



**REPUBLIC OF KENYA**

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

**CAUSE NO. 225 OF 2016**

**MICHAEL MWENDA MUGO.....CLAIMANT**

**VERSUS**

**KIRIANI FARMERS CO-OPERATIVE SOCIETY LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday, 3<sup>rd</sup> November, 2017)

**JUDGMENT**

The memorandum of claim was filed on 12.10.2016 through Kijaru, Njeru & Company. The claimant prayed for judgment against the respondent for:

- a) A declaration that the termination of the claimant's services was illegal, unlawful and wrongful.
- b) Salary arrears for 12 months.
- c) Overtime worked and accumulated leave days.
- d) General damages for wrongful dismissal.
- e) Statutory dues and retirement benefits.
- f) Costs of the dispute and interest.
- g) Any other relief that this court may deem fit to grant in the circumstances.

The response to the memorandum of claim was filed on 18.11.2016 through Kiautha Arithi & Company Advocates. The respondent prayed that the claim be dismissed with costs.

It is not in dispute that the respondent employed the claimant in 1987 as a casual labourer. In 1991 he was promoted to an assistant factory manager. The respondent served upon the claimant numerous warning letters about the claimant's misconduct being selling of the respondent's property, mainly farm produce, without permission.

By the letter dated 10.12.2015 the claimant admitted selling the respondent's bananas without permission and he apologised and asked for forgiveness. By the letter dated 16.12.2015 the respondent served the claimant a letter of suspension from duty in view of the contents of the claimant's letter of 10.12.2015 and the claimant's continued misconduct of selling the respondent's bananas without permission. By the letter dated 24.02.2016 the claimant was invited for disciplinary hearing in that regard and fixed for

29.02.2016 at 11.00am. As per minutes on record the claimant appeared as was scheduled in company of the union representative and it was resolved that he be summarily dismissed without benefits. The letter of summary dismissal dated 29.02.2016 was issued and the termination was effective 29.02.2016. The reasons for dismissal included selling the respondent's property without permission.

To answer the **1<sup>st</sup> issue** for determination, the court returns that the dismissal was not unfair. First, the procedure was fair entailing a notice and a hearing as envisaged in section 41 of the Employment Act, 2007. Second, the reason for termination was valid as per section 43 of the Act especially in view of the claimant's admission and apology letter dated 10.12.2015.

To answer the **2<sup>nd</sup> issue** for determination, the court returns that as the termination has been found not to have been unfair, the prayers made for the claimant will fail accordingly and the court returns the same have not been justified by way of evidence or at all.

In conclusion the claimant's suit is hereby dismissed with costs.

**Signed, dated and delivered** in court at Nyeri this **Friday, 3<sup>rd</sup> November, 2017.**

**BYRAM ONGAYA**

**JUDGE**