



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

CAUSE NO. 2054 OF 2012

DAVID WACHIRA GATUNDU.....1ST CLAIMANT

SHADRACK OCHIENG NYONGESA.....2ND CLAIMANT

WILSON KISANYA OSORE.....3RD CLAIMANT

VERSUS

FIDELITY SECURITY LIMITED.....RESPONDENT

Mr. Mokaya for the Claimants

Mr. Ouma for Respondent

JUDGMENT

1. This suit alleging unlawful and unfair termination and non-payment of termination benefits was brought by the three Claimants against their employer, Fidelity Security Limited.

2. The claims are disputed by the Respondent in the pleadings and oral testimony.

3. Facts of the Case

It is common cause that the three Claimants were on duty as Security Guards at Wilson Airport on the night of 14th May, 2012.

4. That Aircraft Registration Number 5Y-LKG type B190B parked at Apron 4, an area under the guard of the Respondent had its fuel siphoned from the tank.

5. That all the Claimants recorded statements on the matter in which they denied having witnessed anything untoward on the material night.

6. However, CCTV footage received later, revealed a third party motor vehicle with three empty tanks was given access to the Airport premises which tanks were later filled by a total fuelling motorcade and kept in a neighbouring hanger.

7. That on 15th June, 2012, when the CCTV footage was shown to the Claimants by the Security Manager of the client, they all acknowledged through their reports that a strange car carrying three empty

tanks had accessed the client's premises.

8. The Claimants were on these grounds suspended to allow investigations of the matter.
9. The Claimants were subjected to a disciplinary hearing and dismissed from employment for engaging in dishonest conduct.
10. **Determination**

The Claimants had with the intention to deceive their employer, concealed material occurrence at the Wilson Airport on the material night.
11. They later on admitted to the deliberate omission aimed at concealing theft of fuel.
12. This was a valid reason for the Respondent to dismiss the Claimants from their employment.
13. They held positions of trust as security guards and the Respondent could no longer be expected to rely on their services.
14. The offence committed was of a very serious nature and warranted summary dismissal in terms of Section 44 of the Employment Act, 2007.
15. Proper investigations were conducted and the Claimants were given opportunity to make written and oral representations before the summary dismissal.
16. The court finds that the summary dismissals were effected in terms of a fair procedure.
17. The Claimants have accordingly, failed to prove their respective cases on a balance of probability. In the converse, the Respondent has provided sufficient evidence to justify the reason for the summary dismissal of the Claimants.
18. The Claimants were not entitled to notice or payment in lieu thereof.
19. The Claimants were each paid in lieu of leave for days not taken on 31st May, 2012.
20. The respective claims for the three (3) Claimants are dismissed with costs to the Respondent.

Dated and Delivered at Nairobi this 13th day of March, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE