



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO 812 OF 2013**

**CHRISTOPHER MWANGI MAINA.....1<sup>ST</sup> CLAIMANT**

**PETER KIMANI WAINAINA.....2<sup>ND</sup> CLAIMANT**

**DUNCUN MAHUGU.....3<sup>RD</sup> CLAIMANT**

**VERSUS**

**RIFT VALLEY RAILWAYS (KENYA) LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The first claimant was employed by the respondent as a shunter driver on 1<sup>st</sup> November, 2006 at a salary of Kshs 28,000/= per month. The 2<sup>nd</sup> claimant was promoted on 1<sup>st</sup> November, 2006 to the position of a Loco driver at a salary of Kshs 45,000/= per month while the 3<sup>rd</sup> claimant was assigned by the respondent on contractual basis as a locomotive driver grade 8 but performed the duties of a Train Guard. His contract commenced on 23<sup>rd</sup> August, 2010 and was to expire on 22<sup>nd</sup> August, 2013. His salary was Kshs 45,000/= per month.

2. On 16<sup>th</sup> December, 2011 they were assigned work on A9Rloco 8742 (a light locomotive) that was to depart from Nairobi to Stony Athi Station where they were required to attach coachers so as to ferry passengers from Stony Athi to Nairobi. According to the claimants they were supposed to be received on main line but unfortunately they were received on a blocked line where they found a rake commuter train. They smashed the last vehicle BVB 8539. It was the claimant's contention that the accident was due to the failure by the respondent to follow the Kenya Railways General Rules. That is to say the respondent's officers failed to give the claimant's warning order about the blockage on the track. The respondent's officer received the claimants on a blocked rail line as per the indication of signals which indicated a clear line.

3. The train according to the claimants was moving at a speed of about 20 kph and the required speed when entering a station on main was 25 kph. The claimants immediately reported the matter to the Station Master of Stony Athi via a memo which was to be relayed to control as per the rules. According to the claimants, they jointly with the Station Master Stony Athi assessed the damage caused to the train and concluded with control office that it could run after removing the break van bogie that was damaged. The claimants proceeded to pick the passengers from the station and went back to Nairobi. On arrival they were issued with a "NOT TO BE BOOKED" notice which was equivalent to suspension on grounds that the respondent wanted to carry out investigation on the matter. On 17<sup>th</sup> December, 2011 they were asked to make a statement on the accident which they did.

4. On 27<sup>th</sup> March, 2012 they were issued with a letter which laid charges against them to which they responded and through a letter dated 30<sup>th</sup> May, 2012 they were interdicted on half pay and benefits. On 3<sup>rd</sup> August, 2012 the interdictions were lifted but not duties were assigned to them and after one week they received dismissal letters dated 1<sup>st</sup> August, 2012. They appealed against the dismissal but the appeal was rejected. It was the claimant's contention that their dismissal was unfair and that their actions did not amount to gross misconduct.

5. The respondent on their part pleaded that the claimants were verbally advised by the Station Master Athi River that the train would be received on a blocked line at Stony Athi Station but the claimants failed or ignored to take requisite precautions as required to ensure the accident did not occur. The respondent further averred that the speed at which the train approached Stony Athi Station was high and that the claimants passed all signals at danger and did not wait for them to be lowered as required when trains are being received at a blocked line.

6. According to the respondent, the claimants were fairly and lawfully dismissed as per the provisions of the employment Act by being given an opportunity to defend themselves against charges levelled against them and also being offered a chance to have a disciplinary hearing which chance they respectively chose not to utilize. During oral hearing only the claimants' appeared and the court being duly satisfied that the respondent was served proceeded to hear the matter ex-parte. The claimants in their evidence reiterated the averments in the

memorandum of claim hence there would be no need to repeat the same.

7. The onus of proof of reason or reasons for termination of employment is cast upon the employer. The claimants herein were accused of negligence leading to collision between A9R loco 8742 and stationary BVB 8539 occasioning damage to the letter. The claimants were issued with show cause letter to which they extensively responded to the charges against them and stated that it was the respondent's officers in charge of receiving the locomotive A9R loco 8742 who did warn them that they were being received on a blocked line. The respondents however did not believe and accept the claimant's defence and proceeded to dismiss them for gross misconduct.

8. As observed earlier, in a claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination. In default of the employer doing so, the termination shall be deemed unfair. Before the court there was a claim arising out of termination of a contract for employment. The respondent failed to appear to prove the reason or reasons for the termination of the claimants. The claimants on their part appeared before the court and demonstrated that their termination was unfair by justifying their action and shifting the blame to the respondent.

9. In conclusion, the court hereby enters judgment against the respondent for seven months salary as compensation for unfair termination of the claimants. That is to say;

|                      | <b>Kshs</b>      |
|----------------------|------------------|
| a. Christopher Maina | 294,000          |
| b. Peter Wainaina    | 397,355          |
| c. Duncan Malugu     | <u>315,000</u>   |
|                      | <b>1,006,355</b> |

d. Costs

10. The award shall be subject to taxes and statutory deductions.

11. It is ordered.

**Dated at Nairobi this 30<sup>th</sup> day of November, 2018**

**Abuodha Jorum Nelson**

**Judge**

**Delivered this 30<sup>th</sup> day of November, 2018**

**Abuodha Jorum Nelson**

**Judge**

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.