



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

**AT KERICHO**

**CAUSE NO. 18 OF 2016**

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

**NANCY CHEPTANUI.....CLAIMANT**

**VERSUS**

**RIFTVALLEY BOTTLERS LIMITED.....RESPONDENT**

**JUDGEMENT**

This matter is originated by way of a Memorandum of Claim dated 8th February, 2016. The issues in dispute are therein cited as;

- a) Unlawful and unfair termination of employment.*
- b) Discriminative employment policy (s) practice (s).*
- c) Non-payment of terminal dues.*

The respondent in a Statement of Defence dated 7th November, 2016 denies the claim and prays that the same be dismissed with costs.

The claimant's case is that at all material times and particularly from the beginning of 2nd January, 1992 until 22nd October, 2015, she was employed by the respondent as a Junior Administrative Clerk and later promoted to Typist/Telephonist, Secretary, Procurement and Supplies Assistant, Ag. Supplies Officer and lastly as Stores Supervisor. She worked with dilligence and to the satisfaction to the respondent.

It is the claimant's further case that on 22nd October, 2015, she was terminated from employment without valid reasons or pursuance of due process. This was not only unfair and unlawful in that she had offered blemish free service to the respondent for twenty two (22) years. She also claims that this was a breach of labour laws, natural justice and her constitutional rights as follows;

- a) There was no valid reasons for termination;*
- b) The respondent acted discriminatively against the claimant;*
- c) Even if there was a redundancy, the procedure for declaring an employee redundant as set out under Section 40 of the Employment Act was completely disregarded.*

This also amounted to discriminative employment policy and practice.

She claims as follows;

- a) *One month salary in lieu notice.....Kshs. 61,324.40/=*
- b) *Outstanding leave allowance.....Kshs. 45, 993.300/=*
- c) *Days worked up to date of termination.....Kshs.94,014.64,009/=*
- d) *Loss of earning from the date of termination to retirement  
.....Kshs. 13,638,877.20/=*
- e) *12 months compensation.....Kshs.1,398,859.20/=*
- TOTAL CLAIM.....Kshs.15,333,083.40/=**

She in the penultimate prays as follows;

- a) *A declaration that the respondent's decision to terminate claimant was unlawful and unfair and that the claimant is entitled to apyment of his terminal dues.*
- b) *An order for the respondent to pay the claimant his due terminal benefits and compensatory damages totalling of Kshs. 15,333,083.40/=.*
- c) *Interest on (b) above from the date of filing suit till payment in full.*
- d) *Costs of this suit plus interest thereon.*

The respondent's case is that the claimant is her former employee having been employed as a clerk sometimes in 1992 and rising to a position of stores supervisor in the Finance Department at a salary of Kshs. 61,324.00 and a house allowance of Kshs. 31,983.00

The respondent's further case is that sometimes in October, 2015, the claimant was instructed to arrange the store for stock taking which she did not do on time thus disorganizing the team that was intended to take stock of spare parts. It was also noted that postings for consumed items and not been had due to the negligence of the claimant.

The respondent's further case is that on 2nd October, 2015, the claimant was called and informed of the variances in spares but did not visit the team and instead sent a junior staff to address the situation hence an indication of lack of initiative and concern. On 3rd October, 2015, she failed to supply spares to the maintenance team and also occasioned a shortage of petrol from 2nd October, 2015 to 5th October, 2015 without explanation.

The respondent's other case is that on 6th October, 2015, the claimant was issued with a show cause letter intended to be responded on the same date. This is as follows;

*7. The claimant responded to the show cause on 6/10/15 and admitted having been instructed to arrange the store but instead that she did the best of her ability and attributed the challenge of not carrying out her duties as required due to identification and not the manner of arrangement at the store that led to the team that was carrying out the counting exercise to have rough time in accomplishing the counting as required and on time.*

*8. On the issue having been asked to report to the plant but she refused or declined to report she said that she could not make it since she was not able to get a tax and a person to take care of her*

*children and that she thought she was not likely to make any impact hence sending a person to represent her.*

Her response to the show cause was found inadequate and therefore she was invited to a disciplinary meeting on 9th October, 2015. She attended and participated.

*31. On the issue of shortage of petrol it was her answer that they had been stocking petrol and LPG to cater for shortages and that everything else was beyond her control. Asked if she knew that she had committed a misconduct she answered in the affirmative. The committee found her to have committed misconduct.*

*33. The respondent issued the claimant with a termination letter outlining the reason for termination. The respondent further submits that the decision to terminate the claimant was arrived at after careful consideration of all the facts and therefore the claimant cannot claim to have been unlawfully terminated.*

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 claimant in her written submissions dated 6th February, 2017 reiterates her case of unlawful termination of employment in that she was not accorded a fair hearing before termination. She however, is not able to controvert the respondents overwhelming evidence and submissions on misconduct leading to dismissal. The respondent brings out a case of poor disciplinary record that is attributed to her dismissal. Even on a balance of probabilities, the respondent's case comes out as more authentic as compared to the claimant's. 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. She is not. Having lost on a case of unlawful termination of employment, the claimant is not entitled to the relief sought.

I am therefore inclined to dismiss the claim with costs to the respondent. And this answers all the issues for determination.

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

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Okara instructed by Mburu Okara & Company Advocates for the Claimant
2. Mr. Masese instructed by the Federation of Kenya Employers for the Respondent