



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 522 OF 2013**

**JOSEPHAT IDUKA MWANDIHI.....1ST CLAIMANT**  
**SHIDA CHARO MANGI.....2ND CLAIMANT**

**V**

**ALAMDAR TRADING COMPANY LIMITED.....RESPONDENT**

**AWARD**

**Introduction**

1. By a Memorandum of Claim dated 15th April and filed in Court on 16th April 2013, the Claimants have sued the Respondent seeking compensation for unlawful termination of employment and payment of terminal dues. The Respondent filed a Memorandum of Reply on 8th May 2013. At the hearing the 2nd Claimant testified for the Claimants and the Respondent called its Industrial Area Branch Manager, Shane Abbas Dossa.

**The Claimants' Case**

2. The 1st Claimant, Josephat Iduka Mwandihhi was employed by the Respondent in June 2011 in the position of Driver. The 2nd Claimant, Shida Charo Mangi was employed in March 2010 in the position of Loader. On 7th November 2012, the Claimants ferried goods from the Respondent's Industrial Area Branch to the Head Office in Kijabe Street. They state that there was no documentation to confirm internal deliveries.

3. On 8th November 2012, the Claimants made another delivery from Industrial Area to the Head Office and later on the same day they were notified that there were goods missing from the delivery of 7th November 2012. They were thereafter verbally dismissed by a supervisor by the name Ahmed. According to the Claimants, they had fully delivered all the goods. They state that they were not afforded an opportunity to be heard prior to the dismissal.

4. The Claimants' claims are as follows:

**1st Claimant-Josephat Iduka Mwandihhi**

- a. One month's salary in lieu of notice.....Kshs.13,000
- b. Damages for wrongful termination.....156,000
- c. 12 months' salary in compensation for unlawful termination.....156,000
- d. Costs plus interest

## **2nd Claimant-Shida Charo Mangi**

- a. One month's salary in lieu of notice.....Kshs.10,000
- b. Damages for wrongful termination.....120,000
- c. 12 months' salary in compensation for unlawful termination.....120,000
- d. Costs plus interest

### **The Respondent's Case**

5. In its Memorandum of Reply filed on 8th May 2013, the Respondent states that the Claimants were unable to account for some goods entrusted to them. Having failed to account for the missing goods, the Claimants were summarily dismissed. The Respondent denies that the Claimants' dismissal was unlawful or unfair.

### **Findings and Determination**

6. There are two issues for determination in this case:
- a. Whether the termination of the Claimants' employment was justifiable and fair;
  - b. Whether the Claimants are entitled to the remedies sought.

### **The Termination**

7. According to the evidence adduced before the Court, the termination of the Claimants' employment had to do with the loss of a generator entrusted to them for delivery from the Respondent's Industrial Area Branch to the Head Office on Kijabe Street.

8. The accusation leveled against the Claimants is within the territory of gross misconduct which renders an employee liable to summary dismissal. Section 41 of the Employment Act, 2007 sets out the mandatory procedure to be applied in cases of misconduct, including gross misconduct. The purpose of this provision is to allow an employee facing disciplinary action to test the veracity of the accusations made against them and to offer their defence.

9. The Respondent claims that a generator was missing from the goods delivered by the Claimants on 7th November 2012. The Claimants answer is that they delivered all the goods entrusted to them. The Respondent's Industrial Area Branch Manager, Shane Abbas Dossa told the Court that he learnt of the missing generator from the Head Office Manager on 8th November 2012.

10. According to the Respondent, it was standard practice for all deliveries to be documented. On their part, the Claimants submitted that there was no documentation for internal deliveries. The Respondent did not produce any form of documentation to show the movement of the generator in issue and the Court was therefore unable to authenticate the Respondent's pleadings and testimony in this regard.

11. Consequently, the Court finds that the Respondent failed to establish a valid reason for the termination of the Claimants' employment as required under Section 43 of the Employment Act, 2007. Additionally, the Respondent failed to subject the Claimants to the mandatory disciplinary procedure set out under Section 41 of the Act.

### **Remedies**

12. From the foregoing, the termination of the Claimants' employment by way of summary dismissal was substantively and procedurally unfair. I therefore award the 1st Claimant, Josephat Iduka Mwandihhi three (3) months' salary and the 2nd Claimant, Shida Charo Mangi, four (4) months' salary, in compensation. In making these awards, I have considered the Claimants'

respective length of service and the Respondent's conduct in the termination process. I further award each of the Claimants one (1) months' salary in lieu of notice.

13. Finally, I make an award in favour of the Claimant as follows:

**1st Claimant-Josephat Iduka Mwandih**

- a. 3 months' salary in compensation for unfair termination.....Kshs.39,000
- b. 1 month's salary in lieu of notice.....13,000

**Total.....52,000**

**2nd Claimant-Shida Charo Mangi**

- a. 4 months' salary in compensation for unfair termination.....Kshs. 40,000
- b. 1 month's salary in lieu of notice.....10,000

**Total.....50,000**

14. The Claimants will have the costs of this case. The award amounts will attract interest at court rates from the date of the award until payment in full.

15. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS**

**24TH DAY OF MARCH 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Wathome for the Claimant

Mr. Murage for the Respondent