



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 986 OF 2013

ELKANA SWETA MAKOKHACLAIMANT

VERSUS

BOB MORGAN SERVICES LIMITED RESPONDENT

JUDGEMENT

Begisen Advocate instructed by Cootow & Associates Advocates – for the Claimant

Wetende Advocate instructed by Kaplan & Stratton Advocates – for the Respondent

1. This is a claim to unfair, unlawful termination of employment and non-payment of outstanding terminal dues.

2. The claimant, Elkana Sweta Makokha filed the claim on 23rd July 2013 seeking damages for unlawful dismissal, notice pay, service, days worked, house allowance and director allowances and accrued leave pay all computed and amounting to kshs.19, 539,793.00. The Respondent filed the defence on 1st August 2013 denying all the claims noting that the Claimant was their Director of Operations and was summarily dismissed for gross misconduct in accordance with his letter of appointment and applicable law. Both parties filed their pleading attaching records and documents with regard to the matter. At the hearing, the Claimant gave his sworn evidence in support of the Claimant while the Respondent called Joseph Kiptoo Ngetich the Human Resource and Administration Director as their sole witness. At the close of the hearing, both parties filed their written submissions.

Claimant's case

3. In 1992 the Claimant was employed by the Respondent and rose through the ranks to become their Operations Director until 2013 when he was terminated. His last salary was kshs.693, 000.00 per month.

4. On 23rd April 2013 the Claimant was issued with a show cause letter for alleged gross misconduct. The Claimant responded on 24th April 2013 giving details as to how he had a matter reported to the police and the same had been withdrawn. On 26th April 2013 the Claimant was invited to a meeting by the Respondent where he was informed that he had been suspended and was to proceed on compulsory leave pending outcome. On 7th May 2013 the Claimant received a letter of termination. This was done without him being heard or being given right to appeal. The Respondent withdrew all his privileges making the termination malicious, discriminatory and unfair. The Respondent was due to the facts that;

5. There was disregard to the claimant's long and diligent service with the Respondent a period of 21 years;

- a. Failed to consider any appeal by the claimant;
- b. Terminated the Claimant without justification;
- c. Disregarded the fact that the Claimant had no previous warnings;
- d. Failed to comply with section 185 of the Company's Act in terminating a director of a company which has only two directors
- e. Failure to comply with section 41 of the Employment Act; And
- f. Failure to give the Claimant a Certificate of Service.

6. The claimant's evidence was that there was malice in his termination and the same was unfair and thus claim compensation. The claims are outlined as;

- a. *Damages for unlawful termination being 8,316,000.00*
- b. *Three months' notice at kshs.2, 079,000.00*
- c. *21 years of service at kshs.8, 731,800.00*
- d. *9 days worked in May 2013 at kshs.155, 925.00*
- e. *House allowance at kshs.51, 975.00*
- f. *Allowances at kshs.43, 393.00*
- g. *Annual leave accrued at kshs.161, 700.00*

7. The Claimant is further seeking remedies as under section 185 of the Companies Act, costs of the claim and interest.

8. In evidence, the Claimant testified that on 6th February 1992 he was employed by the Respondent as a General Clerk and rose through the ranks to become the Operations Director from 1998 and in 2002 he became a director and was allocated shares in the Respondent company. On 19th April 2013 he was called by the Managing Director (MD) Mrs Morgan who is the chair of the Respondent company. At the time he was on study leave ready to take his examinations at Egerton University. The MD gave him a letter from the police that revoked the claimant's firearm licence, the letter had two counts that he had misbehaved while using a firearm thus the revocation of the licence. He explained the two incidents but the MD told him to leave and he went back to College for his exams.

9. On 23rd April 2013, he was issued with a show cause letter where he was supposed to give a response as to why he should not be dismissed. he replied on 24th and on 26th he received a letter of summoning him to a board meeting where he found the MD, Mr Morgan and the Administrative manager and Mr Joseph Kiptoo the Human Resource Director and Angelina Kamuyu the planning director. The Claimant was asked to clarify issues in the show cause letter. At the end the meeting resolved that the Claimant should proceed on compulsory leave. The Claimant asked if he could provide witness to support his defence but the Respondent refused to hear his wife and houseleek that he had brought as his witnesses.

