



**Mbuthu v De La Rue Currency and Security Print Limited (Cause 969 of 2017) [2024] KEELRC 965 (KLR) (2 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 965 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 969 OF 2017**

**L NDOLO, J  
MAY 2, 2024**

**BETWEEN**

**ALICE NZAMBI MBUTHU ..... CLAIMANT**

**AND**

**DE LA RUE CURRENCY AND SECURITY PRINT LIMITED .... RESPONDENT**

**JUDGMENT**

1. Alice Nzambi Mbuthu, the Claimant in this case, was an employee of De La Rue Currency and Security Print Limited, having been employed as an Accountant, and rising through the ranks to the position of Financial Controller at the time of separation.
2. Pursuant to allegations of overpayment of import duty, the Claimant was issued with a show cause letter dated 16<sup>th</sup> November 2015, to which she responded on 23<sup>rd</sup> November 2015.
3. The Claimant was subsequently invited to a disciplinary hearing, scheduled for 1<sup>st</sup> December 2015 and adjourned to 2<sup>nd</sup> December 2015. The Claimant did not attend the disciplinary hearing and the Respondent proceeded to terminate her employment. She accuses the Respondent of unlawfully and unfairly terminating her employment.
4. The Respondent opposes the claim by a Response to Claim dated 4<sup>th</sup> October 2017, to which the Claimant responded on 24<sup>th</sup> October 2017.
5. At the trial, the Claimant testified on her own behalf and the Respondent called two witnesses; Kerry Ryan and Douglas Denham. The parties also filed written submissions.

**The Claimant's Case**

6. In her Statement of Claim dated 5<sup>th</sup> May 2017 and amended on 27<sup>th</sup> February 2024, the Claimant states that she was employed by the Respondent in the position of Accountant, effective 3<sup>rd</sup> January 2003.



She rose through the ranks and on 9<sup>th</sup> January 2014, she was appointed to the position of Financial Controller, earning a monthly salary of Kshs. 525,000. Her salary was increased to Kshs. 762,905 from July 2015.

7. On 16<sup>th</sup> September 2015, the Claimant attended a video conference where she was questioned by officers of De La Rue International Limited; Kerry Ryan, Martin Sutton and Lara Pletcher, on allegations of overpayment of import duty to the Kenya Revenue Authority and concealment of the overpayment.
8. On 17<sup>th</sup> September 2015, the Claimant sent her response to the allegations by email and on 18<sup>th</sup> September 2015, she was issued with a suspension letter dated 17<sup>th</sup> September 2015.
9. The Claimant states that she attended investigative interviews on 29<sup>th</sup> September 2015, 1<sup>st</sup> October 2015 and 13<sup>th</sup> October 2015. On 16<sup>th</sup> November 2015, she was issued with a show cause letter citing the following allegations:
  - a. Failure to effectively perform her oversight role as Financial Controller, in the review of import duty returns to the Kenya Revenue Authority;
  - b. Failure to report the overpayment after becoming aware of it;
  - c. Possible involvement in irregular accounting and concealment of the overpayment;
  - d. Possible involvement in misrepresenting the breakdown of the creditors account to the KPMG audit team.
10. The Claimant avers that she sent several emails to the Respondent, asking to be provided with copies of documentation in support of the allegations. She lists a number of documents she had requested for, ranging from creditors' summaries to statutory financial statements.
11. The Claimant states that she received an email from the Respondent dated 19<sup>th</sup> November 2015, allowing her to peruse some of the documents at the Respondent's premises on 19<sup>th</sup> and 20<sup>th</sup> November 2015 between 9.00 am and 4.00 pm.
12. On 20<sup>th</sup> November 2015, the Claimant wrote to the Respondent, seeking extension of time until 24<sup>th</sup> November 2015, to submit her response to the show cause letter. The Claimant claims that her request did not elicit any response from the Respondent. She nevertheless submitted her response on 23<sup>rd</sup> November 2015.
13. On 26<sup>th</sup> November 2015, the Claimant received an email inviting her to a disciplinary hearing on 2<sup>nd</sup> December 2015. She wrote back asking that the hearing be rescheduled to 7<sup>th</sup> December 2015, to enable her prepare adequately and also to sit her examinations at Strathmore University.
14. The Claimant states that she received a response from Kerry Ryan indicating that the Claimant could attend the disciplinary hearing during her free session on 3<sup>rd</sup> December 2015. She claims to have also received a letter from the Respondent's Human Resource Manager, Jayne Ng'ethe, asking her to attend the disciplinary hearing on 2<sup>nd</sup> December 2015.
15. The Claimant wrote back indicating her unavailability on the two dates as she was attending a compulsory part of her training. She requested that the disciplinary hearing be rescheduled to 7<sup>th</sup> December 2015 but her request was rejected.
16. The Claimant faults the involvement of officers from De La Rue International Limited in the disciplinary process, which she claims was in contravention of the Respondent's disciplinary rules.



