



**Alai v Tulaga Flowers Limited (Cause 27 of 2019)  
[2024] KEELRC 1906 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1906 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 27 OF 2019  
DN NDERITU, J  
JULY 25, 2024**

**BETWEEN**

**STEPHEN ODHIAMBO ALAI ..... CLAIMANT**

**AND**

**TULAGA FLOWERS LIMITED ..... RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. The claimant commenced this cause by way of a statement of claim dated 29<sup>th</sup> March, 2019 filed in court on 17<sup>th</sup> April, 2019 through Behan & Okero Advocates. As it is the procedure, the statement of claim is accompanied with a verifying affidavit sworn by the claimant, a list of witnesses, a witness statement, a list of documents and a bundle of copies of the listed documents. The claimant filed a revised witness statement on 1<sup>st</sup> February, 2022.
2. The claimant is seeking for the following reliefs -
  - a. General damages for wrongful dismissal;
  - b. The costs of the cause both party and party as well as advocates client with the interest from the date of filing suit and until payment thereof in full
  - c. Any other or further relief as this court may deem just and fit to grant.
3. The respondent through the Agricultural Employers Association filed a memorandum of defence on 15<sup>th</sup> February, 2022, a list of witnesses, a witness statement by Esther Kamau (RW1), the human resources manager, a list of documents and a bundle of copies of the listed documents. In the memorandum of defence the respondent denies liability and prays that the claimant's suit be dismissed with costs for want of merits.



4. The claimant filed a reply to the respondent's memorandum of defence on 23<sup>rd</sup> May, 2022 dismissing the defence and reiterating that judgment be entered against the respondent as prayed in the statement of claim.
5. The claimant's case came up for hearing on 27<sup>th</sup> July, 2022 when the claimant (CW1) testified and on 20<sup>th</sup> February, 2023 when Elizabeth Akinyi Ogutu (CW2) testified and the claimant's case was closed.
6. The defence was heard on 15<sup>th</sup> March, 2023 when RW1 testified and the respondent's case was closed.
7. Counsel for both parties addressed the court by way of written submissions. Miss Awinda for the claimant filed written submissions on 26<sup>th</sup> May, 2023 while Miss Awino for the respondent filed on 22<sup>nd</sup> May, 2023.

## **II. The Claimant's Case**

8. The claimant's case is expressed in the statement of claim, the oral and documentary evidence adduced by the claimant (CW1) and CW2, and the written submissions by his counsel.
9. In the statement of claim, the claimant avers that he served the respondent as a general manager between 28<sup>th</sup> July, 2008 and 31<sup>st</sup> August, 2018 and that his last monthly gross salary was Kshs344,000/=. It is pleaded that the claimant was unlawfully and unfairly terminated on 10<sup>th</sup> July, 2018.
10. It is pleaded that on 10<sup>th</sup> July, 2018, the respondent's directors summoned all the employees including the claimant to an assembly wherein they allegedly, wrongfully and unlawfully, announced the claimant's termination.
11. It is further pleaded that the respondent henceforth suspended the claimant from duty, preventing him from accessing its offices. It is pleaded that no reason was given for the termination and the claimant was not subjected to due process purportedly rendering the termination unfair and unlawful.
12. In his testimony in court the claimant reiterated the contents of the foregoing pleadings and relied on his revised statement dated 31<sup>st</sup> January, 2022. He produced and adopted his listed documents and produced the copies thereof as exhibits 1 to 11.
13. The claimant testified that on 28<sup>th</sup> June, 2018 he wrote an email to Mr. David Wedd, the respondent's managing director, regarding his resignation and terminal dues. He stated that he suspected that the company was undergoing a change of ownership. However, the managing director allegedly assured him that the company was not for sale.
14. The claimant stated that the respondent replied to his email dated 28<sup>th</sup> June, 2018 vide a letter dated 18<sup>th</sup> July, 2018. He stated that he had only expressed his intention to resign but he did not resign. He stated that his letter of appointment dated 27<sup>th</sup> February, 2010 provided for a termination clause which required a one-month notice by either party or three months' pay in lieu of notice.
15. In cross-examination, the claimant stated that after the senior management meeting of 10<sup>th</sup> July, 2018 he was no longer assigned any duties. He stated that since the beginning of the year 2018 he was aware that the respondent company was about to change ownership hence his intention to resign.
16. The claimant stated that his email of 28<sup>th</sup> June, 2018 was titled "Notice of resignation" but he insisted that he did not officially resign but only expressed his intention to do so. He however admitted that he did not at any time withdraw the said notice.



