



employees saying that she had reported the co-operative society officers to personnel Manager. She informed her supervisor about it but he told her to go to work. The following day after she was informed by a colleague Javan Omondi that Edith a co-worker was saying she reported the co-operative, she told Javan to tell Edith to stop talking like that. After finishing work at around 4.30 pm she went to the changing room where she met Hellen. Edith come into the changing room and started asking her about reporting the co-operative officials while pointing a finger at her. She pushed away Edith's hand and in the process Edith's spectacles dropped to the floor, but did not break. Both herself and Edith bent to pick up the spectacles and Edith bit her hand which started bleeding. She reported to the supervisor Mr. Bosire who advised her to report to the Personnel Manager. She went to the Personnel Manager's office but did not find her and decided to go home. When she reached the gate she was stopped and told to write a statement about her confrontation with Edith but didn't as she wanted to go to hospital for treatment of her injured hand.

The following day when she reported to work she was stopped at the gate and told to write a statement. She was told she cannot be allowed to report to work until investigations into the incident were completed. She testified that she was terminated on 26th February, 2014 but was not given a letter of termination.

Under cross examination the Claimant stated that on 27th February she was called to the human resource office together with Edith and RW1 and some union officials. She stated that she was not told anything nor was anything discussed. She and Edith were told to go home and report back on 4th March, 2014. On 4th March, 2014 there were still no discussions.

### **Respondent's Case**

RW1 HELLEN AKINYI testified that she worked with the Claimant. That on 26th February, 2014 while in the changing room at about 4.30 pm Metrine asked Edith why Edith was talking about her. They started arguing and Edith's spectacles dropped and broke. Both Metrine and Edith bent to pick the spectacles, then Metrine stood up shouting that Edith had bitten her finger. The finger was bleeding. She stated that it was Metrine who started the argument.

RW2 REBECCA CHELUGET, the Human Resource Manager of the Respondent testified that on 26th February, 2014 the Claimant and a fellow worker Edith Akeyo fought in the factory a few minutes before leaving after their shift. They were summoned to the office Head of the Department to write statements the same evening. On 27th February, 2014 a hearing was called and attended by 2 union representatives. During the hearing the Claimant and Edith were suspended to enable the Respondent carry out investigations and gather more evidence. The Respondent recorded statements from other witnesses thereafter.

A decision was reached to dismiss the two on 4th March 2014 but the union appealed and the dismissals were reduced to termination. The claimant was served with a letter of termination but refused to collect her terminal benefits. She testified that the Claimant was paid salary for February 2014 through her account at Chase Bank.

RW2 testified that the Respondent has a Collective Bargaining Agreement (CBA) with Tailors and Textiles Workers Union which provides for payment of gratuity. That in 2005 it was agreed that gratuity will be paid at the end of every year and the Claimant was paid her gratuity at 12 days salary for every year worked and there was no pending gratuity due to her.

RW2 stated that the Claimants terminal benefits due was shs.14,956 made up of one month's salary in lieu of notice shs.9,024, days worked Shs.3,818, leave due Shs.3,760 less advance of Shs.3,000.

### **Determination**

I have considered the pleadings and evidence adduced in court. I have also considered the submissions filed by the parties. The issues arising for determination are whether the Claimant was unfairly terminated

and if she is entitled to the prayers sought.

From the facts of the case, there was a confrontation between the Claimant and Edith following which they were asked to write statements and thereafter suspended from duty. The suspension was to facilitate investigations and gathering of more evidence as stated by RW2. However, following the gathering of evidence, a decision was made to summarily dismiss the claimant and Edith.

RW2 stated that the Claimant was heard on 27th February, 2014. In the first place, a hearing cannot take place before gathering of evidence and investigations. Secondly, the alleged fighting having occurred on 26th February 2017, a fair hearing could not take place on 27th February, 2014 as the Claimant had not been informed of the offences she was accused of and given an opportunity to prepare her defence.

Both the Claimant and RW2 stated that she was not a member of the union. The averments by the Respondent that the hearing was in the presence of two union officials is not in conformity with section 41 which requires the hearing to be in the presence of either a union shopfloor representative or fellow employee, of the claimant's choice. The Claimant was never given an opportunity to be accompanied by an employee of her choice. The union officials could not represent her as she was not a member of the union.

Finally a fair hearing cannot be by ambush. In the present case the claimant arrived at work in the morning only to be confronted with what the Respondent refers to as a hearing. She was not notified of the hearing in good time to prepare her defence. She was not aware of the charges against her when she was called for the hearing and had not been informed of the right to be accompanied to the hearing.

For the foregoing reasons, I find that there was no hearing of the Claimant's disciplinary case. She was suspended and then evidence gathered during her suspension which was used to dismiss her without her being given an opportunity to defend herself on the evidence gathered after her suspension. The termination was therefore unfair.

## **Remedies**

The Claimant is entitled to pay in lieu of notice, pay for days worked and leave which the Respondent stated as follows -

- (i) One months' salary in lieu of notice
- (ii) Gratuity shs.15,830.
- (iii) Leave shs.3,760.
- (iv) House allowance shs.1,354
- (v) 11 days worked Shs.3,818 less shs.3,000 Christmas advance.

I therefore award the Claimant the following -

- (i) Consolidated Pay in Lieu of Notice Shs.10,322
- (ii) Salary for 11 days Shs. 3,818
- (iii) House Allowance Shs. 1,354
- (v) Leave Shs. 3,760
- (vi) Gratuity Shs. 1,580

In addition I award the Claimant maximum compensation of shs.123,864 taking into account her long service of more than 20 years and the manner in which she was terminated.

The Respondent will also pay the claimant's costs for this suit and the decretal sum will be subject to interest at court rates from date of judgment unless payment is made within 30 days.

**Dated and signed and delivered this 2nd day of March, 2017**

**MAUREEN ONYANGO**

**JUDGE**