



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**

**CAUSE NUMBER 1137 OF 2014**

**MARY ACHIENG OUMA.....1<sup>ST</sup> CLAIMANT**

**JECINTA COMPANY LIMITED.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**SALIHIIHYA COMPANY LTD.....RESPONDENT**

**JUDGMENT**

1. This cause was consolidated with cause number 1138 of 2014. Parties herein attempted amicable settlement but nothing came out of it and on 15<sup>th</sup> March, 2016 the matter proceeded for hearing.
2. The first claimant Mary Achieng testified that she was employed by the respondent in 2005 and worked until February, 2014 when her services were terminated. According to her some cheques were found in her name and was arrested for interrogation. She was later charged at Makadara and by this time this matter proceeded the criminal trial was still going on. In her evidence she denied stealing the said cheques. According to her, they could at times receive cheques with no names and they could be asked by the respondent to file in their names to avoid taxation. It was her evidence that her dismissal was for no good reason. She was never issued with any show cause letter. It was further her evidence that since her arrest she has never gone back to the respondent's premises and further the respondent has never called her back to work.
3. In cross-examination she stated that she was not supposed to receive cheques. She further stated that it was not the second claimant's duty to bank cheques. It was later her evidence that the drawers of the cheques were respondent's clients and that the cheques were given to the cashier who could sometimes send her to Bank the cheques. She admitted banking the cheques in her account.
4. The second claimant Jacrata Adhiambo testified that she was employed in 2009 and was dismissed in 2014 without any reason. According to her, she heard rumors about some cheques that were found in her name. They were subsequently picked for questioning. She denied anything to do with the cheques. She further stated that since her arrest she had never gone back to the respondent's premises. In cross-examination she stated that she was introduced to the respondent by her sister, the first claimant and that she used to work as a tea girl and cleaner. She could also perform messengerial duties upon request.
5. The respondent's witness Mr. Siyad Hussein testified that he was the respondent's operations manager. It was his evidence that the 1<sup>st</sup> claimant was employed in March, 2008 and that her duties included receiving customers and cheques. The second claimant according to him was an office

messenger, cleaner and tea girl.

6. According to Mr. Hussein, one of the customers called in February, 2014 and claimed she gave the respondent a cheque but an individual banked the same. According to him, the 1<sup>st</sup> claimant came and conceded that the cheque was in her name and asked for forgiveness. The matter was reported to the police and the claimants were arrested. Later more cheques totaling to Kshs.538,528 were found in the 1<sup>st</sup> claimants' name. He denied ever instructing the claimant to insert her name on the cheques. He further stated the claimants have never gone back to work since their arrest. He denied terminating the claimant's services.

7. In cross-examination he stated that when the client complained over the cheque he met with the 1<sup>st</sup> claimant to discuss the matter. No minutes of the meeting were taken. It was further his evidence that known customers could give cheques signed with the amount stated but without the name of the payee. He further stated that the 1<sup>st</sup> claimant used to surrender the bankslips and that they were stamped by the bank showing the respondent's name.

8. The respondent in this matter denies terminating the claimants' services but does not tell the Court the steps he took to call upon the claimant to show cause why their services could not be terminated for absconding duty. The claimants on their part have conceded that since their arrest and trial which was still on going, they have never gone back to work. This scenario is fully appreciated by the Court because the parties may have assumed that the fact of the claimant's arrest and prosecution did not create a conducive environment for them to continue working. However a contract of employment cannot be terminated through assumption. A party especially the employer must take a positive step and terminate a contract of employment. It may well be true that the accusations the claimants are facing are serious enough to warrant their summary dismissal but such dismissal cannot be assumed. The respondents must act and terminate the relationship.

9. Considering the case herein as a whole and the conduct of the parties in relation to the employment contract, the Court will convert the cessation of employment relationship between the parties herein and award the claimants one month's pay in lieu of notice of termination of employment. The Court further awards them three months salary on account of unfair termination of employment.

10. The claimant shall further have costs of the suit.

11. It is so ordered.

Dated at Nairobi this 23<sup>rd</sup> day of September 2016

**Abuodha Jorum Nelson**

**Judge**

Delivered this 23<sup>rd</sup> day of September 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

**Abuodha Jorum Nelson**

**Judge**