



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 401 OF 2013**

**BERNARD OKELLO WESONGA.....CLAIMANT**

**VERSUS**

**SOS CHILDRENS VILLAGE INTERNATIONAL REGIONAL**

**TRAINING & RESOURCE CENTRE.....RESPONDENT**

**JUDGMENT**

1. The Claimant filed his suit against the Respondent on 25<sup>th</sup> March 2013. In the Memorandum of Claim dated 25<sup>th</sup> March 2013 the Claimant averred that the Respondent employed him on 7<sup>th</sup> April 2007 and that he worked for the Respondent with loyalty and diligence until 14<sup>th</sup> June 2012 when the Respondent wrongfully and unlawfully terminated the Claimant's services without notice and refused to pay him his terminal benefits. He thus sought pay in lieu of notice Kshs. 29,928/-, house allowance @ 15% of basic Kshs. 269,352/-, costs and interest.

2. The Respondent defended itself in the suit and filed a Response to the Statement of Claim. In the Response the Respondent denied the description the Claimant had accorded it in paragraph 2 of the Statement of Claim. It was denied that the Claimant was promoted to position of conference worker and that the Claimant earned Kshs. 24,264/-. The Respondent averred that the Claimant was dismissed after an incident involving the attempted theft of a laptop from the conference facility of the Respondent. The Respondent averred that the Claimant is not entitled to housing allowance as this was neither part of the contract of employment no in the employees handbook.

3. The Claimant testified and the Respondent called Louise Vittone the Head of Regional Training at the Respondent. The Claimant testified regarding his service and the loss of the laptop and the eventual finding of the lost laptop. Upon the laptop was a note addressed to the Claimant. The Claimant denied being the author of the note or being complicit in the theft of the laptop. He testified that at the time of the alleged theft he was on leave attending a colleagues wedding. He was suspended alongside a lady whose handwriting was said to resemble that on the laptop. In cross exam he admitted leaving the key to the conference hall in the laundry room. He admitted the note was addressed to Bernard and that there is no other person called Bernard there. He confirmed that he was paid for the days worked. The Respondent's witness testified that the laptop was stolen from the conference room where the Claimant was in charge. The laptop was found with a note addressed to Bernard and which note stated "*Bernard nimepta lakini nitapea Peter (taxi driver) sababu yeye hawezi angaliwa*". She testified that the dismissal was justified under clause 2.11 of the Regulations.

4. The parties filed written submissions and the said submissions reiterated their rival positions. The Claimant filed his written submissions on 25<sup>th</sup> June 2014 and the Respondent filed their written submissions on 11<sup>th</sup> July 2014 together with a list of authorities on the same date. The Claimant submitted that at the time of the alleged theft he was on leave and on his return noticed the missing laptop and raised the issue. After a search the laptop was found with a note implicating the Claimant and the Claimant was suspended on 5<sup>th</sup> May and later the Respondent summarily dismissed the Claimant from its employ. It was submitted that the Claimant was entitled to payment of house allowance or provision of housing in terms of Section 31 of the Employment Act. The Respondent in

its submissions submitted that the Claimant was not entitled to the prayers sought in the claim as the Claimant had not proved the special damages sought.

5. It is clear the Claimant was terminated on account of the theft of a laptop from the Respondent's conference facility. The theft was not entirely successful as the item was recovered after a search of the premises. The Claimant admitted that he left the key in the laundry room. This act of itself was sufficient misconduct to warrant the action taken by the Respondent. The Claimant was accused of being complicit in the theft and after investigations was not taken to Court. The Respondent's witness stated that the Respondent decided against criminal charges as the Claimant is a father of young children and their welfare would be affected if conviction ensued. The theft of the laptop involved the Claimant in as far as he was careless with the key. The Respondent's code of regulations made provision for summary dismissal where theft was involved and the Claimant's contract of service was therefore terminated in line with the code of regulations. It was warranted to summarily dismiss the Claimant. Is the Claimant entitled to any relief? The Claimant was paid for the days worked and he admitted this and therefore he was not entitled to notice or pay for the days worked. He was suspended and accorded a hearing before his termination and that was in keeping with the provisions of Section 41 of the Employment Act which provide that an employee should be given a hearing before dismissal contemplated for the reasons set out in that section.

6. It was not disputed that the Claimant did not earn any house allowance. Under Section 31 of the Employment Act, provision is made that an employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees or shall pay to the employee sufficient sum as rent in addition to the wages or salary of the employee as will enable the employee obtain reasonable accommodation. The Claimant is thus entitled to pay on housing allowance. The Claimant earned Kshs. 20,764/- as basic salary and the house allowance is 15% of basic pay. He would be entitled to Kshs. 193,105.20 for the housing. He was not entirely successful in the claim and will therefore not be entitled to costs on the suit. Each party to bear their own costs.

Orders accordingly.

**Dated and Delivered at Nairobi this 22<sup>nd</sup> day of July 2014**

**NZIOKI WA MAKAU**

**JUDGE**