10. On 8th May 2013, the MD called the Claimant and was given letter of summary dismissal for gross misconduct. He demanded for his terminal dues but was told these would be paid to him later. The Claimant did a handover to Mr Morgan and on 15th may 2013 he went back to hand over the lap top and credit card but the dues were not paid.

11. In the show cause letter, the Claimant was accused of misbehaving while in possession of a firearm causing the respondent's licence to be revoked. The Claimant stated that in June 2012 he went on duty to Meru and arrived very late and after taking his dinner and drinks together with the driver he booked at a hotel as he very tired. In the morning the Claimant realised that his firearm was missing. When he tried to get out of his room it was locked. He pushed the door and it got damaged. He went to the driver who said he had kept the firearm after he felt the Claimant was too tired to secure it. The manager of the hotel came to assess the damage and saw a bullet under the bed and this was reported to the police. The Claimant was taken to the police station where he was charged with malicious damage to property. The hotel owner came to the station another are an agreement to settle the matter once the Claimant paid for the damage. The Claimant exported the matter to the Respondent human house director Mr Ngetich but it was settled. Once the Claimant settled on the damage he was unconditionally released by the police and he reported

back to work.

12. On 20th March 2013 at 9pm the Claimant had a misunderstanding with his wife who went out and reported to the police. The next day while the Claimant was at work, two police officers came for him and they went to Embakasi Police Station where he met the OCS. There was a report that the Claimant had threatened to shoot his wife using the firearm in his possession. He was asked to surrender the firearm pending investigations and the Claimant resumed work. The matter was later withdrawn and the issue settled with Embakasi police. The Claimant was still doing his exams at the time. He did not inform the MD as investigations were still ongoing.

13. When the Claimant was called to a meeting by the Respondent he brought his wife and household to explain that the charges at Embakasi police station had been withdrawn. He wanted the board to hear them to appreciate what had transpired. The MD insisted that it was a domestic matter and the board was not going to hear these two independent witnesses.

14. The Claimant had also been appointed as a company director and with it came various privileges. He had a credit card where he could meet his expenses, there was security at his private residence, there was a house alarm, he had a comprehensive medical cover, car expenses were paid and his utility bills were paid for by the respondent. He was also allocated shares in the company. These privileges were withdrawn immediately upon termination. The medical cover was withdrawn forcing the Claimant to make his own payments.

15. The Claimant also stated that he had a basic salary of Kshs.519,000.00 and Kshs.173,000.00 as his house allowance all being Kshs.693,000.00 per month. He is seeking damages as the termination was unfair, there was no notice prior to the termination and thus a three months' notice pay in lieu is due and the days he worked for in May 2013 were never paid for. The Claimant served for 21 years and is owed service pay. The Claimant is also seeking house allowance at 15% of basic salary, his annual leave together with interest and costs of the suit.

16. In cross-examination the Claimant confirmed that the remedies sought under section 185 of the Companies Act are on the basis that he was unfairly terminated from his employment. The Respondent business is in the security and safety sector which involves matters of life and death. At the position the Claimant held he was supervised by the MD as this was a senior position. He had a firearm and as Operations Director he was the one responsible for keeping records of all the firearms the Respondent had. The Claimant had a temporary permit while the MD had held the permit as the overall responsible person. Those with temporary permits were under the MD permit and any incident with regard to all firearms had to be reported to the MD. In total the Respondent had 12 temporary permits. The Respondent was responsible for the firearms register to record all movements and to keep an inventory with a serial number, rounds of ammunition, dates of issue and the person in possession thereof.

17. The Claimant also confirmed that he had an incident in Meru, the firearm in his possession was confiscated by the police but he never took record to this in the register. Also the police at Embakasi police station told the Claimant to surrender the firearm in his possession after his wife reported threats but the Claimant did not record or report to the MD about both incidents. The Claimant was aware that the Respondent firearm licence was withdrawn due to the two incidents where he was involved in mishandling the firearm in his possession. In the first incident the Claimant got back the firearm after paying for the damage he had caused while in the second incident the police retained the firearm.

18. The Claimant insisted that his contract made provision for notice pay at 3 months as against what was provided for by the respondent. That his copy of the contract is the correct version as he was a senior officer and his notice period was not similar to other junior staff that had one month while he had three months.