17. The Claimant claims to have been injured in a stampede following a security drill at Strathmore University on 30<sup>th</sup> November 2015. She states that she was treated and advised to stay off duty and seek trauma cancelling. The Claimant therefore renewed her request that the disciplinary hearing be conducted on 7<sup>th</sup> December 2015.
18. On 2<sup>nd</sup> December 2015, the Claimant received an email from Douglas Denham informing her that the disciplinary hearing would proceed. Denham offered to send a taxi to pick the Claimant to attend the hearing.
19. The Claimant states that the entire process, which was handled by Jayne Ng'ethe, Kerry Ryan, Alison Longbottom and Douglas Denham was in contravention of the Respondent's disciplinary rules and the Claimant's right to be heard.
20. The Claimant faults the Respondent on the following grounds:
  - a. Conducting the disciplinary hearing in the Claimant's absence;
  - b. Allowing unauthorised persons to conduct the disciplinary hearing;
  - c. Denying the Claimant the right to be heard;
  - d. Dismissing the Claimant without approval of the General Manager or his nominated deputy, contrary to the employee handbook;
  - e. Failing to take into account the Claimant's plea to defer the disciplinary hearing.
21. The Claimant's claim is as follows:
  - a. 1 month's salary in lieu of notice.....Kshs. 792,905.32
  - b. Salary for December 2015 to June 2016.....4,577,431.92
  - c. Service pay for 12 years.....4,577,431.32
  - d. 12 months' salary in compensation for wrongful dismissal, unlawful and unfair termination

### **The Respondent's Case**

22. In its Response dated 4<sup>th</sup> October 2017, the Respondent admits having employed the Claimant as an Accountant, on 3<sup>rd</sup> February 2003. The Respondent further admits that the Claimant rose through the ranks to the position of Financial Controller as at the time of the termination of her employment in December 2015. The Respondent states that as at July 2015, the Claimant's annual salary was Kshs. 7,691,040.
23. The Respondent avers that while it initially appeared that the Claimant had carried out her duties with diligence, it was subsequently discovered that she had failed to carry out a crucial part of her duties as Financial Controller.
24. The Respondent states that sometime in September 2015, it received reports regarding improper management of aspects of its finance function. In particular, it was alleged that import duty due from the Respondent to the Kenya Revenue Authority had been overpaid. It was further alleged that the overpayment had been misreported, concealed and falsified in the Respondent's accounts for the year 2014/2015.
25. The Respondent states that it commenced investigations into the allegations, which included interviewing staff in the Finance Department. As part of the investigations, the Respondent arranged



for the Claimant to be interviewed via a video conference on 16<sup>th</sup> September 2015. The interview was conducted by Martin Sutton and Kerry Ryan, with Lara Pletcher taking notes.

