



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

**AT NYERI**

**CAUSE NO.5 OF 2015 CONSOLIDATED**

**WITH CAUSE NO. 6, CAUSE NO. 7 AND CAUSE NO. 71 ALL OF 2015**

**RHODA NJERI KIGURU.....1<sup>ST</sup> CLAIMANT**  
**CHARLES KIMANI NJOROGE.....2<sup>ND</sup> CLAIMANT**  
**JAMES MUTUA KIVINDYO.....3<sup>RD</sup> CLAIMANT**  
**DUNCAN NJOROGE KIMANI.....4<sup>TH</sup> CLAIMANT**

**VERSUS**

**KIAMBAA DAIRY FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday, 23<sup>rd</sup> September, 2016)**

**JUDGMENT**

The claimants filed their respective statements of claims against the respondent through Namada & Company Advocates. Each of the claimants prayed for judgment against the respondent for:

- a. A declaration that the dismissal of the claimant from employment was unlawful and unfair.
- b. A declaration that the claimant is entitled to payment of terminal dues and compensatory damages as pleaded.
- c. An order for the respondent to pay the claimant due terminal benefits and compensatory damages totalling to , for 1<sup>st</sup> claimant Kshs.403, 205.00; 2<sup>nd</sup> claimant Kshs.538, 097.00; 3<sup>rd</sup> claimant Kshs.362, 705; and 4<sup>th</sup> claimant Kshs.356, 914.00.
- d. Interest on (c) above from the date of filing suit till payment thereof.
- e. Costs of the suit plus interest thereon.

The respondent filed the defence and counterclaim to the claims and prayed that the claims be dismissed with costs and judgment be entered against the claimants jointly and severally for Kshs. 2, 000,000.00 as counterclaimed and for costs of the suit and counterclaim. Ngugi, Mwaniki & Company Advocates acted

for the respondent. The claimants filed the answer to defence and defence to counterclaim and prayed that the counterclaim be dismissed with costs.

The claimants were employed by the respondent in July 2009, February 2011, February 2011 and 1.12.2009 respectively. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> claimants served in the position of chef while the 4<sup>th</sup> claimant was the accounts clerk. At the time of the summary termination on 14.05.2014 the 1st claimant's monthly pay were Kshs.29, 867.00; the 2<sup>nd</sup> and 3<sup>rd</sup> claimants Kshs. 26, 867.00 each per month; and the 3<sup>rd</sup> claimant Kshs.27, 378.00 per month. The evidence on record suggests that the claimants were subsequently deployed in various assignments in the operations of the respondent 1<sup>st</sup> claimant as customer service officer, 2<sup>nd</sup> claimant as system administrator, 3<sup>rd</sup> claimant as control clerk or stores data clerk, and 4<sup>th</sup> claimant as the credit officer.

The claimants' case is that on 29.04.2014 the respondent, through its manager one Daniel Njenga, received an anonymous complaint letter. On 30.04.2014 the respondent delivered to each of the claimants a suspension letter. The suspension letter stated that following the threat letter received by the manager on 29.04.2014, the executive board had decided to suspend each of the claimants until further notice pending the hearing and determination of the case after conclusion of the investigation. By the letter dated 5.05.2014 each claimant was informed that the executive board had decided to suspend each of the claimants for 30 days from 30.04.2014. The letter stated that each claimant was linked to the scandal of undermining the authority of the respondent and it was for each claimant to prove otherwise. Each claimant was invited to make written representation or verbal views on the whole issue at the board meeting which the letter stated had been fixed for 07.05.2014. Subsequently, each of the claimants received the letter of summary dismissal dated 14.05.2014. The letter stated that each claimant's employment contract had been terminated because the board had found that each of the claimants had been directly involved in the recent warning letter to the manager which amounted to insubordination and disobedience of the society's authority which was vested in the board by the Annual General Meeting and in the manager by the board. The letter stated that each claimant was therefore liable to summary dismissal per clause 9.44 (v) (vii) (ix) of the respondent's human resource policies and clause 10.6 (iii) (v) and (vii) and clause 11.7 of the respondent's terms and conditions of service. The letter warned that if anything happened to the respondent's manager then each of the claimants would be held responsible.