9. The Claimant also confirmed that once he cleared with the Respondent he was paid for the 9 days worked at Kshs. 155,925, a house allowance was paid at Kshs.51, 955.00; allowances were paid together with leave allowance. The claim was filed before these dues were paid. The Claimant was member of the

Sacco and the Claimant wrote to the Sacco asking them to set off his Sacco dues from his terminal dues from the Claimant to enable him continue with his medical scheme. The Respondent still owes him his terminal dues.

Respondent's case

20. In defence, the Respondent stated that the Claimant was their employee and his summary dismissal was justified on the grounds of gross misconduct and breach of the code of conduct; due process was followed and the Claimant is thus not entitled to the claims outlined in the memorandum of claim. The Claimant as the Operations Director had his duties and responsibilities outlined in writing which was to facilitate the Respondent business in offering security.

21. On 17th April 2013 the MD was summoned to the Firearms Bureau of the Kenya Police (KBKP) and was given a letter dated 17th April 2013 which letter revoked the Temporary Firearms Permits (TP) that had been issued to the Respondent by the bureau for the purpose of carrying out its business of providing security. The revocation was due to the fact that the Claimant had on two occasions behaved inappropriately while in possession of a firearm. Following the revocation letter, the Respondent conducted internal investigations and established that on or about June 2012, the Claimant while on official duty in the Mount Kenya region had been personally involved in an incident leading to his arrest. He remained in custody at Meru for two days. His firearm was confiscated and was returned after a week. In March 2013 the Claimant was involved in another incident after a report was made to the police regarding his actions with the firearm that was in his possession. The firearm was withdrawn by the OCS Embakasi Police Station. Despite these serious incidents, the Claimant did not report to the MD whom he knew was the licence holder of the firearm he was entrusted with. This amounted to gross dereliction of duty taking into account the legislation with regard to firearm permits and thus gross misconduct.

22. As a result of the revocation of the Licence held by the Respondent and the internal investigations, on 23rd April 2013 the Respondent wrote a show cause why his employment should not be summarily be dismissed on account of the two incidents as he had engaged in behaviour which led to the revocation of the Respondent firearms permit by KBKP causing substantial loss of business and reputational damage to the respondent. The Respondent had to notify their clients that they could not offer protection with firearms as the firearms permits had been withdrawn. Also the Claimant had failed to report the two incidents to the MD causing the revocation of the firearms permits with the knowledge that that this would cause serious repercussions on the respondent's business of providing security.

23. On 24th April 2013, the Claimant gave his response admitting that he was aware of the withdrawal; and revocation of the firearms permits and licence but denied that he had abused or behaved inappropriately while at Meru or at Embakasi leading to such revocation and withdrawal. He however confirmed that he was arrested in Meru for two days and his firearm withheld and that he had been asked to surrender his firearm at Embakasi Police Station following a domestic quarrel.

24. On 26th April 2013, the Claimant was invited for a hearing which was held on 29th April 2013 the allegations against him were explained. His responses were considered and the Respondent arrived at a decision to terminate him bearing in mind the serious incidents the Claimant was involved in as a senior officer and had caused revocation of firearm licence affecting the Respondent business and reputation. The Respondent had lost confidence and trusts in the Claimant making it untenable for him to continue in their employment and was thus summarily terminated for gross misconduct. This summary dismissal followed due process and in accordance with respondents Code of Conduct and the application of section 44 of the Employment Act. Thus the dismissal was justified in the circumstances of this case and was procedural thus lawful. The Respondent did not breach the provisions of section 185 of the Companies Act. This is a matter that does not relate to the jurisdiction of this court. The Claimant is not entitled to the claims he has made. These should be dismissed with costs to the respondent.

25. In evidence the respondent's witness was Mr Ngetich who stated that he is the Human Resource director and conversant with the case as he worked with the Claimant at the time of his termination. The

Claimant had a written contract and at the time of termination he was the Operations Director. The Claimant was issued with promotion letters and where his salary was increased, he got a new letter to confirm the same. At some point the Claimant was appointed as a director of the Respondent business but this was separate and different from his employment contract. However not all the benefits that the Claimant enjoyed were documented. With regard to his employment, there were written confirmations.

