



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI**  
**CAUSE NO 111 OF 2011**

**RUTH WAMBUI MURUNYU.....CLAIMANT**  
**VS**  
**INDU FARM (EPZ) LIMITED.....1ST RESPONDENT**  
**HARRY VAN DER PLAS.....2ND RESPONDENT**  
**CHRISTIAN BENARD.....3RD RESPONDENT**

**AWARD**

**Introduction**

1. Ruth Wambui Murunyu, the Claimant herein was an employee of the 1st Respondent, Indu Farm (EPZ) Limited. She brought a claim against her former employer together with its Chief Executive Officer and Managing Director by way of a Memorandum of Claim dated 31<sup>st</sup> January 2011 and amended on 11<sup>th</sup> February 2013. The Respondents filed a Statement of Defence on 29<sup>th</sup> June 2011 and an amended Reply on 27<sup>th</sup> February 2013. The Claimant testified on her own behalf while Gladys Njeri, Alice Njeri Ndung'u and Lillian Mutisya testified for the Respondent.

**The Claimant's Case**

2. According to the Claimant's amended Memorandum of Claim, she was employed by the 1<sup>st</sup> Respondent in the year 2000. On 10<sup>th</sup> June 2010 she was summarily dismissed on allegations of incitement of other employees of the 1<sup>st</sup> Respondent. The Claimant however pleaded that since she was an official of the Kenya Shipping Clearing & Warehouses Workers Union, her dismissal had to do with her involvement in union activities.

3. The Claimant's claim is as follows:

- a. One month's salary in lieu of notice.....Kshs. 7,652.00
- b. 10 days worked in June 2010.....Kshs. 2,943.00
- c. Accrued leave (168 days).....Kshs. 39,362.40
- d. Public holidays worked (11 days per year).....Kshs. 32,373.00
- e. Overtime (3 hours per day).....Kshs. 79,488.00
- f. Severance pay (at 15 days per year).....Kshs. 44,145.00
- g. 12 months' pay in compensation for loss of employment..... Kshs. 105,597.60
- h. Salary for the days out of employment

i. Costs

### **The Respondents' Case**

4. In their amended Reply, the Respondents admit that the Claimant was an employee of the 1<sup>st</sup> Respondent but add that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are wrongly joined in these proceedings. The Respondents further state that the Claimant was first employed by the 1<sup>st</sup> Respondent on casual basis in the year 2003 and later on contract basis from time to time depending on availability of work

5. The Respondents admit that the Claimant was dismissed on 10<sup>th</sup> June 2010 but deny that the reason for her dismissal had to do with her involvement in union activities. Rather, the Claimant was dismissed for gross misconduct at the work place. Specifically, on 8<sup>th</sup> June 2010, the management of the 1<sup>st</sup> Respondent received information that the Claimant was spreading false, malicious and alarming rumours among employees of the 1<sup>st</sup> Respondent to the effect that the company had been sold and the employees would lose their jobs.

6. On 9<sup>th</sup> June 2010, the Claimant was given an opportunity to explain to the management and other employees on the source of her information but while admitting having spread the rumours, she failed to explain the reason behind her conduct. She further declined to put her defence in writing.

7. The Claimant was also accused of collecting union dues from employees without remitting them to the union. In addition, she was accused of threatening the lives of her supervisors; Lillian and Njeri upon which a complaint was made to the Police. It is the Respondents' case that the Claimant's dismissal was justified and that she was paid all her terminal dues.

### **Findings and Determination**

8. The issues for determination in this case are as follows:

- a. Whether the 1<sup>st</sup> Respondent had a valid reason to terminate the Claimant's employment;
- b. Whether the procedure used to effect the termination was lawful and fair;
- c. Whether the Claimant is entitled to the reliefs sought.

