



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT

NAKURU

CAUSE NO. 417 OF 2013

STELLA CHEPKOSGEI.....CLAIMANT

KENYA FARMERS ASSOCIATION LTD..... RESPONDENT

JUDGMENT

1. Stella Chepkosgei (Claimant) sued Kenya Farmers Association Ltd (Respondent) on 29 November 2013 alleging unfair termination of employment.
2. The Respondent filed an Answer to Claim on 7 February 2014, and the Cause was heard on 16 November 2015 and 8 February 2016.
3. The Claimant filed her submissions on 29 February 2016, while the Respondent's submissions were only filed on 21 April 2016 (should have been filed by 15 April 2016).
4. The Court has considered the pleadings, evidence and submissions and adopts the issues for determination as set out in the Claimant's submissions.

Procedural fairness

5. Although the Claimant contested the procedural fairness of the termination of her employment, documents produced in Court show that on 23 July 2010, the Respondent wrote to her intimating that she had failed to remit and or explain the whereabouts of Kshs 136,360/-, stock shortage of Kshs 18,825/-, and also alleging alteration of cash sale documents.
6. The Respondent again wrote to the Claimant on 27 September 2010 to show cause within 14 days why disciplinary action should not be taken against her over unaccounted for Kshs 191,685/-.
7. The Claimant responded to the show cause notice on 4 October 2010, after which her employment was terminated on 30 November 2010.
8. Considering the show cause notice and response by the Claimant, the Court is satisfied that the process undertaken by the Respondent met the basic statutory requirements of procedural fairness as envisaged by section 41 of the Employment Act, 2007.
9. Although the Claimant underpinned her case on section 40 of the Employment Act, 2007, the said section is not relevant or material in her case because she was not declared redundant.

Substantive fairness

10. Documents produced in Court include a letter dated 8 July 2010, in which the Claimant apologised for taking money from the Respondent and undertaking to repay the same, and a letter dated 4 October 2010 (response to show cause) admitting to taking the money due to family financial dire straits and seeking forgiveness.
11. With the admission in the two letters, the Court is satisfied that the Respondent had valid and fair reasons to terminate the employment of the Claimant.

Appropriate remedies

Pay in lieu of notice

12. The Respondent had offered to pay the Claimant 3 months' pay in lieu of notice and therefore nothing turns on this head of relief.

Service benefits (gratuity)

13. In terms of section 35(5) and (6) of the Employment Act, 2007, the Claimant is not entitled to *service benefits* if what she seeks is *service pay*, considering that she was a member of the National Social Security Fund.
14. If the *service benefits (gratuity)* sought was based on contract, no evidential basis for the relief was placed before Court.

Leave dues

15. The Claimant sought Kshs 230,524/- on account of leave for 20 years.
16. Leave application forms for 2008, 2009 and 2010 were produced.
17. The Respondent had indicated that the Claimant would be paid earned leave entitlement. It should compute and pay the commuted amount if there are any outstanding/accrued leave.

Underpayments

18. The Claimant did not prove that she was underpaid or that Legal Notice No. 98 of 2010 applied to the industry/sector the Respondent was engaged in.

Compensation

19. With the conclusion on the fairness of the termination of employment, compensation is not available.

Wages for November/December 2010

20. The Claimant is entitled as of right to wages up to 6 December 2010 when the termination of employment became effective.
21. The Respondent had also indicated in the letter of termination that the wages would be paid.
22. The Respondent should compute and pay the wages.

Res judicata