26. The Respondent being a business that provided security was granted firearm licence held by the MD with instructions to follow applicable regulations and the law. Any incidents that related to the use of the firearms were to be reported. Any Licence holder had a duty to report a loss, theft or misuse. It was the MD duty to make all reports as the licence Holder. The Claimant together with others was issued with a TP with instructions to report any incident to the police. The Claimant had a TP was required not to misuse it. The licence issued there was a list of duties and obligations to the holder among them was to ensure the safety and proper usage of the firearm. There was a register where all activities with regard to the use of the firearm were to be recorded and this was kept by the claimant. There was also a safe to keep firearms and the Claimant as the Operations Director kept the key to the safe. This record of the register was not properly maintained and the Claimant failed to record the incidents he was involved in.

27. On 23rd April 2013, the Claimant was issued with a show cause letter on the grounds of gross misconduct. The first was that the Respondent firearm licence had been revoked following the Claimant handling the firearms inappropriately. The Respondent lost revenue as a result and there was loss of business as the Respondent could not offer its core service to clients. The Claimant had a duty to inform the MD of the incidents he was involved in with regard to the use of the firearm as the Licence holder which he failed to do. Secondly, the Claimant was in breach of duty when he failed to report to the MD on the confiscation and surrender of his firearm to the police. He was supposed to advise the Respondent on all operational matters. He was to ensure proper custody and proper record of the firearm. Thirdly, the Respondent had failed to report on his firearm. There was no record of the incidents when the Claimant surrendered possession. The Claimant thus did not keep safe custody of his firearm. It was his duty and part of his role as the Operations Director to record and ensure safe custody of all respondent's firearms.

28. On 29th April 2013, the Respondent called the Claimant for hearing. This was to address the charges against the claimant. The Claimant had a witness but was not allowed to give evidence. This was an internal hearing and outside persons were not allowed. After the meeting the Claimant was advised on his right of appeal but did not exercise it. All terminal dues were paid.

29. The claim for 3 months' notice does not arise as the Claimant was entitled to one months' notice pay. This was a case of summary dismissal but he was paid for the one month in lieu of notice. The Claimant is seeking service pay for 21 years but this does not apply in his case. No dues are owing to the Claimant with regard to section 185 of the Companies Act. Compensation is not due as this was a case where dismissal was justified.

Submissions

30. Both parties made their extensive written submissions in support of their case. The Claimant submitted that the Claimant was issued with a show cause letter with three allegations. There was a charge that he had misbehaved which led to the revocation of the respondent's firearm permit. The Claimant was able to explain the two incidents, he was not found culpable and thus to use these incidents against him is an unfair practice. Section 47 (5) of the Employment Act apply where an employer who alleges a case of summary dismissal is justified has the burden of proof as held in the case of **Johnson Jadhan Othieno okumu versus Pwani Oil Products Limited [2013] eKLR**.

31. The Claimant also submitted that section 10 of the employment Act require an employer to give an n employee a detailed job description. With regard to the firearm issued to the claimant, there was no job description. The subsequent summary dismissal was therefore not justified and the Claimant is entitled to the outlined claims. Evidence that the terminal dues were applied to offset the Sacco share is wrong as these were two separate entities, the court should avoid technicalities and grant the Claimant his prayers. The Claimant is entitled to three months' notice pay, service pay, salary and allowances, leave and

compensation.

32. The Respondent on their part submitted that there was credible evidence against the Claimant to justify his summary dismissal following section 47 (5) of the employment Act as held in **Jackson Butiya versus EPK Cause No.335 of 2011**. That the grounds leading to the summary dismissal were outlined to the Claimant and he was given time to respond, there was a hearing and the subsequent termination was procedural, lawful and thus justified. The Claimant misled the court with regard to the applicable contract document which led to questioning his credibility. All terminal dues have been settled and these claims have been repeated in the claim thus seeking double payment. The Claimant is therefore not genuine, credible and his claims are not made in good faith.

33. The Respondent also submitted that the incidents that led to the summary dismissal were grave and gross. The nature of respondents business in offering security to client necessitated the use of firearms which was also regulated by the applicable law. The Claimant failed to follow the set legal requirements causing the licence held by the Respondent to be revoked and withdrawn causing the Respondent massive business losses. As a senior officer of the respondent, the Claimant had a duty in handling the firearm properly, keeping an accurate record and ensuring the safe custody of the firearm. Where there was an incident, this was to be reported to the MD as the overall responsible person. The revocation caused the Respondent reputational and financial business loss and the Claimant was liable. In cases as serious as what the Claimant had done, the code of conduct had been breached as this was gross misconduct as outlined under Section 44 (c)(g) of the Employment Act. The dismissal was therefore based on the respondent's operational code of conduct and the law and thus the result outcome was valid.