26. The Claimant is said to have stated that she was not aware of the overpayment and denied any responsibility in the overpayment, which she attributed to her juniors; Javan Ndonga and Hezron Omondi.
27. The Claimant was suspended from work on 18<sup>th</sup> September 2015, pending investigations into the allegations of overpayment of duty and concealment of the overpayment. The Respondent states that the Claimant was suspended on full pay and other contractual benefits. The Respondent avers that the suspension letter was erroneously dated 17<sup>th</sup> September 2017 instead of 18<sup>th</sup> September 2015.
28. The Claimant was informed that during her suspension, she remained an employee of the Respondent and she was thereby bound by her terms and conditions of employment. She was required to co-operate in the investigations and if she wished to take annual leave during the period, she was required to seek approval from the Head of Operations. In addition, if she wished to go on holiday or otherwise make herself unavailable, she was required to request for annual leave.
29. Upon request by the Respondent, the Claimant attended investigative interviews on 29<sup>th</sup> September 2015, 1<sup>st</sup> October 2015 and 13<sup>th</sup> October 2015. Following the investigations, the Claimant was issued with a show cause letter dated 16<sup>th</sup> November 2015, to which she was required to respond by 4.00 pm on 20<sup>th</sup> November 2015.
30. Upon receipt of the show cause letter dated 16<sup>th</sup> November 2015, the Claimant asked for copies of a long list of documents, as well as access to a number of the Respondent's staff.
31. According to the Respondent, a large number of the documents on the Claimant's request list were irrelevant. With respect to the documents that the Respondent considered relevant, the Claimant was invited to the Respondent's premises at any time between 9.00 and 4.00 pm, on 19<sup>th</sup> November 2015 and 20<sup>th</sup> November 2015, to access and view the documents.
32. By her letter dated 20<sup>th</sup> November 2015, the Claimant sought more time to provide her written response; she undertook to do so on 24<sup>th</sup> November 2015. The Claimant responded by her letter dated 23<sup>rd</sup> November 2015.
33. By the Respondent's letter dated 27<sup>th</sup> November 2015, the Claimant was invited to a disciplinary hearing scheduled for 2<sup>nd</sup> December 2015. The Respondent states that the Claimant failed to attend the disciplinary hearing, without any good cause, and the hearing proceeded in her absence.
34. The Respondent asserts that based on the terms of her suspension, the Claimant was expected to be available to attend a disciplinary hearing at any time during normal working hours, unless she requested for and was excused from work, under usual terms and conditions of employment.
35. The Respondent states that the disciplinary hearing was initially scheduled for 1<sup>st</sup> December 2015 but it was postponed to 2<sup>nd</sup> December 2015 at 10.00 am, to accommodate the Claimant, who had said that she was sitting examinations. The Respondent adds that its representatives, who had travelled from the United Kingdom, would not be available after 2<sup>nd</sup> December 2015. Further, the representatives are said to have delayed the start time of the disciplinary hearing to 12.00 noon. An offer was also made to the Claimant for a taxi to facilitate her to attend the hearing.
36. The Respondent states that its representatives tried to reach the Claimant on 1<sup>st</sup> and 2<sup>nd</sup> December 2015, by telephone, text message and email but she was unreachable. On 2<sup>nd</sup> December 2015 at 3.00



pm, the Claimant wrote to the Respondent, alleging that she had not been in a fit mental state to attend the disciplinary hearing.

37. The Respondent terms the Claimant's request that the disciplinary hearing be rescheduled to 7<sup>th</sup> December 2015, as unreasonable. The Respondent states that the Claimant was allowed a fair chance to be heard and that the disciplinary process was conducted in a lawful and procedural manner.
38. The Claimant was dismissed by letter dated 15<sup>th</sup> December 2015. The Respondent's case is that the dismissal was lawful and fair. The Respondent states that the Claimant was paid all her terminal dues.

### **Findings and Determination**

39. There are two (2) issues for determination in this case:
  - a. Whether the Claimant's dismissal was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Dismissal**

40. The Claimant was dismissed by letter dated 15<sup>th</sup> December 2015, under reference 'Disciplinary Hearing Outcome'. The letter, signed by Douglas Denham, states in part:

"Dear Alice,

#### Disciplinary Hearing Outcome

I am writing to advise you of the outcome of your disciplinary hearing. You were given the opportunity to attend the disciplinary hearing on 1<sup>st</sup> December 2015 and this was postponed to 2<sup>nd</sup> December 2015 at 10 am to accommodate your exam schedule. You requested that the meeting be postponed to 7<sup>th</sup> December to allow you attend a Capstone Simulation. As you had been advised on a number of occasions that you need Company permission to take study leave or exam leave, your request to reschedule the hearing to Wednesday 7<sup>th</sup> December was denied.

I was informed on 1<sup>st</sup> December 2015 that you had notified the Company that you had injured your ankle and I delayed the start time of the hearing to 12.00 on 2<sup>nd</sup> December 2015 to allow you to travel to the factory by taxi (at the Company's expense) if required. However, despite instructions to the contrary, you failed to respond to my email, telephone calls and voicemails to both your telephone numbers and texts to both your mobile numbers in respect of the timing of the hearing. You also refused to allow the Company to hand deliver documents to you, and did not come to site to collect them. At the scheduled time of the meeting we had not been provided with a doctor's certificate from you and, indeed, to this day the Company has not received one. I made every attempt to contact you to discuss the hearing and you did not respond to my request to contact me.

