



Njeru v Indus Logistics Limited (Employment and Labour Relations Cause 311 of 2017) [2024] KEELRC 1051 (KLR) (9 May 2024) (Judgment)

Neutral citation: [2024] KEELRC 1051 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 311 OF 2017**

MN NDUMA, J

MAY 9, 2024

BETWEEN

FAUSTIN NJERU CLAIMANT

AND

INDUS LOGISTICS LIMITED RESPONDENT

JUDGMENT

- 1 The claimant filed suit on 15/2/2017 seeking compensation for unlawful and unfair termination of employment and payment of service pay and damages for discrimination.
- 2 The facts of the case per testimony by CW1 is that CW1 was employed by the respondent as a motor cycle rider at a monthly salary of Kshs.20,000/=. That the employment was from February 2014 until 5th August 2016 when the employment was terminated for not performing his duties as expected. CW1 said the allegations were false as he worked well and was accused of not picking telephone calls while he was riding. CW1 said he could not pick calls while riding as it was dangerous but returned calls upon reaching destination. CW1 said he multitasked as he gave service to different people at the same time.
- 3 That he was called to meetings to discuss work and he explained to the employer the challenges he faced while working. Under cross-examination the claimant stated that he was paid for days worked upon termination. He said he was registered with NSSF and NHIF hence he was not paid any service pay. CW1 said he was paid Kshs.20,000/= which was salary for 5 days and one month in lieu of notice.
- 4 CW1 admitted that on 8/1/2016, he was late to get to work but he apologized in writing. CW1 said on 12/8/2016, he was called to a disciplinary hearing and was accused of not taking telephone calls. CW1 said he explained that he could not take calls while riding. CW1 said he did deliveries and returned to office daily. That he had no fixed office area since he did deliveries everywhere.
- 5 CW1 said there was no valid reason to terminate his employment. That he was obedient and did his work well and never refused to work as alleged or at all. CW1 denied he did boda-boda while at home.



- 6 RW1, Boaz Omari Obop testified that he was the Human Resource Manager from October 2015. That the claimant was a rider from 1/2/2014 and earned Kshs.14,000/= a month. That CW1 was paid Kshs.20,000/= upon termination. That the claimant was a rider and did deliveries in Nairobi Central Business District and outwards town in Westlands. That claimant did his work but complained of excess work. That claimant was deployed to other areas as a result.
- 7 That claimant reported late to work and left early many times. That claimant did bodaboda work before reporting to work and upon leaving early at 3:00 p.m. That claimant kept his phone off in the morning and disregarded text messages. That the claimant was rude and argumentative and did not follow instructions in the performance of his work.
- 8 That claimant was summoned to several disciplinary hearings and was suspended for 11 days in January 2016.
- 9 That on 12/7/2016, the claimant was given a cheque to pay for the respondent's customer ASL Ltd but he paid the cheque on 13/7/2016 at 11:34 a.m. and the consignment attracted storage charges as a result of the delayed payment.
- 10 That upon review of the claimant's record, the respondent made a decision to terminate his employment on 4/8/2016 and was given a letter of termination accordingly. The claimant was paid terminal dues and was given a certificate of service.
- 11 On cross-examination RW1 said that the claimant had disciplinary issues before he was terminated. RW1 said that the respondent did not issue the claimant with notice to show cause nor did they serve him with charges to answer before attending disciplinary meetings. RW1 said that there was no direct evidence adduced at the disciplinary meeting but the work sheets showed when he reported late and left early. The reports of riding boda-boda were made by staff whistleblowers. RW1 said there was no Human Resource Manager before he was employed in October 2015.
- 12 That the late payment to ASL cost the company a penalty charge of 1,320/USD. That no formal complaint was made to the claimant regarding that matter. That the claimant wrote two apology letters for lateness.

Determination

- 13 The parties filed written submissions and the issues for determination are:-
- i. Whether the termination of the employment of the claimant was for a valid reason following a fair procedure and
 - ii. Whether the claimant is entitled to the reliefs sought.
- 14 In *Janet Chepkemoi Machina and another v Laikipia University* [2021] KLR Hon. Wasilwa J. held:-

“My understanding of section 41 of the *Employment Act* is that the employee is entitled to a fair hearing. The gist of the fair hearing includes knowing the charges against you, having evidence presented by any witness and cross-examining such witness and also calling one's own witness.

In the case of the claimants no witnesses were even called to testify against them. It is as if they were told you committed an offence of theft which they denied and then a determination to dismiss them was made. This in my view falls below a fair hearing and it is my finding that the claimants were denied a fair hearing.”



- 15 A valid reason to terminate an employee must be crystalized in a charge sheet in a notice to show cause before an employee is invited to a meeting where he/she is given opportunity to exculpate himself/herself.
- 16 It is an essential element of that hearing that the accuser(s) of the employee present evidence in the presence of the employee the basis of the crystalized charge(s). The employee is then given opportunity to ask the accuser(s) questions.
- 17 It is only after that when the employee is given opportunity to give his explanation to the charges made against him. In making the decision, the proceedings at the hearing are taken into account and reasons given by the employer for the decision arrived at if it be adverse to the employee.
- 18 These are the basic minimum requirements under section 41 of the *Employment Act*.
In the present case, RW1 admitted that no formal charges were made against the claimant before or in the proceedings. No witnesses testified against the claimant and no tangible reasons were given for the decision taken by the respondent to terminate the employment of the claimant.
- 19 The court has in the circumstances concluded that the respondent did not adhere to the provisions of section 41 read with 43 and 44 of the *Employment Act*, in terminating the employment of the claimant. The termination of the employment of the claimant was therefore unlawful and unfair.
- 20 The claimant is entitled to compensation in terms of section 49(1)(c) and (4) of the Act.
- 21 In this regard, the claimant had served the respondent for a period of over two years as a rider. The claimant worked well though he admitted having adverse record of late coming and other shortcomings. The claimant was not subjected to a work plan with set performance indicators and targets and no performance appraisal report were placed before court to note his overall performance showing his strong and weak points.
- 22 This is the only valid and procedurally correct manner in which an employer gauges the performance of an employee for the purpose of reward and sanction. Short of that, the exercise is based on conjecture and non-tangible parameters that do not meet the standard envisaged under section 36, 41 and 43 of the *Employment Act*, 2007.
- 23 An employer does not wake up and summon employees to meetings without notice of matters to be discussed. Such meetings do not pass the test of fairness and equity and in the end constitute an oppressive vice against the weaker parties in an employment environment.
- 24 The claimant lost prospects of continued employment, lost means of livelihood and support for self and family. The claimant was not compensated for the loss. The claimant was paid in lieu of notice and was paid for days worked. The claimant was in NSSF arrangement and was not eligible for payment of service pay. The court has considered the pleadings on discrimination and has found no evidence adduced by the claimant to support that claim.
- 25 The court therefore has only considered compensation in respect of unlawful termination of employment in terms of section 49 of the Act. The court has taken into account cited case of *Janet Chepkemoi Machira (Supra)* and *Michael Odhiambo Opiyo v Bidco Africa Limited* [2021] eKLR and awards the claimant the equivalent of five (5) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.100,000/=.
- 26 In the final analysis judgement is entered in favour of the claimant against the respondent as follows:-
- i. Kshs. 100,000/= in compensation



- ii. Interest at court rates from date of judgment till payment in full.
- iii. Costs of the suit

DATED AT NAIROBI THIS 9TH DAY OF MAY, 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Ms. Kisaka for claimant

Ms. Nyanjiru for respondent

Mr. Kemboi, Court Assistant

