



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1011 OF 2013**

**EDWIN NDOLO SILLA ..... CLAIMANT**

VERSUS

**COLOUR PACKAGING LIMITED ..... RESPONDENT**

Ms Alati for Claimant

Mr. Muli for Respondent

**JUDGMENT**

1. The Claimant seeks maximum compensation for alleged unlawful and unfair dismissal; salary in lieu of 21 days' leave; salary in lieu of one month notice and payment in respect of three (3) holidays worked in the Memorandum of Claim filed on 4<sup>th</sup> July, 2013.

**2. Facts of the Claim**

The brief facts of the case as set out in the Memorandum of Claim and *viva voce* evidence by the Claimant are;

That by a letter of appointment dated 22<sup>nd</sup> December, 2011, the Respondent appointed the Claimant in the position of Operations Manager with effect from 3<sup>rd</sup> January, 2012.

The Claimant worked continuously for the Respondent in that capacity until he was summarily dismissed by a letter dated 5<sup>th</sup> February, 2013 for gross misconduct.

3. It was alleged by the Respondent that on 4<sup>th</sup> February, 2013, at 4.30 p.m. the Claimant with other staff members was involved in the theft or loss of company property by loading in a motor vehicle more goods than declared on the delivery note.

4. That the wrongful loading was discovered and the goods detained at the dispatch bay.

5. The dismissal was in terms of Section 44(4)(g) of the Employment Act, 2007.

6. The claimant was to be paid for the days worked upto and including 4<sup>th</sup> February, 2013, any overtime worked and pro rata leave as at 4<sup>th</sup> February, 2013 less any company loan/advance presented to the

Claimant by the company.

7. The Claimant's gross salary was Ksh.90,000.00 as at the time of summary dismissal. He was entitled to 21 days annual leave and the contract of service was silent on notice period applicable in case of termination by either party.

8. The Claimant was not given a show cause letter nor was he brought before a disciplinary committee to answer the charges levelled against him. He was immediately sent home in spite of protestations that he was not involved in preparing the delivery note and the dispatch of the alleged goods. That work had been delegated to another manager and in fact at the material time he was attending a management meeting from where he was summoned to the scene.

9. The Claimant states that he was wholly innocent and was therefore unlawfully and unfairly dismissed.

#### **10. Response**

The Respondent company, Colour Packaging Limited, the employer of the Claimant at the material time filed a Statement of Response on 16<sup>th</sup> August, 2013.

11. The Respondent admits the position and salary of the Claimant as at the time of dismissal.

12. The Respondent avers that on the material day the Claimant conspired with other people to load more bread wrappers (Bleached Uncoated Paper 30 gms) than was indicated in the delivery note.

13. That the Claimant received moneys from various clients but failed to remit the same and also failed to issue receipt in respect of moneys received by him on behalf of the company to the loss and detriment of the Respondent.

14. It should be noted that only the first reason above, i.e, loading more goods than contained in the delivery note with the intent to steal from the company, was listed in the letter of summary dismissal.

15. The Respondent did not call any witness to testify in support of its case. The averments in the Statement of Response therefore remain unsubstantiated on the face of very candid denial by the Claimant.

16. The Respondent does not dispute that it not subject the Claimant to a hearing before summarily dismissing him.

17. The evidence by the Claimant remains wholly uncontroverted. To that extent, the court finds that the Claimant was unlawfully and unfairly dismissed because he was not dismissed for a valid reason contrary to Section 45(1) as read with Section 45(2)(a).

18. And that the Respondent did not apply a fair procedure in terminating the Claimant's service contrary to Section 45(2)(c) of the Employment Act.

#### **19. Remedy**

Upon termination, the Respondent computed the Claimant's terminal benefits to include Ksh.7,552.00 for the four days worked in the month of February, 2013, Ksh.53,706.00 in respect of 16 leave days not taken and Ksh.20,000.00 travelling allowance. Total payment due was Ksh.81,253.00.

20. The Respondent then deducted Ksh.113,348.00 alleged to be uncollected monies from various clients. The Claimant therefore received zero payment.

21. Since the Respondent has not justified the said deduction before court and did not counter claim the same, the court finds that the deductions were unlawful and unwarranted.

22. Accordingly, the Claimant is entitled to payment of;

1. 16 days salary in lieu of leave in the sum of Ksh.53,706.00
2. Travelling allowance in the sum of Ksh.20,000.00, and
3. Four (4) days salary for 4 days worked in the month of February, 2013 in the sum of Ksh.7,552.00

It should be noted that these amounts are derived from the final payment voucher prepared by the Respondent and provided as annexure I to the Statement of Response.

4. Further, the Claimant is entitled to one (1) month salary in lieu of notice in terms of the provisions of Employment Act in the sum of Ksh.90,000.00
5. The Claimant is also entitled to Ksh.14,400.00 being salary for days worked during public holidays.

23. The claim for Ksh.54,000.00 in respect of service pay is refused because the Claimant was registered with NSSF and the Respondent duly contributed to the Fund on behalf of the Claimant.

#### 24. **Compensation**

The court has found that the Claimant was unlawfully and unfairly summarily dismissed. He held a senior position and was labelled a thief unjustifiably and humiliated in front of his subordinates.

25. He was not given any notice nor was he subjected to any hearing. He suffered a lot of pain in the circumstances.

26. One of the Directors of the Respondent however later on helped him to acquire another job.

27. The Claimant had previously served the Respondent for a cumulative period of 22 years. He was a trustworthy employee and deserved better treatment in the circumstances.

28. After being re-employed, he had only served the Respondent for one year. The court awards him four (4) months salary as compensation for the unlawful and unfair dismissal in the sum of Ksh.360,000.00

29. Accordingly total award to the Claimant is as follows;

1. Ksh.7,552.00 for days worked
2. Ksh.53,706.00 in lieu of leave
3. Ksh.20,000 travelling allowance
4. Ksh.90,000.00 in lieu of notice
5. Ksh.14,400.00 for the unpaid holidays worked
6. Ksh.360,000.00 compensation

**Total award is Ksh.545,658.00**

30. The award is payable with interest at court rates from the date of this judgment till payment in full.

31. The Respondent is also to pay the costs of the suit.

**Dated and Delivered at Nairobi this 28<sup>th</sup> day of January, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**