



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT AT NAIROBI**  
**CAUSE NUMBER 77 OF 2012**

**BETWEEN**

**JOHN MOSE AMIGA.....CLAIMANT**

**VERSUS**

**DOMINION VEGFRUITS LIMITED .....RESPONDENT**

*Rika J*

*CC. Leah Muthaka*

*Mr. John Mose Amiga the Claimant in Person*

*Mr. Nyakiangana instructed by Julius Nyakiangana & Company Advocates for the Respondent*

**ISSUE IN DISPUTE: UNFAIR AND UNLAWFUL TERMINATION**

**AWARD**

1. The Claimant filed his Statement of Claim in Person, on the 24<sup>th</sup> January 2012. The Respondent filed its Statement of Reply on 8<sup>th</sup> February 2012. Parties gave evidence in support of their respective cases, closing the hearing on 14<sup>th</sup> March 2013. The Claimant gave evidence and called no additional witnesses, while the Respondent testified through its Director John Mairura. The dispute was last mentioned in Court on 30<sup>th</sup> April 2013 when Parties confirmed the filing of their Closing Arguments and were advised by the Court Award would be delivered on Notice.
2. The Claimant stated he was employed by the Respondent as a Driver on 26<sup>th</sup> October 2007. Employment was by word of mouth. The Respondent is a Horticultural Firm, involved in the growing and export of fresh produce. The Claimant earned Kshs. 23,000 per month. He served diligently until 5<sup>th</sup> September 2011, when his contract of employment was terminated by the Respondent. He was not given notice, and was not given reason or reasons for termination. He prays for severance pay at the rate of 15 days' salary for each year worked at Kshs. 507,500; 1 month salary in lieu of notice at Kshs. 20,300; unpaid leave at Kshs. 7,280; and 12 months' salary at Kshs. 243,600. In total, he seeks an amount of Kshs. 778,680, costs, interest and any other relief the Court may deem suitable to grant.
3. He testified on cross-examination that he was not issued a letter of employment. He started working in October 2007. He was not issued a letter of termination; he was merely summoned by his employer and told to stop working. The employer mentioned to him about theft that had taken place at the workplace. He was paid a sum of Kshs. 29,542 by the Respondent on 20<sup>th</sup> September

2011. He signed the Petty Cash Voucher. He did not know who the other signatories were. He signed the document accompanying the voucher which set out the details of payment. He was not shown the Discharge Voucher. He seeks severance of Kshs. 507,500. He did not do the computation to arrive at the figure; it was KITUO CHA SHERIA [Legal Aid Centre], who did for him the computation. The Company is still in operation. 3 employees, including the Claimant, left employment at the same time. He did not know if others preferred suits against the Respondent after termination. He was not told the amount of Kshs. 29,542 paid to him included notice pay. He conceded notice was paid. He clarified his salary was Kshs. 20,300, not Kshs. 23,000 as stated in chief. He started working in October, not November 2007. He did not have any document to show his date of employment. He agreed there could be an error in the computation of the years of service. He did not know what severance pay is. Either Party could terminate the contract by notice, or pay in lieu of notice. The Claimant urges the Court to uphold his Claim.

4. The Respondent through its Director conceded the Claimant was employed as a Driver. He worked from November 2007 to 5<sup>th</sup> September 2011. Mairura told the Court he terminated the Claimant's contract of employment lawfully and fairly. The Respondent exports vegetables and fruits to Europe. These products are sourced from farmers across the country. Amiga was to deliver the vegetables and fruits to the Airport at Nairobi, for processing and shipment. He used to do so with the assistance of General Workers.

5. Mairura was called by an informer and told his vegetables and fruits were being sold by Amiga and one of the General Workers by a roadside. Mairura called Amiga the following day. The Claimant was quite furious, and in a huff, left the Director. He was involved in sale of his employer's merchandise on 26<sup>th</sup> August 2011. Mairura confronted Amiga on the following day. The Claimant left in a blaze of fury, and only returned to the workplace on 5<sup>th</sup> September 2011, when the Director handed him the termination letter. Mairura explained to him the reason for termination. The Director computed the Claimant's dues. August salary had already been paid to the Claimant. There was no salary which was outstanding on termination. He was paid salary for 5 days worked in September 2011, leave days and 1 month salary in lieu of notice. The Director ensured the Claimant read and understood the details of the payment made to him. He received and acknowledged payment, and discharged the Respondent from any further obligation. His claim for severance is groundless. His role was not declared redundant. He did not work for 5 years, but for 3 years and 11 months. His contract was not unfairly terminated. He was involved in theft by servant. Answering some few questions from Amiga, Mairura testified that Amiga was caught selling the Respondent's produce at a place called Pipeline in Nairobi. A Supplier named Karanja was the informer. This informer did not avail samples of the stolen items to Mairura. The Respondent prays for dismissal of the Claim.

#### *The Court Finds and Awards:-*

6. The Respondent's evidence that the Claimant was found together with his General Worker, selling the farm produce they were instructed by their employer to deliver to the Respondent's facility at the Airport Nairobi, was given persuasively. The Claimant was not a forthright witness. In his evidence-in-chief, he stated he was not told why his contract was terminated. The reason is stated in clear language in the letter of termination. He even denied receiving the letter of termination in his evidence. In his Statement of Claim, he does not state that he did not receive the letter of termination; he only complains that there was no notice preceding termination. The evidence of the Respondent's witness Mairura was consistent and convincing. He testified that he confronted the Claimant over the allegations that he had been found hawking the Respondent's farm produce. This was on 28<sup>th</sup> August 2011. The Claimant left the office in anger, and did not answer the queries. He only returned on 5<sup>th</sup> September 2011, when he was issued the letter of termination. Weighing the evidence of the two witnesses, the Court is inclined to uphold the evidence of the Respondent.

7. The Claimant did not reveal to the Court in his evidence-in-chief, and Statement of Claim, that he was paid Kshs. 29,542 by the Respondent in terminal dues. He concealed evidence from the Court, only conceding payment after cross-examination. He was paid 1 month salary in lieu of notice, but still finds it

conscionable to strain the Court seeking another 1 month salary in lieu of notice. He agrees he signed the payment voucher, but testified that he did not see the discharge section in that voucher. He does not claim his position was declared redundant, but is seeking severance pay. He was unable to explain how he arrived at the figures he seeks, instead throwing the responsibility of explaining the figures to KITUO CHA SHERIA. No witness was availed from this Organization. He was subscribed to the N.S.S.F, and even assuming he seeks service pay under Section 35 of the Employment Act 2007, his membership to the N.S.S.F makes him ineligible to receive other social security payments outside his statutory pension. His case is no more than a salmagundi of highly inflated and improbable claims for terminal benefits, which have no factual and legal foundation. The Court does not find any prejudice suffered by the Claimant on the ground that the Respondent granted him no formal hearing. This Court has held in the past that where an employee portrays a belligerent attitude on being confronted with accusations of having committed an employment offence, such an employee makes it impossible to hold a civil disciplinary hearing. Amiga walked out angrily on his employer, and did not submit himself to the disciplinary process. In the end, the Court dismisses the entire Claim with no order on the costs.

Dated and delivered at Nairobi this 27<sup>th</sup> day of September 2013

James Rika

Judge