



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 313 OF 2013**

**MAYEGA CHAGARA.....CLAIMANT**

**- VERSUS -**

**RAIPLYWOOD (KENYA) LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 9<sup>th</sup> May, 2014)

**JUDGMENT**

The claimant filed the memorandum of claim on 16.09.2013 through Mayoni Orina & Company Advocates. The claimant prayed for judgment against the respondent for:

- a. **Declaration that his termination was unfair and unlawful.**
- b. **Three months pay in lieu of notice.**
- c. **Gratuity payment.**
- d. **Compensation for unlawful termination.**
- e. **Certificate of service.**
- f. **Any other relief that the honourable court may deem fit and just to grant.**

The respondent's reply to memorandum of claim was filed on 09.10.2013 through Kalya & Company Advocates. The respondent prayed that the claimant's suit be dismissed with costs. The claimant filed a reply on 17.10.2013.

The case was fixed for hearing on 25.03.2014 and 2.04.2014. Counsel for the claimant opted to rely on the pleadings and documents as filed and without calling a witness. The respondent's witnesses included Samuel Otieno Oloo, the respondent's Plant in-charge and deputy to the Plant Manager (**RW1**); and Richard Okello Nyamwalo, the respondent's Personnel Officer (**RW2**).

RW1 was the claimant's immediate supervisor. On 26.09.2009, was a Saturday. RW1 worked for 4 hours from 8.00 am to noon. He gave instructions, before leaving duty, for packing 500 polypropin bags per bundle. On Monday, 28.06.2009, RW1 received a report and was shown 6 bundles each with 600 polypropin bags contrary to the instructions that each bundle contains 500 bags as per the Internal Job Order that RW1 had issued before he left duty on 26.09.2009. The claimant was responsible for the packing by enforcing the instructions given by RW1. The respondent's case was that the claimant had failed to implement the instructions. RW1 reported the anomaly to the Plant Manager and the case was forwarded to the Human Resources Manager.

RW2 testified that he received from the Plant Manager the report against the claimant by the internal memorandum of 2.10.2009. The memorandum had a list of 14 names including that of the claimant. He called the 14 employees to his office and listened to their explanation. After that preliminary meeting, he

considered that some of the employees were culpable and he issued a show cause notice for proper disciplinary process.

The claimant received the notice and was given an opportunity to make oral and written submissions for exculpation. The claimant presented himself at the meeting of 12.10.2009 with one witness called Juliana Kihuga (**now deceased**). RW2 testified that the claimant confessed that whatever was alleged against him was true and that he admitted disobeying the packing instructions as per the Internal Job Order issued by RW1. RW2 testified that the claimant admitted labelling the bundles as containing 500 bags as instructed but in fact the bundles contained 600 bags as a deliberate error by the claimant. RW2 testified that the claimant's explanation was that he complied with a fellow supervisor's misleading information and not the Internal Job Order. RW2 testified that the claimant and the other misleading supervisor were dismissed. RW2 also testified that the claimant was employed by the respondent in 1987. The claimant was dismissed on account of careless and poor performance.

As provided for in **section 45(2) of the Employment Act, 2007**, the court finds that the claimant's dismissal was not unfair because it was related to the claimant's poor performance and misconduct; it was based on the claimant's disregard of the respondent's operational requirements; and the termination was conducted in accordance with fair procedure entailing notice and hearing as envisaged in **section 41 of the Act**. The court finds that the material before the court and the evidence for the respondent is such that the claimant knew the allegations that faced him but he failed to exculpate. The court finds that there is no reason to doubt the evidence and the account of the circumstances as given for the respondent.

The court finds that, as the claimant did not give evidence and the dismissal has been found not to have been unfair, the claimant has failed to establish and justify the prayers as made.

In conclusion, the claimant's case is dismissed with orders:

- a. **The claimant to pay 50% of the costs of the suit.**
- b. **The respondent to deliver to the claimant a certificate of service by 1.06.2014 being the claimant's statutory entitlement under section 51 of the Employment Act, 2007.**

**Signed, dated and delivered** in court at Nakuru this **Friday 9<sup>th</sup> May, 2014.**

**BYRAM ONGAYA**

**JUDGE**