34. The Claimant was called for a hearing and present were his co-workers. The need for the Claimant to call his wife and house help as his witnesses is not legally permissible and was thus not allowed by the respondent. The decision arrived at by the Respondent was therefore just, reasonable and appropriate. The Claimant is therefore not entitled to any compensation as there was no unfair termination. The terminal dues payable were used to offset the claimant's Sacco dues following his email in this regard. The Respondent paid for notice which was sat one month's salary, service pay is not due as she Respondent had complied with the provisions of section 35(5) of the Employment Act, days worked for and the leave due was settled and there are no remedies as under section 185 of the Companies Act.

The questions that emerge in this matter are;

Whether the Respondent had a justifiable reason to dismiss the claimant

Whether there is a conflict in the documents in the possession of the parties – the employment contract

Whether there are any remedies

35. On the first issue for determination, section 43 (1) of the Employment Act provides that;

43. (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.

36. By a letter dated 23rd April 2013, the Claimant was given notice as to the allegations against him which gave a detailed account of matters that he was to respond to. I find the reasons outlined and the evidence with regard to the cited incidents by the Respondent were matters grave enough to warrant the Claimant being called upon to give an explanation. The claim admitted that indeed he was the Operations Director of the respondent, this was a senior position that came with responsibility, he held a TP for a

firearm and he stated that while in Meru he slept and the next morning found the same missing and his hotel room locked only to trace the same with his driver. He was held at Meru police station but never reported this incident to the respondent. Also, another incident with regard to a firearm in his possession was report at Embakasi police station and the same was withheld. He did not report to the respondent. These are grave operational matters that any employee, however senior should have reported to their supervisor. It is immaterial that the matters are resolved out of court and the Claimant was not charged, the acts of the firearm leaving his custody and being held by third parties were matters serious enough to cause him to take the responsibility of information his supervisor.

37. Once the Respondent complied with section 43 of the Employment Act, the Claimant was given time to respond and a hearing held to hear his defences. Section 41 provides;

41. (1) Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.

38. Therefore, even in the most of serious cases as those falling under the provisions of section 44 of the Employment Act, an employee so charged are entitled to a hearing. Such hearing is to be conducted with due cognisance of steps outlined under section 41(1) of the Act. The employee has the right to call his union representative and where not unionised to be called and heard in the presence of a fellow colleague of his choice.

39. In this, the Respondent through their letter dated 26th April 2013 advised the Claimant of the hearing. The Claimant in preparation for the hearing brought his wife and house help. These are not persons as envisaged under section 41(1) of the Act. The Respondent submitted that present were other colleagues of the claimant. However, these colleagues are not the ones expressed under section 41(1) of the Employment Act. The one to be present is one *of his choices*. This is a right of the affected employee that cannot be compromised by the employer in causing there to be present another employee of their employers' choice. The fact that the Claimant had brought with him his wife and house help is indicative that these were his preferred choice and in view of the law, the Respondent had a duty to explain to the Claimant that such witnesses were not permitted and he had the option to identity another employee of *his choice*. I find no evidence that this right was accorded to the claimant.

40. Equally the Respondent gave a detailed account of how things took place leading to the claimant's summary dismissal. One crucial element is lacking, the proceedings with regard to the hearing of the Claimant on the 29th of April 2013 is not attached. It is therefore left to imagination as to what transpired at these meetings. The Respondent witness stated that the Claimant was explained of his right to appeal at this meeting. There is no such evidence on record. I take it then, the letter of dismissal did not outline this right and there is not proceeding of the hearing giving the Claimant this crucial information where he could challenge the decision to terminate his case. His senior position notwithstanding and having been responsible at the highest level, once the disciplinary proceedings commenced against the claimant, all dues process and procedures were to equally apply to him like any employee of the respondent. Where the law is not followed particularly section 41 of the Employment Act which is stated in mandatory terms, the outcome decision of the employer becomes unfair.