In the interest of proceeding in a timely manner, and because Alison Longbottom and myself had travelled from the UK to conduct the hearing and would not be available after 2<sup>nd</sup> December 2015, the decision was taken to hold the hearing in your absence, as clearly stated in the correspondence. You have been given every opportunity to explain why the issues were untrue but failed to attend to explain and therefore I could only take into account what you had stated in your response to the Show Cause letter and interview notes from the



investigation. I am informed that you arrived at the factory on 7<sup>th</sup> December 2015, which surprised me as you had already been informed that the hearing had already taken place...

I have seen the allegations against your failure to supervise the petty cash system and supplier payment processes properly. You explained in your response to the Show Cause letter that it was a pre-existing culture at the site and that you simply followed the existing customs and practices. I was very surprised by this written response and would have very much liked to have discussed it with you, as when I asked your line manager, Neil Miller, to comment, he informed me that you and he, “had talked about the role of Finance as Custodian and Co-pilot and the Custodian comes first and the need for the Finance lead on site to set the ‘tone from the top’ on financial control. In my view it is Alice’s/FC’s role to set the ‘tone from the top’ and if she is not getting support from the Head of Operations then she raises it through the line. That is why Finance reports through the functional line rather than to the Head of Operations.” Neil Miller also confirmed that you did not raise your concerns around control and incidents of going outside of normal control with him, which he would have expected you to do.

You say that, ‘any reasonable accountant on the face value of the supporting documentation would not know if it is a ‘screen dump.’ As a general comment, although you are not expected to check the data on invoices, you should know when you are signing them off that they satisfy the statutory requirements...It is entirely reasonable to expect that qualified professionals in the Finance department would know the difference between a genuine invoice and a screen dump...

In your absence, I have:

reviewed the extensive documentation from the investigation reviewed the Show Cause letter and your full written response to it interviewed Javan Ndongareviewed your comments on the culture of the business with your line manager, Neil Miller

Stephen commented that you did not fully cooperate with the investigation when he interviewed you, refusing to answer some of his questions. Equally, you have not co-operated with the disciplinary hearing by not responding to my communications by email, text and telephone to both company and personal mobiles...

From the evidence I have seen, I am satisfied that, on the balance of probabilities, you were aware of the overpayment to the KRA and took steps to conceal the overpayment from the auditors. In support of my view, I have been made aware of the two versions of the ‘other creditors report’ which were found on your computer, one with and one without the large overpayment identified. Secondly, I have seen your account that the matter was not brought to your attention by Hezron and Javan at a meeting in February 2015. I have met and interviewed Javan and seen the accounts at interview with Javan and Hezron. I noted that you deny the meeting took place, but on balance the evidence is not in your favour and I am satisfied on the balance of probabilities that you did fail to perform your oversight role effectively and not only failed to ensure that an overpayment of that size-KES 40,455,000 (261,000 sterling pounds) was disclosed to the auditors but also should have been disclosed to your Line Manager.

This is an act of dishonesty and a major offence in accordance with the Company’s Disciplinary Procedure. You are a senior person at the site and with this role comes significant responsibility and accountability. You explain your actions by saying either



you did not know about issues or that is how it has always been done, which to me is unacceptable from a Financial Controller.

As a result of these findings, it is no longer possible for the Company to put its trust in you. I deem this serious breach of your obligations so significant as to warrant summary dismissal.

By reason of the above, the Company has decided to dismiss you from employment with immediate effect.

You have the right to appeal against your dismissal. If you wish to appeal, you must do so in writing to Kerry Ryan within five working days of receiving this letter, stating your grounds of appeal in full.

The following arrangements apply with immediate effect (but may be varied or revoked in the event of a successful appeal):

- a. Your dismissal takes effect immediately and your final day of employment is therefore 14<sup>th</sup> December 2015.
- b. You are not entitled to payment in lieu of notice.
- c. Your holiday entitlement for this year, prorated up to your final day of employment, will be calculated.
- d. We shall forward your Certificate of Service to you in due course.
- e. You will remain bound by the confidentiality clause of your contract of employment after your employment with the Company has ceased.

I enclose two copies of this letter. Please sign and return one copy to Jayne Ng'ethe.

If you have any questions please feel free to contact Jayne Ng'ethe.

