



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 534 of 2010**

(Before Hon. Justice Hellen Wasilwa on 21<sup>st</sup> November, 2012)

**STEPHEN OUMA ONYULO..... APPLICANT**

**VS**

**AGRO MANUFACTURING COMPANY..... RESPONDENT**

**JUDGMENT**

The Claimant herein Stephen Ouma Onyulo filed his memorandum of claim dated 13<sup>th</sup> May, 2010 through the firm of Owino & Owino Advocates. The issue in dispute is wrongful termination of employment.

The claimant gave evidence before court and informed court that he was employed by the Respondent in October 1998 and dismissed on 14<sup>th</sup> March, 2009. He stated that he was Chief Steward at the Respondent's Company and it was alleged that he stole company property. On 14<sup>th</sup> March, 2009, he was arrested by police. When he came to the office on 16<sup>th</sup> March, 2009, it was alleged that he stole bolts and was given a dismissal letter. He indicates that he was not taken to the police station and neither was he paid anything. The Respondent indicated that they would pay money on humanitarian grounds and eventually he was paid 12,000/= on 30<sup>th</sup> March, 2009. He informed court that his salary was 13,377/= per month. He denies he wrote annexure AMG 1 and denies contents of AMG3. He prays that he be paid all his dues including compensation.

In cross examination, the claimant told court that he was a Welder. He was also the Chief Steward. He denies that on 14<sup>th</sup> March, 2009 he was arrested by police but when paragraph 5 of his memo is pointed out to him he still denies he was arrested. He denies Exh AMG1 is his document. He also denies he signed it. He says he does not know David Kiambuthi.

He also denied he signed document exh AMG2. He told court that Christopher was his supervisor. He also indicated that exh S005 was done after he had left employment as he resigned on 27<sup>th</sup> November, 2009. He says exh AMG 3 was dated 26<sup>th</sup> March, 2005 when he had already been dismissed. He says he was not given an opportunity to be heard and defend himself.

The Respondent filed their memorandum of reply dated 30<sup>th</sup> June, 2010, through the firm of Muthaura Mugambi, Ayugi & Njonjo Advocates. They also called three witnesses. Their evidence is basically to the effect that the claimant was dismissed following his own admission that he stole bolts and nuts and was actually arrested by police. They annexed letters dated 14<sup>th</sup> March, 2009 and 20<sup>th</sup> March, 2009, and exhibits AMG1 and AMG2 written purportedly by the claimant admitting to this assertion. A subsequent meeting held by 29<sup>th</sup> March, 2009, between the Respondent and his Union made an agreement to pay him

Ksh.12,000/= which amount was paid and acknowledged by the claimant. Exh AMG 3 is an acknowledgment of this assertion. In light of the express admission of guilt, the Respondent summarily dismissed the claimant following the incident on 14<sup>th</sup> March, 2009. The Respondent avers that the dismissal was lawful as the claimant was a suspect in a criminal offence and this behavior amounts to gross misconduct. The Respondent also avers that they paid the claimant all he was entitled to.

The parties have filed their submissions before this court.

I have considered evidence adduced by both parties and their submissions. The issues for determination by this court are:

Whether the dismissal of the claimant by the Respondent was unlawful.

If so, what remedies the claimant is entitled to.

I will consider the first issue first. The claimant contention is that the Respondent stage managed his arrest by the police on a Saturday and instead of taking him to the police station, he was taken to the Respondent's premises. On Monday he was given a dismissal letter. He says this was stage managed due to his position as a Shop Steward. The claimant also denied he was the author and signatory of the documents attributed to him. The Respondent had intended to adduce evidence from a document examiner that indeed the documents were authored by the claimant but they never succeeded in doing so.

The claimant has submitted that the claimant was never given an opportunity to defend himself nor was he informed of his wrong doing. None of the Policemen who arrested the claimant were called also as witnesses. The Respondent contention is that the claimant was summarily dismissed due to his implication in the committal of a criminal case.

The documents the Respondents sought to rely on to indicate the claimant admitted he stole both from Respondent have been denied by claimant. It would have been the Respondents duty to prove that indeed the claimant authored the said documents. The Respondent had asked for time to call a document examiner to prove that assertion but failed to call that witness. It therefore remains a mere assertion that the claimant authored and signed documents which implicated him. The policeman who allegedly arrested the claimant was also not called as a witness and this would have shed more light on Respondent's case as to why and how the claimant was arrested.

There is actually no clear finding that the claimant was arrested for stealing and that he also admitted the said guilt. In the absence of such clear evidence, I cannot find that his dismissal was lawful. In any case, if the dismissal was summarily, then the issue of payment of 12,000/= on humanitarian grounds does not arise. This Respondent having failed to establish gross misconduct or conduct incompatible with faithful discharge of his duties, termination of his services was therefore wrongful.

Having found that claimant was wrongfully terminated, what remedies are available to him? Since claimant was denied certain entitlements on dismissal, I find for him and enter judgment as follows:

1 month salary in lieu of notice	-	Ksh.13,377/=
6 months compensation for unlawful termination		
$= 13,377 \times 6$	-	Ksh.80,262/=
<b>TOTAL</b>	-	<b>Ksh.93,639/=</b>

The Respondents will bear costs of this suit.

Dated, signed and delivered this 21<sup>st</sup> day of November, 2012.

**HELLEN WASILWA**  
**JUDGE**

Appearances:

Owino & Owino Company Advocates

Mr. Nyaribo

Rachel Gichuki

for Claimant

for Respondent

Court Clerk