41. Whether there is a conflict in the documents in the possession of the parties – the employment contract – the Court observed that the Claimant had made changes to his contract. He inserted notice period as that of three months instead of what the Respondent had agreed to at One month. The court adjourned the matter to have both parties provide the original employment contract and in this regard, the

Claimant admitted that he had inserted a page into his copy of the contract to read three months while the Respondent retained the original page which had a provision for one month notice. This kind of manipulation of documents by a party speaks to the character and trustworthiness of the Claimant as a witness. It does not serve his case well that he, being a senior officer at the Respondent business could manipulate records to his favour even where he had a well outlined contract between him and the Respondent as his employer. This kind of manipulation is suggestive that the Claimant as a person is not to be trusted and is not honest with his work. The court will therefore rely on the employment contract in the possession of the Respondent as a true copy and record of the document drawn between the parties herein.

42. The Claimant pleaded that he was entitled to a remedy under section 185 of the Companies Act. He however failed to state how this arose with regard to his employment with the Respondent and the nature of remedy sought. To delve into this issue herein will be academic. This is therefore taken as having been abandoned by the claimant.

Remedies

43. The Claimant is seeking damages for unlawful termination. On the above finding that due process was not followed, the Claimant is entitled to compensation which will be assessed at one month's pay. I take the record of the Respondent with regard to the contract documents, the pay slips as the true copies of documents shared between the Claimant and the Respondent in the course of his employment. Pursuant to section 49(1)(c), the Claimant will be paid his gross monthly salary all amounting to kshs.414, 993.00 based on the gross salary last paid to him in May 2013 the last complete months he had.

44. As outlined above, the contract of employment made provision of one months' notice payable where notice was not given before termination. This was a case of summary dismissal but the Respondent admitted that they were willing to make this payment. This is awarded at kshs.414, 993.00 being salary for one month.

45. The Claimant is also seeking service pay for the 21 years he served the respondent. From the pay slips attached on both records and pleading of the parties herein, there is evidence that the Claimant was registered with the NSSF and NHIF. In this regard section 35(5) of the Employment Act applies and the Claimant is not entitling to service pay. This is declined.

46. Days worked are payable and the Claimant is entitled to the 9 days' pay that he served before he was terminated. Based on the gross salary payable at the time of termination, for the 9 days worked the Claimant was entitled to Kshs. 124,497.00. The Respondent opted to pay kshs. 194,103.33 Which amount is hereby confirmed.

47. The claim for allowances is not found as different from what the Claimant had incorporated in his salary in writing. Where this arose, the same was paid. The Claimant for house allowances and other allowances that were due are declined.

48. The Claimant is seeking kshs.161,700.00 as his leave pay. In submissions the Claimant stated that his accrued leave days amounted to kshs.8,117, and 030. This is based on what the Claimant submitted to be work done for 9 months before his termination. This claim is misplaced, leave is due as a right and not based on a perception of what the Claimant felt was due at any given time. In his evidence, the Claimant did not delve into this issue as to how the difference with regard to his pleading and his submissions arose. Based on the mixed claims, this will be declined.

49. Employees who out of their own free will join employees Sacco do so by virtue of their employment and do authorize the employer to make deductions from their salaries to the Sacco for their welfare and for the collective good of all. An employee is therefore stopped from claiming that once their employment is terminated, there are owed all their savings without taking into consideration the collective agreement under their Sacco and or cooperative society. Where an employee has enjoyed a loan facility from the collective kitty he is equally under a duty to make good any dues where his relationship with the

collective is severed by virtue of the termination of his relationship with the principal. See **Javan Mbago Were versus H. YOUNG & CO. (EA) LTD, Cause No. 1478 of 2010.**

50. Where the Claimant had pending commitments from his Sacco, the Respondent as the employer had the right to offset these from the terminal dues of the claimant.

There is confirmation that of all the terminal dues owing, the Respondent had already paid the sum of kshs.600, 000.00 and an amount of kshs.398, 000.00 was owed with regard to the claimant's insurance premium. These amounts are to be deducted from the total award granted to the claimant.

Judgment is therefore entered for the Claimant as against the Respondent in the following terms;

- a. **There was a procedural flaw in the summary dismissal of the claimant;**
- b. **The Claimant is awarded compensation equivalent to one months' salary at kshs.414,993.00;**
- c. **Notice pay at kshs.414,993.00;**
- d. **9 days worked amounting to kshs. 194,103.33;**
- e. **The amounts above to be paid less what the Claimant has received and or been deposited into his bank account; and**
- f. **Each party will bear their own costs.**

Delivered, dated and signed in open Court at Nairobi this 18th day of November 2014.

M. Mbaru

JUDGE

In the presence of:

Lilian Njenga: Court Assistant

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