



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 265 OF 2013

(Formerly Cause No. 636 of 2012 at Nairobi)

BENSON WAFULA WASWA.....CLAIMANT

- VERSUS -

K.K SECURITY COMPANY LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Wednesday 30th April, 2014)

JUDGMENT

The claimant filed the statement of claim on 18.04.2012 through Andambi & Company Advocates. The claimant prayed for judgment against the respondent for:

1. **A declaration that the termination process as carried out by the respondent is unlawful and that during his employment with the respondent he was not remunerated as required.**
2. **Payment of Kshs.23,538.00 in lieu of termination notice; Kshs.94,152.00 being 12 months' salary for wrongful termination; and Kshs.2,000,730.00 for 17 years service pay.**
3. **Costs of the suit.**
4. **Any other relief the honourable court may deem fit to grant.**

The respondent filed the reply to the memorandum of claim on 22.06.2012 through Kantai & Company Advocates. The respondent prayed the suit be dismissed with costs.

The case was heard on 4.03.2014 and 13.03.2014. The claimant gave evidence to support his case and the respondent's witness was Francis Kipsang, the respondent's field officer.

The claimant was employed by the respondent as a guard. On the night of 24th January 2012, he was deployed at the CPC Ken Knit go-downs used to store maize belonging to the respondent's client. There was maize grain leakage which the claimant gathered and stored in a bag weighing about 30 kg. The claimant sought to leave his work place with the maize on the morning of 25.01.2012 but was discovered by the field officer and subsequently subjected to disciplinary process. The claimant was summarily dismissed on account of taking the maize from the place of his assignment without permission.

The court has considered the evidence, the pleadings and the submissions and makes the following findings on the issues in dispute:

1. The 1st issue is whether the claimant's dismissal was unfair. The court finds that the claimant in his statement to the respondent admitted to taking the maize without authority as leveled against him. In his evidence, the claimant contradicted himself by stating that he had bought the maize and again by restating that he had gathered the maize grain that had dropped at his place of assignment. The court finds that the contradictory evidence is incredible and the respondent dismissed the claimant upon a valid reason namely, taking maize grain from the workplace without permission. The evidence on record shows the claimant was notified and heard in view of the allegations that were preferred and as per section 41 of the Employment Act, 2007. In the circumstances, the court finds that the dismissal was not unfair.
2. The 2nd issue is whether the claimant has established the justification for grant of the prayers as made in the statement of claim. The court has evaluated the evidence and finds that the claimant has not provided the necessary evidence to justify the grant of the prayers.

In conclusion, the claimant's statement of claim is dismissed with costs.

Signed, dated and delivered in court at **Nakuru** this **Wednesday, 30th April, 2014.**

BYRAM ONGAYA

JUDGE