The claimants were dissatisfied with the dismissal and they each filed suit claiming pay for 15 days of suspension from 30.04.2014 to 14.05.2014, one month pay in lieu of the termination notice; and 12 months' salaries for compensation for unfair and unlawful termination under section 49(1) (c) of the Employment Act, 2007. The particulars were set out in the respective statements of claims and the total amount claimed is as earlier stated in this judgment.

The claimants' case was that there was no valid reason for their summary dismissal because the alleged anonymous letter was not produced and there was nothing linking them to the alleged letter.

RW1's testimony, the respondent's manager one Daniel Kinyanjui Njenga, was that sometimes around April 2014 it was observed that the claimants displayed a lifestyle suggesting that they were living beyond their legitimate incomes. It was suspected that they were fraudulently sharing the respondent's resources. Thus on 01.04.2014 RW1 then serving as the respondent's human resources officer issued a circular redeploying the staff so as to curb the observed trends and to assess the consequence of staff rotation on the claimants' changed lifestyle. Within two weeks of the staff redeployment, RW1 testified that the management received an anonymous letter which was scrutinised by the board and the claimants were implicated as the suspected authors. The letter contained threats and the claimants were summarily dismissed. The matter was reported to the police station and at the time of hearing the suit the investigations were on-going and not concluded. RW1 testified that the anonymous letter had not been filed, its contents could not be verified in court and there was no signed respondent's report in the matter.

The **1<sup>st</sup> issue** for determination is whether the termination was unfair. The reason for suspension and then termination was that the claimants were suspected as implicated with the alleged anonymous letter. The letter was not produced and the nature of the alleged threats contained in the alleged anonymous letter

was not disclosed. A police report made after the summary dismissal appears to have withered without significant outcome about the claimants' culpability. That the police report was to shade more light about the allegations confirms that at the time of the termination the respondent lacked sufficient grounds to implicate the claimants. The forensic audit report equally came long after the claimants had left service and any allegations of negligence of duty did not exist at the time of the termination. In the circumstances, the court returns that there was no genuine reason for the claimants' dismissal. The dismissal was unfair under section 43 of the Employment Act, 2007.

The **2<sup>nd</sup> issue** is whether the claimants are entitled to the money as prayed for. Up to the time of the termination, the claimants were dedicated workers. They and each desired to continue in employment. They and each did not contribute to the termination. The court awards each of them 12 months' gross salaries as prayed for with respect to the unfair and unjustified termination. The summary dismissal was without notice and each deserves a month's pay in lieu of termination notice together with the 15 days' pay during the suspension as was prayed for.

The counterclaims being based on the belated audit report, the court finds that the counterclaims will fail as the claimants were not given the opportunity to defend themselves and it was not shown that any of them was specifically liable as counterclaimed. Further the extent of the individual culpability was never established and the counterclaims would therefore fail.

In conclusion judgment is hereby entered for the claimants and for each of them against the respondent for:

- a. The declaration that the dismissal of the claimant from employment was unlawful and unfair.
- b. The declaration that the claimant is entitled to payment of terminal dues and compensatory damages as pleaded.
- c. The order for the respondent to pay the claimant due terminal benefits and compensatory damages totalling to , for 1<sup>st</sup> claimant **Kshs.403, 205.00**; 2<sup>nd</sup> claimant **Kshs.538, 097.00**; 3<sup>rd</sup> claimant **Kshs.362, 705**; and 4<sup>th</sup> claimant **Kshs.356, 914.00**; the respondent to pay by 01.12.2016 failing interest at court rates to be payable thereon from the date of this judgment till full payment.
- d. The respondent to pay each claimant's costs of the suit and the counterclaim.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 23<sup>rd</sup> September, 2016**.

**BYRAM ONGAYA**

**JUDGE**