### **The Reason for Termination**

9. Section 43 of the Employment Act, 2007 provides that:

***(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of Section 45.***

***(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.***

10. In the case of *Jessy Olukutukei Vs Feed the Children Kenya and Another [2014] eKLR* this Court held that:

***“ The burden on the employer imposed by Section 43 of the Employment Act, 2007 is to establish a valid reason that would move a reasonable employer to terminate the employment of an employee. “***

11. The Claimant's employment was terminated by letter of summary dismissal dated 10<sup>th</sup> June 2010 which states as follows:

***“We hereby inform you that you have been implicated in damaging rumours both (verbal and written) as follows that are not healthy for the company's business; That,***

- 1. The CEO Harry van der Plas has sold the company (only known to you.)***
- 2. The managing director Chris Benard is no longer an employee of Indu-Farm he has abandoned his responsibilities and is putting up his own company at the airport.***
- 3. The money to pay employees service pay is ready (Apparently preparations took place during the management three day in house training which according to you they were locked up in the training room counting the sums of money to be paid to employees and packing them in envelopes)***
- 4. If an employee wants to join the union (Kenya Shipping and Warehousing) they have to pay a penalty of six months plus one month's contribution for the union to recognise their membership. In addition to the above you have been extorting money from them and not giving receipts of contribution on a weekly basis as well as not remitting their contribution to the union office. These are fraudulent actions on your part.***

***On 9th June 2010 the management gave you a chance to address the employees and clear the above allegations as well as reveal your source for delivering wrong information which you did not respond to. Later you were given another chance to meet the management in the boardroom and explain your utterances which you agreed and even mentioned names of those that you had told. As per the procedure you were asked to put your defence in writing which you refused to obey saying you will not put anything in writing we can do what we want even sack you, this is gross misconduct and insubordination which warrants summary dismissal.***

***Lastly you went too far by verbally threatening the lives of our Supervisors (Lillian and Njeri) you told management and other employees to tell them that they should watch out their lives are in danger. This is a criminal offence which will be reported to the police to take action against you. Incase anything happens to them, we shall hold you liable.***

***We will not allow you to cause anxiety in the company with such damaging information and rude behaviour which can cause unrest to our employees and loss of business. You have breached our company code of conduct as well as the labour laws, based on the above the management has decided to summarily dismiss you with effect from the date of this letter.(sic)***

***Yours faithfully***

***Indu Farm (EPZ) Ltd.***

***Christian Benard***

***Managing Director”***

12. The Claimant made a general denial of all the charges set out in the letter of summary dismissal. However, with regard to the final charge of threatening the Respondent's Supervisors, Gladys Njeri and Lillian Mutisya, the Court found the testimony of all the three witnesses called by the Respondent consistent and truthful.

13. In my view, this charge alone was serious enough to move the Respondent to terminate the Claimant's employment. I therefore find that the Respondent has established a valid reason for termination of the Claimant's employment within the terms of Section 43 of the Employment Act, 2007.

## **Termination Procedure**

14. The charges leveled against the Claimant fall under what is commonly known as misconduct and Section 41 of the Employment Act, 2007 establishes the procedure for handling of such cases as follows:

- (a) That the employer has explained to the employee in a language the employee understands the reasons why termination is being considered;
- b) That the employer has allowed a representative of the employee being either a fellow employee or a shop floor representative to be present during the explanation;
- c) That the employer has heard and considered any explanations by the employee or their representative;

15. In addition, Section 12 of the Act requires an employer who has more than 50 employees in its employment, to document internal disciplinary rules for use in handling disciplinary cases. The Respondent submitted a copy of its Employee Handbook which sets out an elaborate disciplinary procedure. There was however no evidence that this procedure was applied in the Claimant's case. There was also no evidence of compliance with Section 41 of the Employment Act, 2007 and the termination of her employment was therefore unfair for want of due procedure.

## **Reliefs**

16. Having found the termination of the Claimant's employment unfair on account of the Respondents' failure to observe due procedure, I award her six months' salary in compensation. From the Claimant's final payslip, it is evident that she was paid her salary up to the date of termination, notice pay as well as leave and public holiday pay on termination. These claims therefore fail and are dismissed.

17. The Claimant was not declared redundant and is therefore not entitled to severance pay neither is she entitled to service pay as she was a member of the National Social Security Fund (NSSF). The claim for over time compensation was not proved. Finally, the prayer for salary for the period the Claimant has been out of employment which demands an order for specific performance is not merited in this case.

18. Ultimately, I make an award in favour of the Claimant in the sum of Kshs. 52,800 being the equivalent of six months' salary in compensation for unfair termination of employment.

19. The Court was unable to understand why the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were joined in these proceedings yet no claim was made against either of them. The Claimant's case as against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents is therefore dismissed.

20. Each party will bear their own costs.

Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18<sup>TH</sup> DAY OF JUNE 2014**

**LINNET NDOLO**

**JUDGE**

### **Appearance:**

Ms. Wangare Ndirangu for the Claimant

Ms. Muthoni for the Respondents