



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

**AT NAIROBI**

**CAUSE NUMBER 1421 OF 2011**

**MICHAEL KAHENYA MATHU.....CLAIMANT**

**VERSUS**

**KAMINDI SELFRIDGES (SUPERMARKETS) LIMITED.....RESPONDENT**

**JUDGMENT**

1. The claimant in this suit by a memorandum of claim filed on 18<sup>th</sup> August, 2011 averred that he was employed by the respondent for 16 years as an attendant at monthly salary of Kshs.25,172/=. He worked until 9<sup>th</sup> July, 2011 when according to him, he was unfairly dismissed without proper notice or hearing.
2. The claimant therefore claimed against the respondent his terminal benefits., severance for the period he was in employment amounting to Kshs.1,210,186/=.
3. The respondent in its memo of response filed on 15<sup>th</sup> September, 2011 admitted that the claimant was its employee for the period alleged but denied that he was earning Kshs.25,172/= at the time he left employment. The respondent further averred that the claimant's dismissal was not unfair since it was in accordance with the Employment Act, 2007, as he was guilty of gross misconduct in that he failed to supervise his work as per the respondent's rules and regulations. He was further accused of permitting and allowing the respondent's goods to be stolen while under his supervision.
4. Regarding terminal dues, the respondent averred that the claimant was not entitled to any since at the time to termination, he was fully paid his dues.
5. On procedure of termination, the respondent averred that on 8<sup>th</sup> July, 2011 the claimant was summoned and given a hearing by the respondent's management to respond to the allegations against him but he intentionally refused to give a reasonable explanation to the said charges.
6. At the hearing the claimant additionally testified that after he got injured at work, he was placed in the position of a supervisor. He denied any involvement in theft as alleged in his dismissal letter. He reported the dismissal to the Labour Office who recalculated his dues and concurred with the calculations made by the respondent. He was not satisfied hence brought the present claim.
7. According to him, he worked diligently and there were no disciplinary complaints against him. It was his evidence that he was never given an opportunity to defend himself against the accusations.
8. In cross-examination he stated that as supervisor he was in charge of other workers. He used to

observe them as they worked. He further stated that he used to supervise the movement of goods between the two stores. He initially did not know what happened about Paul Mbaru but later learnt that he was caught stealing some items from the respondent. It was his testimony that Mburu was under his supervision. Concerning leave, he stated that whenever he did not go on leave he was paid in lieu.

9. The respondent called two witnesses. Mr. Kariuki who stated he was presently working as a Manager testified that the claimant was required to supervise other staff and that on the material day, goods were moved by other staff under the claimant's supervision. It was his evidence that a good Samaritan informed him that he saw Mburu put some things in his car. These items were later found in Mburu's car.

10. Regarding termination, it was his evidence that the termination letter was issued after a meeting and a discussion with the claimant. He further stated that the claimant's basic pay was Kshs.12,623/= at the time of termination and that he regularly went on leave and signed for it. The claimant was also paid house allowance. It was his testimony that the claimant did not steal but failed in his duties.

11. The respondent's second witness, Mr. John Kinuthia stated that they received a report of a stolen water gate and the culprit was a worker under supervision of the claimant. The water gate was among the items that were offloaded and kept in the shop.

12. Concerning hearing before dismissal he stated that the claimant was heard at the respondent's premises and later at the Labour Office.

13. A contract of employment imposes duties and obligations on the parties to it. On the part of an employee, there is an implied duty to perform work assigned diligently and to the best of such employees abilities. The claimant herein was a supervisor over his colleagues in the carrying out of their work. One of his colleagues under his supervision was found to have attempted to steal his employer's property.

14. The claimant cannot therefore be heard to argue that since he was not the one caught stealing he could not be held responsible. Supervisory role places heavier duty on such supervisor to oversee colleagues under him. He is therefore expected to instill discipline and work ethics among staff under his supervision to ensure the work he or she is supervising is carried out as required by the employer.

15. Apart from complaining that there was no CCTV, the claimant did not tell the Court what he did in course of his work as a supervisor on the material date to reasonably ensure that his colleagues did not engage in acts of impropriety. No evidence was led by him to show either that he could not constantly monitor his colleagues while working or that the attempted theft occurred while he was away with the permission of his employer. To this extent the Court is of the view that the respondent had sufficient reason to dismiss the claimant.

16. Regarding the procedure for termination, the respondent's witnesses testified that the claimant was summoned over the attempted theft incident and questioned over it but failed to offer any satisfactory answer. In his own evidence in Court, the claimant stated that on 6<sup>th</sup> July, 2011 he was asked by his supervisor to see the Director and when he went he was told by the Director that she had decided to terminate his services. This was told to him in the presence of the respondent's two witnesses. It is incredible that the Director could dismiss the claimant without any cause at all and pay him his terminal dues in accordance with the prevailing employment law.

17. The claimant's dismissal letter was very clear on the reasons for his dismissal and went ahead to compute his terminal dues which he received and signed for. This computation was later confirmed by the Labour Office as correct and in accordance with the prevailing Labour Laws. The claimant's only quarrel was that he felt that the computation was not correct.

18. In his memorandum of claim filed before this Court, the claimant has claimed terminal benefits for 16 years, leave allowance for a similar period and 3 month's salary in lieu of notice. In his evidence in Court he failed to prove what the 16 year's terminal benefits were and that during the period he worked he never went on leave.

19. From the foregoing the Court is in concurrence with the respondent as well as the Labour Office that there were justifiable reasons for terminating the claimant's services and that upon termination he was fairly compensated and has no cause of action against the respondent in that regard. The claim herein is therefore dismissed with costs.

20. It is so ordered.

Dated at Nairobi this 31<sup>st</sup> day of July 2015

Abuodha J. N.

Judge

Delivered this 31<sup>st</sup> day of July 2015

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge