



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI**

**CAUSE NO. 65 OF 2015**

**DENNIS WAWERU MACHARIA.....CLAIMANT**

**VERSUS**

**BRITISH ARMY TRAINING UNIT KENYA.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 2<sup>nd</sup> October, 2015)

**JUDGMENT**

The claimant filed the memorandum of claim on 21.04.2015 through Lucy Mwai & Company Advocates. The claimant prayed for:

- a. Reinstatement to employment or compensation for unlawful termination.
- b. Costs of the suit.
- c. Interest on (a) and (b) above.
- d. Any other or better relief that the honourable court may deem fit to grant.

The respondent filed the statement of response on 14.05.2015 through Hamilton Harrison & Mathews Advocates. The respondent prayed that the claimant's claim be dismissed with costs.

The claimant was employed by the respondent with effect from 24.06.2013 as a driver or maintainer under the indefinite contract of employment for locally engaged civilians.

By letter dated 17.03.2015 the claimant was invited to a disciplinary hearing to consider a disciplinary case against the claimant about alleged theft of fuel from the respondent's military vehicle. The letter informed the claimant the option to be accompanied at the hearing with a colleague of his choice. The hearing was scheduled for 19.03.2015 at 1600 Hrs.

The respondent's case was that the claimant being assigned to drive a military vehicle, he stopped at a place around Sagana with the sole purpose of siphoning fuel from the vehicle. The claimant's case was that he stopped because he had a stomach upset and required to relieve himself by turning into a nearby compound. Thus, he had to turn into the compound to ensure that the vehicle was not left unattended to by the roadside. The respondent relied upon the photographic evidence which showed jerry cans, siphoning equipment and piping. The respondent further relied upon evidence of Cpl. Cater (RW1) who had noticed the parked vehicle on the material day found the claimant preparing to siphon the fuel. Further, a child at the scene had told RW2 who was also at the scene that fuel was siphoned from military vehicles from the yard the claimant was found. RW2 also testified that the claimant had told him not to report the case to military police. RW1 had taken the pictures of the paraphernalia at the scene used to siphon the fuel.

The only and main issue for determination in this case is whether the termination was unfair. The court has considered the evidence, pleadings and the submissions. There is no doubt that the claimant was given notice of the allegations and was given a hearing as envisaged in section 41 of the Employment Act, 2007 and the court finds that the termination was procedurally not unfair. The court has considered the reason for termination. The respondent's case is coherent and credible. There is no dispute that the claimant pulled out of the convoy and entered the compound with a closed gate. The court finds the claimant's conduct suspect and in view of the paraphernalia that was observed in that compound, the

court finds that the claimant intended to siphon fuel from the vehicle. The court finds that the reason for termination was valid as envisaged in section 43 of the Act and the termination was substantively not unfair.

Thus the court finds that the termination was not unfair and the claimant's suit is dismissed with costs.

**Signed, dated and delivered** in court at **Nyeri** this **Friday, 2<sup>nd</sup> October, 2015.**

**BYRAM ONGAYA**

**JUDGE**