



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 137 OF 2016**

*(Before D. K. N. Marete)*

**FREDRICK WANDERA.....CLAIMANT**

**VERSUS**

**LETSHEGO KENYA LIMITED.....RESPONDENT**

**JUDGEMENT**

This matter is originated by way of a Memorandum of Claim dated 7th September, 2016. The issues in dispute are therein cited as;

1. *Unfair and unlawful dismissal.*
2. *Non-payment of terminal dues.*
3. *Defamation.*
4. *Other benefits arrears.*

The respondent in a Memorandum of Defence dated 22nd November, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that he was employed by the respondent as a Regional Manager in their Bomet Branch on 1st May, 2015 at Kshs. 85,000.00. This was renewable but depending on performance.

The claimant's further case is that on 12th February, 2016, he was given a bonus of Kshs. 81,000.00 and his salary reviewed to Kshs. 92,000.00, an indicator of outstanding performance. He avers that this did not go well with some top managers who felt threatened and immediately, a team of three members were sent from the Head office to come and evaluate the claimant's branch and these concluded that this was below par. He explained that this was due to under staffing. He had a compliment of three instead of six officers but his plea on this fell on deaf ears.

The claimant's further case is that in the meantime, he conducted investigations into this delay in loan repayments and processes which implicated a loan officer, one, Geoffrey Abuga in misappropriation of customer monies. This was reported to his supervisor, Margaret Chepngetich whereby the matter was forwarded to the head office. Thereon, the claimant and Mr. Abuga were summoned for disciplinary process. Here, Abuga admitted and was dismissed whereas the claimant was given fourteen (14) days to

pave way for investigations.

*18. The claimant avers that the disciplinary committee as constituted and how the hearing was conducted flouted the provisions of the Employment Act, The Human Resource Management Professionals Act, the provisions of his employment contract and the principles of natural justice in that:-*

*(i) The Human Resource and Administration Manager did not have a valid Practicing Certificate when the cause of action arose hence was estopped from practicing as such by the law.*

*(ii) The claimant was summoned for a Disciplinary meeting yet he was never issued with a notice to show cause so as to know what he was being summoned for.*

*(iii) The claimant was denied his right to call his fellow team members to come and vouch for him in the disciplinary proceedings.*

It is the claimant's other case that on 27th May, 2017, the Chief Executive Officer, one, Charles Njoroge, sent a memo via email to all the respondent's staff stating that he had realised that some staff were using unscrupulous means of soliciting funds from the firms clients where the claimant was also implicated.

The claimant avers as follows;

*20. This statement was made after investigations into the incident of funds misappropriation had been finalized which cleared the claimant and even after Geoffrey Abuga had acknowledged both orally and in writing via his letter dated 19<sup>th</sup> May 2016, that he had misappropriated clients' fund and did so on his own.*

On 6th June, 2016, the claimant was summoned to the head office where he was informed that a decision had been reached that he had failed in his duties by allowing misappropriation of client's monies in his branch. He was given an option of either resigning or being terminated. He opted for the latter and was issued with a letter of termination on 14th June, 2016. He puts it thus;

*i. The Claimant was never served with a notice to show cause as provided for by the Employment Act.*

*ii. The Claimant's explanation as to why the branch performance was deteriorating was no taken into account, despite him explaining to the disciplinary committee that the same was occasioned by not having enough staff members and even reminded them that he had raised that issue previously via an email dated 25<sup>th</sup> March, 2016 (attached herein) and the CEO Mr. Charles Njoroge ordered the regional Manager one Margaret Chepngetich, to ensure that two (2) more staff members were assigned to him, via an email dated 29<sup>th</sup> March 2016, but the same was never done.*

*iii. The outcome of the disciplinary and grievances cases was never communicated to the claimant in writing nor was there any documentary record made of all formal hearings as stipulated in the LETSHEGO GROUP HR POLICY. Furthermore, immediately after the claimant was suspended to pave way for investigation on misappropriation of client's funds by one Geoffrey Abuga, an email was sent to all staff members indicating that the claimant had been suspended in relation to the said offence, in clear breach of the provisions of the LETSHEGO GROUP HR POLICY which stipulate that the Group will ensure all disciplinary and grievances cases are resolved with confidentiality.*

*iv. The Claimant was never placed on a three (3) months Professional Improvement Plan (PIP) as provided for by the LETSHEGO GROUP HR POLICY for any employee who is constantly under performing, as alleged.*

*v. The Claimant was never accorded the opportunity call his colleagues to vouch for him if need*

be, as provided for by the Employment Act.

vi. *The Respondent went ahead to dismiss the claimant without according him a chance to appeal against the decision as provided for by law.*

vii. *The respondent acted in a rushed manner and extremely inconsiderate manner.*

viii. *All the requirements of the law were thrown out in the haste to dismiss the claimant.*

He prays as follows;

a) *12 Months Salary as damages for unfair termination(12 months x 92,000) =Kshs.1,104,000/=*

b) *Unpaid house allowance(Kshs. 13,800PM x 13 Months) =Kshs.179,400.00/=*

c) *Gratuity/Severance (Kshs. 92,000/26 x 30days x 1 year) =Kshs. 106,154/=*

d) *General damages.*

e) *Interest on (a), (b), (c) and (d) at court rates from the day each payment fell due and payable until payment in full.*

f) *Certificate of service.*

g) *Cost of this suit.*

The respondent's case is a denial of the claim and avers that;

i. *The Claimant was summarily dismissed on the grounds of non-performances; he was not unlawfully terminated as alleged.*

ii. *The Claimant's summary dismissal was fair, procedural and in accordance with the applicable provisions of the law.*

iii. *The claimant's summary dismissal was warranted on the grounds of non-performance and was in fact accepted by the claimant herein as justified. The claimant should not be allowed to probate and reprobate.*

iv. *The claimant's claim as filled is false and deliberately misleading.*

v. *The claimant is not entitled to the orders sought.*

The respondent's further case is that the claimant was employed by as Branch Manager, Bomet on 1st May, 2015 and put on probation for three months but this was extended for another three. Before the extension of the probation period, he was issued with a show cause letter for disclosure of confidential information to third parties which he accepted and apologised. He appeared before a disciplinary committee on 1st July, 2015 and was served with a warning letter dated 24th July, 2015. This is as follows;

4. *The Claimant was employed by the Respondent as a Branch Manager for Bomet on the 1<sup>st</sup> May 2015. The Claimant was put to a probation period for three months but later on the same was extended to another period of 3 months due to disclosure of client's information to the 3<sup>rd</sup> parties. Before the claimant's probation was extended he was given notice to show cause why disciplinary actions should not be taken against him for disclosure of such confidential information to the third parties, he responded by accepting his mistake and asked for forgiveness through a letter. He*

*appeared before a disciplinary committee on the 1<sup>st</sup> day of July 2015 and was given a final warning letter dated 24<sup>th</sup> July 2015 and was given a final warning letter dated 24<sup>th</sup> July 2015 on the recommendation of the disciplinary committee to serve a further probation period for three months for the respondent to gain confidence with him following the said disciplinary committee to serve a further probation period for three months for the respondent to gain confidence with him following the said disciplinary issue. He was also to be appraised during that period for probation. The appraisal to that effect was to be conducted in October 2015. The Claimant was at the end of his probation period appraised and found to have changed and was confirmed as a branch manager on the 24<sup>th</sup> November 2015.*

On 29th April, 2016, the claimant was issued with a warning letter following a review of the claimant's branch by a team from the headquarter office which concluded that he was not holding credit control meetings which had resulted to poor quality of loans. This warning was a notice of poor performance and he was expected to improve within 30 days or face disciplinary action.

On 17th May, 2016 the Regional Manager informed Chief Operating Manager – Headquarters that one of the Relationship Manager, of the claimants branch, a Mr. Abuga was misappropriating customer funds. On 20th May, 2016, the claimant was issued with a notice to show cause to explain an amount of Kshs. 247,500.00 misappropriated by his officers. He attended a disciplinary meeting on 23rd May, 2016 and was given an opportunity to defend himself, but asked for forgiveness. He was thereafter suspended pending investigations.

He was subsequently terminated from employment on 13th June, 2016 after a consideration of his defence and further investigations. He was paid an amount of Kshs.160,821.33 being his final dues.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful?
2. Whether the claimant is entitled to the relief sought?
3. Who bears the costs of this claim?

The 1st issue for determination is whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. The parties hold diametrically opposed positions on this. The Claimant in his written submissions dated 9th February, 2017 reiterates a case for unlawful termination but this is denied by the respondent. It is the respondent's case that from day one, the claimant was not able to offer satisfactory service in his employment and was therefore subjected to an extension of probation for a further three months.

Further, on investigation and implication of the claimant's branch in fraudulent activities and loss of customer's monies or funds, the claimant was taken through disciplinary proceedings in which he was involved but now denies. It is the respondent's submission that the termination of the employment of the claimant was lawful and consequential upon his poor performance as a Branch Manager. This is even admitted by the claimant. I agree with the respondent. I therefore find a case of lawful termination of the employment of the claimant by the respondent and hold as such.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not having lost on a case of unlawful termination of employment he is disentitled to the relief sought.

I am therefore inclined to dismiss the claim with orders that each party bears their own cost of the claim.

Delivered, dated and signed this 26th day of April 2017.

**D. K. Njagi Marete**

## **JUDGE**

### Appearances

1. Miss Mitei holding brief for Mbonda instructed by Lestings & Smith, Advocates for the Claimant
2. Mr Opar instructed by Mothanwa & Company Advocates for the Respondent