



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**CAUSE NO.120 OF 2014**

**ATIIMA CLARKSON MBATARU.....CLAIMANT**

**-VERSUS-**

**DHABITI SACCO LIMITED..... RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 19<sup>th</sup> December, 2014)

**JUDGMENT**

The claimant filed the memorandum of claim on 16.09.2014 in person. He prayed for reinstatement and in alternative an order for payment of his terminal dues as per the collective agreement. He also prayed for costs of the suit.

The respondent filed the memorandum of defence on 14.10.2014 through Mbaabu M'Inoti & Company Advocates. The respondent prayed that the claim be dismissed with costs.

The respondent employed the claimant on 05.12.1994 as a clerk to perform duties of a teller. The claimant was dismissed on 1.09.2014 by the letter of summary dismissal dated 20.08.2014. The letter of dismissal stated that after investigations, it was found that while executing duties as a teller, the claimant had dishonestly withdrawn cash on various occasions from account No. 4918-409-13784 without the rightful authority or mandate to do so; and that during the investigation meetings that the claimant attended, the claimant had denied making the transactions yet his job credentials were reflected in the transactions' vouchers. Thus, the letter stated that the respondent's board meeting held on 11.08.2014 had decided to dismiss the claimant from employment with effect from 1.09.2014.

The claimant admitted in his testimony that he was the teller who transacted all the vouchers in question as per exhibit JIK2 and further acknowledged that there were discrepancies in the customer's signatures as per the vouchers filed in court. Those were the voucher transactions that had showed the claimant's culpability leading to his termination. The claimant admitted that he attended the meetings of 20.09.2013 and 03.08.2013. Further, the evidence showed that the union representative one Stephen Bundi attended the meeting of 5.04.2014 at which the claimant's case was discussed.

RW1 was the respondent's chief executive officer one Titus Munjuri. He testified that he received a customer's letter of grievances dated 22.05.2013 and received on 24.05.2013. RW1 traced the relevant vouchers as they related to the complaint being exhibit DSL5 (b). The paying teller as identified on the vouchers was code 01 being the claimant. The signatures on genuine vouchers by the customer being exhibit DSL5 (a) differed from those in exhibit DSL5 (b) subject of the grievance by the customer. Investigations had revealed that the customer never appeared yet withdrawals had been made. At the meetings of 3.08.2013 and 3.08.2013 the claimant was present and he had the opportunity to examine the customer. The claimant at the meeting admitted withdrawing the money irregularly to recover a friendly loan he said he had advanced the customer in their private arrangements. The evidence in this court did not establish the existence of such friendly loan. The union representative attended the board meeting of 5.04.2014 and pleaded for lenience but the board decided to dismiss the claimant.

RW3 was the respondent's customer in issue one Jacob Ikiao Kireru. He confirmed in his testimony that he maintained an account with the respondent and further confirmed the irregular withdrawals from his account. He confirmed that in his conversation with the claimant on the date he wanted to know his account balances, the claimant as the respondent's teller had admitted that he had irregularly withdrawn

Kshs. 85,000.00 from RW3's account. Later, RW3 testified that the claimant refunded the cash by delivering it to RW3's wife at RW3's home.

The court has considered the evidence and the only issue for determination is whether the claimant is entitled to the remedies as prayed for. The court finds that the claimant had an opportunity to be heard and even cross-examined RW3 during the respondent's administrative disciplinary proceedings. The court finds that the respondent established the reason for termination and complied with the provisions of section 41 of the Employment Act, 2007 by according the claimant due process before the summary dismissal. The court finds that the summary dismissal was not unfair.

**In conclusion, judgment is entered for the respondent against the claimant and the claimant's suit is dismissed with costs.**

**Signed, dated and delivered in court at Nyeri this Friday, 19<sup>th</sup> December, 2014.**

**BYRAM ONGAYA**

**JUDGE**