Yours sincerely

(signed)

Douglas Denham

Group Commercial Legal Director"

41. The Claimant's dismissal was triggered by an alleged overpayment of customs duty to the Kenya Revenue Authority and concealment of the overpayment. These were very serious allegations touching on the Claimant, in her position as Financial Controller.
42. The parties set out the processes undertaken by the Respondent towards resolving the matter and by virtue of her position, the Claimant was right at the centre of it. First, she was suspended from duty pending investigations and she attended three investigative interviews. Second, she was issued with a show cause letter to which she responded; she asked for a number of documents, some of which the Respondent considered irrelevant while communicating its willingness to allow the Claimant access to some of the documents on site. From the evidence on record, the Claimant did not take up the Respondent's offer to access the documents on site.
43. The Claimant was subsequently invited to a disciplinary hearing scheduled for 1<sup>st</sup> December 2015 and rescheduled to 2<sup>nd</sup> December 2015. The Claimant asked that the disciplinary hearing be rescheduled to 7<sup>th</sup> December 2015; first, on the ground that she was sitting examinations; second, because she was attending classes; and third, because she had suffered an injury and mental instability arising from an awry security drill at Strathmore University.



44. The Respondent accommodated the Claimant by rescheduling the disciplinary hearing from 1<sup>st</sup> December 2015 to 2<sup>nd</sup> December 2015 but did not accede to the date of 7<sup>th</sup> December 2015 given by the Claimant. Significantly, the Claimant did not produce any documents to support her reasons for insisting on a rescheduling of the disciplinary hearing to 7<sup>th</sup> December 2015 nor did she offer any credible explanation for her failure to respond to inquiries from Douglas Denham.
45. In the letter dated 15<sup>th</sup> December 2015, which formalised the Claimant's dismissal, Douglas Denham gives a detailed account of attempts made to reach the Claimant. In the end, the Claimant did not show up for the disciplinary hearing and her case was concluded in her absence.
46. The Claimant's complaint is two-fold; first, that the Respondent condemned her unheard and second, that there was in fact no valid reason for the dismissal. I must at the very outset state that administrative charges against an employee are dealt with at the shop floor where the employer facilitates the employee to offer their defence.
47. This Court has stated elsewhere that an employee who squanders the opportunity offered by the employer at the shop floor cannot come to court complaining that they were not heard (see *Jackson Butiya v Eastern Produce Kenya Limited (Cause No 335 of 2011)* and *Mathew Lucy Cherusa v Poverelle Sisters of Belgamo t/a Blessed Louis Plazzalo Health Centre [2013] eKLR*).
48. Further, in its decision in *Charles Githinji Gichobi v Oracle Technology Systems (Kenya) Limited KEELRC 43 (KLR) (19 January 2023) (Judgment)* this Court held that an employee, cannot without justifiable cause, decline to participate in disciplinary proceedings initiated by the employer.
49. In her testimony before the Court, the Claimant admitted that as the Respondent's Financial Controller, the buck stopped with her with respect to any issues arising in the Finance Department. With this in view, the Claimant was under an obligation to cooperate with her employer both at the investigation stage and in the disciplinary proceedings.
50. The Claimant told the Court that the issue of overpayment of import duty was first brought to her attention in a video call on 16<sup>th</sup> September 2015, which was followed by email exchange between herself on the one hand, and Martin Sutton and Kerry Ryan on the other. She was subsequently issued with a show cause letter upon which she made a request for documents. She however did not take up the Respondent's offer for her to access some of the documents on site.
51. In addition, the Claimant did not attend the disciplinary hearing as required. There is also evidence that she failed to respond to inquiries from her superior, particularly on the day she was required to attend the disciplinary hearing. Her excuse for failure to attend was not supported by any documentary evidence.
52. Looking at the Claimant's conduct in totality, what emerges is an employee who intentionally put roadblocks to a disciplinary process initiated by her employer. She therefore left the employer with no option but to proceed and conclude her case in her absence.
53. In the letter dated 15<sup>th</sup> December 2015, Douglas Denham gave an account of the efforts made by the Respondent to accommodate the Claimant but it would appear that the Claimant had made up her mind that she would only participate in the disciplinary process on her terms.
54. Denham further gave a detailed analysis of the charges levelled against the Claimant and the findings made by the Respondent, which the Claimant opted not to challenge at the shop floor. In the circumstances of this case, I find no reason to fault the employer.



55. In the ultimate, I find and hold that the Claimant's dismissal was substantively and procedurally fair. The claims for compensation and notice pay are therefore without basis and are disallowed.

**Other Claims**

56. No basis was established for the claims for salary for December 2015 to June 2016 and service pay, which consequently fail and are dismissed.

57. In the end, the Claimant's entire claim fails and is dismissed.

58. Each party will bear their own costs.

59. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> DAY OF MAY 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Ng'ethe for the Claimant

Mr. Omondi for the Respondent

