

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 87 OF 2013

PRISCA NJERI KARIA.....CLAIMANT

VERSUS

THIRIKWA FARMERS CO-OPERATIVE SOCIETY
LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday, 20th December, 2017)

JUDGMENT

The claimant filed the memorandum of claim on 12.08.2013 through Wangechi Munene & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. Annual leave for 2 years Kshs.29, 340.00.
- b. One month salary in lieu of notice Kshs.14, 100.00.
- c. Terminal benefits of Kshs.38, 490.00.
- d. Service pay of general damages for wrongful or unfair dismissal.
- e. Costs of the suit.

The claimant's case is that she was employed by the respondent as secretary manager effective 01.10.2009. She alleges that she was unlawfully terminated from employment on 08.03.2013 when her monthly pay was Kshs.14, 100.00. Her case is that the dismissal was unfair for want of due process.

The response to the memorandum of claim was filed on 16.09.2013 through Munene Wambugu & Company Advocates. The respondent prayed that the suit be dismissed with costs. At paragraph 3 of the memorandum of response it was stated thus, "**3. Paragraph 3 and 4 of the memorandum of claim are not contested save to clarify that the dismissal was effective 1st March 2013.**" Thus, the court returns that the respondent has admitted that the respondent employed the claimant on 01.10.2009 as secretary manager and further that on 01.03.2013 the claimant was unlawfully dismissed from employment without a notice. The evidence on record was that as secretary manager, the claimant confirmed that she informed a supplier of sisal gunny bags that he had been a successful bidder for supply of the bags. She confirmed that following that communication, bags that were unfit for the purpose were delivered. The claimant in her testimony stated that it was irregular for her to convey the information to the supplier on telephone and a formal written order was necessary for that purpose. The court returns that had the claimant not irregularly conveyed to the supplier the information about the successful bid, then the unfit bags would not have been delivered to the respondent – because a formal order as per the respondent's procurement policy would have provided for the specifications and quality of the bags the respondent was desirous of buying. The court has considered the pleadings, the evidence and the submissions. The court returns that whereas the claimant's contract of employment was terminated without notice and a hearing as envisaged in section 41 of the Employment Act, 2007, the claimant substantially contributed to her termination when she breached the respondent's procurement policy on conveying a formal written order for supply to successful bidders. The court places that contribution at 100% and returns that the claimant would not be awarded any compensation under section 49(1) (c) of the Act.

There was no evidence and submissions on the other reliefs as prayed for in the memorandum of claim. The court returns that the same were not justified and in absence of evidence and submissions in that regard, the same are deemed abandoned.

In conclusion, the claimant's suit is hereby dismissed with costs in favour of the respondent.

Signed, dated and delivered in court at **Nyeri** this **Wednesday, 20th December, 2017.**

BYRAM ONGAYA

JUDGE