

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAKURU

CAUSE NO. 376 OF 2013

ALEX TOYA INDASIO.....CLAIMANT

- VERSUS -

MINI BAKERIES (NRB) LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 20th June, 2014)

JUDGMENT

The claimant filed the statement of claim on 28.10.2013 through Wambua Kigamwa & Company Advocates. He prayed for judgment against the respondent for:

- a. **One month notice pay Kshs.21,300.00.**
- b. **10 years service pay at Kshs.21,300.00 making Kshs.213,000.00.**
- c. **12 months salary as compensation for unfair and unlawful termination Kshs.255,600.00.**
- d. **Total claim Kshs.489,900.00.**
- e. **Costs and interests.**

The memorandum of response was filed on 18.11.2013 through Jones & Jones Advocates. The respondent prayed that the statement of claim be dismissed with costs with interest on the costs at court rates.

The claimant testified that the respondent employed him as a slicer, divider and a dough maker. The claimant testified that he worked till 6.08.2013. It was at 6.00 am and he was through with his night shift. The claimant testified that he had taken 2 loaves of bread in a paper bag which he also used to carry his uniform. The claimant's testimony was that he had requested the foreman to take the loaves and during the cross examination, in a contradictory manner, stated that the loaves were a reward by his foreman to conceal the shortfall in the number of the loaves of bread by reducing the weight from 460g to 410g per loaf.

The respondent's witness was Mohamoud Omar Ahmed, the respondent's operations manager (**RW**). His testimony was that the claimant was a casual worker employed in 2006 as a dough maker. He testified that after the claimant was found on the material morning with the two loaves of bread, the claimant confessed to his misconduct and was dismissed on his way out.

The court has considered the evidence. The court finds that the claimant was dismissed upon his confession that he had engaged in the misconduct of taking the two loaves of bread. The court holds that where before termination, like in the instant case, the employee has admitted or confessed with respect to the poor performance or misconduct in issue then the employee cannot successfully allege absence of due process or dispute validity of the reason for the ensuing termination.

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

Signed, dated and delivered in court at **Nakuru** this **Friday 20th June, 2014**.

BYRAM ONGAYA

JUDGE