

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1632 OF 2014

LABAN MUNGAI.....CLAIMANT

VERSUS

BORDAR LIMITED.....RESPONDENT

JUDGMENT

1. The Claimant herein Mr. Laban Mungai sought relief for his unlawful dismissal by the Respondent. He averred that he performed his duties diligently and enthusiastically. He stated he was maliciously implicated in the loss of tiles on 17th May 2014 and dismissed on 16th June, 2014. He averred the verbal dismissal was in flagrant breach of the law. He averred he was not accorded a hearing in terms of section 41. He thus sought a declaration that the dismissal was unfair, unjust and unlawful. He sought payment of one (1) month's salary in lieu of notice, 8,000/- for days worked in June, 12 months salary compensation and General damages as well as costs of the suit.

2. The Respondent did not enter appearance or file defence in spite of service and the cause proceeded as an undefended claim. The Claimant testified on 18th March 2015 default judgment having been entered on 14th January 2015. The Claimant testified that he was employed as a Warehouse Clerk by the Respondent on 6th March 2014. He earned 16,000/- a month plus allowance of 2,000/-. He was called to a meeting on 17th May 2014 by his supervisor Mr. David Owino and the HR Manager Miss Dean. He was told cartons had been loaded at the godown by his assistant. He was accused of being responsible and he sought to see the CCTV Footage and was denied the opportunity to do so. He sought to see the General Manager but was told he was busy. He was told not to go back to work. He was not reported to the police but was asked not to go back to work. He did not understand why he was dismissed. He did not receive pay for May. No notice was given or paid. In reply to his advocates demand the Respondent stated that the Respondent would seek 71,500/- from the Claimant which was the value of the goods lost.

3. The Claimant was from all accounts unprocedurally dismissed from his employment. His contract of employment provided in Clause 8 that termination could be effected on giving a one month notice or salary in lieu of notice. Gross misconduct would attract termination without pay or notice. Unfortunately the allegations made against the Claimant were unsubstantiated. He could not be conceivably vicariously liable for a theft by another person unless it was shown he was involved. In the premises his dismissal was unfair in terms of section 41 of the Employment Act. He was entitled to notice if the Respondent had lost faith in him. He is also entitled to payment of his dues for days worked. He is entitled to pay for 17 days worked in May 2014.

4. As regards compensation section 49(1)(c) grants the Court the discretion to award compensation. One of the considerations is the conduct of the Respondent or Claimant. The Respondent was callous and for the manner of termination which was verbal and without basis I hold that a sum of Ksh. 48,000/- being equivalent to 3 months salary will suffice as compensation. The Claimant will also have costs of the suit.

5. In the final analysis I enter judgment for the Claimant against the Respondent for:

1. Ksh. 16,000/- being one month in lieu of notice;
2. Ksh. 8,000/- being for the days worked in May 2014;

3. Ksh. 48,000/- being 3 months compensation;
4. Costs of the suit;
5. Interest on 1), 2), and 3) above from date of Judgment till payment in full.
6. Certificate of service

Orders accordingly.

Dated and Delivered at Nairobi this 16th day of April 2015

NZIOKI WA MAKAU

JUDGE