2019)

**JUDGMENT**

The claimant filed a memorandum of claim on 27.09.2016 through M/s Sagana, Biriq & Company Advocates. The claimant prayed for judgment against the respondent for:

- a) A declaration that the claimant suffered unfair and wrongful termination.
- b) Two months' pay in lieu of notice  $Kshs.170,000.00 \times 2 = Kshs.340,000.00$ .
- c) Compensation for unfair termination  $12 \times 170,000.00 = Kshs.2,040,000.00$ .
- d) Service pay for 4 years at  $170,000/2 \times 4 = Kshs.340,000.00$ .
- e) An order that the respondent issue the claimant with a certificate of service and reference befitting her status.
- f) Costs of the claim and interest.

The claimant was employed by the respondent in October 2011 as Office Administrator and she served on probation until December 2011. On 01.01.2012 the claimant was employed on permanent terms by the contract dated 21.12.2011. In 2015 she was promoted to the position of Controller Analyst.

The claimant's further case is that in November 2015 in the course of her duty the claimant received forex from John Onyango, one of the other respondent's employees in the sum of USD785.63 and ZAR 538.09. The forex went missing while in the claimant's custody and the claimant could not trace it. The claimant reported the matter to her supervisor verbally but no action was taken until the end of the financial year on 31.12.2015 and it became necessary to carry out the audit. The claimant received a notice of disciplinary hearing dated 29.01.2016 for disciplinary hearing on 03.02.2016. The allegations were that she lost the forex and failed to report the loss. That she had reported to the line manager belatedly sometimes on 20th to 24th December 2015, as confirmed in her email of 08.01.2016. Her full rights were communicated in the invitation. The claimant was dismissed by the letter dated 02.02.2016. She appealed against the summary dismissal but the appeal was unsuccessful as the dismissal was upheld. She filed the present suit.

The respondent filed the memorandum of response on 16.02.2017 through Daly & Inamdar Advocates. The respondent denied that the dismissal was unfair and prayed that the claimant's suit be dismissed with costs. The respondent counterclaimed for:

- a) US\$ 785.63 and ZAR 538.09 at current Central Bank of Kenya foreign exchange rates.
- b) Interest on the sums in (a) above at commercial interest rates.
- c) Costs of the suit plus interest thereon.
- d) Any such further relief as the Honourable Court shall deem fit to grant.

The claimant filed a reply to memorandum of defence and counterclaim on 08.04.2017. The respondent filed the reply to the claimant's defence to counterclaim on 17.06.2019.

The evidence and the pleadings in the case are clear. The claimant was accorded due process of a notice and a hearing under section 41 of the Employment Act, 2007. By her own pleadings and evidence in Court she admitted the money in the currency as counterclaimed was lost while in her personal custody. She testified that she received the money in November 2015 and proceeded on leave without surrendering it. She admitted that the first time she addressed the issue in writing was by her email in January 2016. She also admitted that she was required to account for it immediately it was given to her but she failed to do so. She also confirmed that she admitted the allegations at the disciplinary hearing and that she was willing to refund the money. She also confirmed that she was happy with the way the disciplinary hearing was conducted because everything was fair to her. The Court returns that as at the time of termination the respondent has shown that it had a valid reason to summarily dismiss the claimant and as envisaged in sections 43 and 45 and 47(5) of the Employment Act, 2007.

In conclusion judgment is hereby entered for the respondent against the claimant for:

- a) A declaration that the summary dismissal was not unfair.
- b) Dismissal of the claimant's case with costs.
- c) The claimant to pay the respondent US\$ 785.63 and ZAR 538.09 at current Central Bank of Kenya foreign exchange rates by 15.12.2019 failing interest at Court rates to be payable thereon from the date of filing the suit till full payment.
- d) The claimant to pay costs of the counterclaim.

**Signed, dated and delivered** in court at **Nairobi** this **Friday, 8th November, 2019.**

**BYRAM ONGAYA**

**JUDGE**