



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 664 OF 2013**

**NICHOLAS KAITANO.....CLAIMANT**

**VERSUS**

**DATA RUSH SERVICES LIMITED.....RESPONDENT**

**JUDGMENT**

1. The Claimant in this suit claims he was employed in June 2006 as a motorcycle rider. His exit salary was Kshs.13,552/= per month.
2. He avers that on 27<sup>th</sup> November, 2012 the respondent's officer, one Mr. Benjamin Kibuchi verbally asked him to write a letter to the Managing Director explaining what transpired on 26<sup>th</sup> November, 2012 while the claimant was on duty at the Co-operative Bank, Ruaka Branch which he did. He was consequently on 29<sup>th</sup> November, 2012 dismissed from employment on grounds that he misrepresented the respondent during his normal delivery duties at Co-operative Bank Ruaka Branch.
3. The claimant complains that the decision to dismiss him was arrived at out of bad faith as he had never misrepresented the respondent in any way. The claimant further states that in arriving at a decision to dismiss him, the respondent breached various mandatory provisions of the Constitution, the labour laws and principles of natural justice in that no charge was ever served upon him. No hearing ever took place before his dismissal and that he was dismissed on account of false reasons.
4. The claimant therefore seeks an order for compensation on account of unfair and wrongful dismissal which he computes at Kshs.335,411/=.
5. The respondent in a short memorandum of response simply stated that the method of terminating the claimant's employment was by way of summary dismissal as set out in the dismissal letter consequently the respondent denied all the allegations of unlawful termination of employment and avers that such a claim does not lie.
6. At the hearing, the claimant testified that on 26<sup>th</sup> November, 2012 he was sent to Co-operative Bank Ruaka Branch and while there making delivery he received call to go to Tribe Hotel to collect a cheque before they close. According to him he stepped out to pick the call and when he returned he asked the lady who received the mail to sign the way bill but the lady refused yet the bag was already open. She returned the mail back to the bag and asked him to take it to the Operations Manager to sign. The following day he was asked to explain what happened at Ruaka which he did and was subsequently dismissed.

7. The claimant denied ever talking loud on phone at the Bank's premises and he was never told of these accusations prior to his dismissal.
8. The respondent on the other hand called a Mr. Ronald Ooko who stated he worked for the respondent as the Human Resource Manager and that he joined the respondent in 2014 after the claimant had been dismissed. He stated that from the records the claimant was terminated on account of gross misconduct contrary to respondent's code of conduct. It was his evidence that the respondent takes customer care seriously hence complaint by customers are taken seriously. He stated that the claimant had disciplinary issues with the organization and produced a letter marked as D-ex I showing claimant's response to a complaint against him as an example.
9. Regarding the claimant's remuneration he stated this was Kshs.13,552/= which was consolidated gross pay per month. He informed the Court that gross pay does not include house allowance.
10. In cross-examination he stated that he did not see any show cause letter in the claimant's file nor any record of a hearing prior to dismissal. He further informed the Court that he was not aware if any investigations were carried out.
11. Mr. Namada for the claimant submitted that the dismissal was contrary to section 41 of the Employment Act since no charge or notice to show cause was served on the claimant. He further submitted that no hearing took place and no opportunity was given to the claimant to challenge the adverse complaints laid against him in the alleged email. Counsel further submitted that the onus of proof of validity of the reasons for dismissal rests with the employer yet the respondents witness had confirmed that due process was not followed.
12. Counsel for the respondent on the other hand submitted that the respondent had numerous complaints from their clients concerning the claimant. This according to counsel amounted to gross-misconduct, willful negligence and carelessness which justified the claimant's dismissal.
13. I have reviewed pleadings and evidence in this matter as well as submission by counsel and have reached the conclusion that the respondent did not accord the claimant an opportunity to adequately defend himself against the accusations against him. The respondent's own witness though relying heavily on records as these events took place prior to his joining the respondent, informed the Court that he did not find any show cause letter in the file and further that there was no record of any disciplinary hearing in the file. Mr. Ooko further stated that he was not aware if any investigations were carried out.
14. The foregoing considered the Court finds that the Claimants services were wrongfully and unfairly terminated and hereby award him as follows:-

**Kshs.**

- |                                                                    |               |
|--------------------------------------------------------------------|---------------|
| (i) One month's pay in lieu of notice.....                         | 13,552        |
| (ii) 6 days untaken leave.....                                     | 2,710         |
| (iii) Unpaid house allowance for 3 years.....                      | 73,180        |
| (iv) 6 month's salary as compensation for unfair<br>Dismissal..... | <u>81,312</u> |

170,754

15. The award shall be subject to taxes, statutory deductions and any terminal dues that may have

been paid to the claimant at the time of dismissal.

16. The respondent shall issue the claimant with a certificate of service.

17. Cost of the suit is awarded to the claimant.

18. It is so ordered.

Dated at Nairobi this 25<sup>th</sup> day of February 2015

Abuodha J. N.

Judge

Delivered this 25<sup>th</sup> day of February 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge