



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

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1501 OF 2011**

**KHAEMBA WYCLIFF NYONGESA .....CLAIMANT**

*VERSUS*

**GENERAL PLASTICS LIMITED.....RESPONDENT**

Ruth Atinga for the Claimant

Njiru for Respondent

**JUDGMENT**

1. The Claimant was employed by the Respondent on 1<sup>st</sup> November, 1984 as an Assistant Supervisor and served in various capacities until his employment was terminated on 20<sup>th</sup> March, 2010.
2. On 5<sup>th</sup> March, 2010, the Claimant was found in possession of eight (8) pieces of polythene bags wrapped around his back during a routine check at the gate while going for lunch.
3. At the time of termination, the Claimant earned a gross salary of Ksh.31,166.00 per month and produced a pay slip to that effect.
4. The claimant denies that he was in possession of stolen polythene bags on the material day or at all.
5. He told the court that he was given a show cause letter on 9<sup>th</sup> March, 2010 and continued working till 17<sup>th</sup> March, 2010. He replied to the letter on 17<sup>th</sup> March, 2010. On 20<sup>th</sup> March, 2010 he was given a letter of termination.
6. The Claimant says that he was falsely accused of theft because he had lodged a claim for compensation arising from an injury of a finger sustained in the course of his work.
7. The claimant states that the termination was without payment of any benefits and same was unlawful.
8. He seeks payment of terminal benefits and compensation as set out in the Memorandum of Claim. He had worked for 26 years and states that he had a good record except a warning letter he got in 1981 on allegation of theft though there was no evidence at all.

9. He stated that he could not read or write English and therefore the response to the notice to show cause was done on his behalf by a friend.
10. He denied that his employment was terminated on 26<sup>th</sup> July, 1991 stating that the matter was resolved by the Director and had continued working without a break.
11. He was not compensated for the thumb injury.

12. **Response**

RW1 told the court that the Claimant was one of the founding employees. He gave the Claimant a notice to show cause on 9<sup>th</sup> March, 2010. The Claimant kept the letter until 17<sup>th</sup> March, 2010 inspite that he was supposed to reply within 48 hours. He communicated to the Claimant in English. He did not pardon the claimant at all, but management took decision to terminate his employment. The plastic stolen was worth between Ksh.30.00 to Ksh.50.00 each. He was caught by an outsourced security officer at the gate who reported the matter to him. The Askari wrote a statement to this effect.

13. RW2 was the Askari known as Milo Zachemus Okinyi. He was the security officer who searched the Claimant and found him with eight (8) plastic bags tied to the Claimant's back under the over-all. He wrote a statement and gave it to the Security Manager. He stated that at the time the Claimant was on his way for lunch with co-workers.

14. He explained that, these were 90 kg white bags used to package maize flour.

15. In terms of the letter of employment, the Claimant was entitled to two months' notice upon termination of employment since he had served over five (5) years in the sum of Ksh.62,332.00.

16. This payment is not conditional at all.

17. The Claimant would have been entitled to 21 days salary (based on 49.16% of the consolidated salary) for every completed year of service provided he had completed 4 years continuous service.

18. The Claimant had served the Respondent for over 26 years and would have benefited from the claim had he been retired on attainment of 55 years in addition to the pension cover under the National Social Security Fund. The Claimant was however, 50 years at the time of dismissal having been born in 1960.

19. The court is however satisfied that, there was a valid reason to dismiss the Claimant for theft of company property. Since he was not summarily dismissed, he is entitled to two (2) months' notice period or payment in lieu thereof.

20. The court therefore awards the Claimant;

- a) 2 months' salary in lieu of notice in the sum of Ksh.62,332.00
- b) costs of the suit
- c) the award is payable with interest at court rates from date of Judgment till payment in full.

**Dated and Delivered at Nairobi this 25<sup>th</sup> day of February, 2015.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**