17. He stated that he received some of his dues as per the letter dated 18<sup>th</sup> July, 2018 including his gratuity amounting to Kshs1,672,710/=. He confirmed that he was paid his last salary, one-month's salary in lieu of notice, and he was issued with a certificate of service.
18. In re-examination, he stated that there was no change of ownership of the respondent by the time he was terminated.
19. Responding to a clarification sought by the court the claimant stated that he did not land another job after leaving the employment of the respondent and that he is now engaged in some farming.
20. In her testimony in court CW2, who worked with the respondent as a production supervisor from 2009 to 2018, relied on her filed witness statement dated 22<sup>nd</sup> July 2022. She testified that there was no notice issued for the meeting of 10<sup>th</sup> July, 2018 and that the managing director informed the employees at the meeting about operational changes. She stated that the managing director announced that the claimant was no longer part of the management team and introduced a Mr. Avinash as an investor.
21. CW2 further testified that the employees at the assembly were informed that there was a new manager by the name of Peter to whom they were supposed to report. She stated that around 30 to 40 employees attended the said meeting. She also stated that she was surprised that the claimant was terminated in the presence of such a large gathering.
22. In cross-examination, she stated that she no longer works at the respondent's company and did she not have any documentation of her employment as alleged from the respondent.
23. It is on the basis on the foregoing evidence and circumstances that, the claimant is seeking that judgment be entered in his favour as prayed in the statement of claim. The submissions by his counsel shall be considered in a succeeding part of this judgment.

### **III. The Respondent's Case**

24. The respondent's case is contained in the statement of response to the claim, the oral and documentary evidence adduced through RW1, and the written submissions by its representative.
25. In the response to the statement of claim, the respondent vehemently denies the averments in the statement of claim. The respondent states that the claimant resigned voluntarily via an email dated 28<sup>th</sup> June, 2018, refuting any announcement of the claimant's termination by its directors in an alleged gathering of 10<sup>th</sup> July, 2018. The respondent acknowledged receipt of the claimant's letter of resignation as per the email alluded to above and that it responded thereto vide a letter dated 18<sup>th</sup> July, 2018.
26. The respondent denies that the claimant was suspended before resignation or that he was terminated. Further, it is pleaded that there was no formal complaint lodged by the claimant in regard to execution of his duties before his voluntary resignation. Further, the respondent denies that the claimant only expressed his intention to resign in the email dated 28<sup>th</sup> June 2018 but states that the claimant actually and indeed resigned via that email.
27. In her testimony in court, RW1, the respondent's human resources manager, reiterated the contents of her written statement dated 12<sup>th</sup> February, 2022 as her evidence-in-chief. She produced copies of the filed documents as exhibits 1 and 2. She confirmed that the claimant served the respondent as a general manager from 2008 to 2018.
28. RW1 stated that the claimant resigned from his job and the respondent acknowledged the notice of resignation. She stated that the claimant was paid all his terminal dues and issued with a certificate



- of service. She stated that the claimant was not suspended before his resignation and that he did not complain about the terms or conditions of work before resigning. She further stated that the respondent replied to the claimant's email of resignation and paid all his terminal benefits.
29. In cross-examination, RW1 stated that the email of 28<sup>th</sup> June, 2018 by the claimant amounted to resignation and that the respondent understood it as such. Further, she stated that since the claimant resigned from his employment, there was no need to conduct a disciplinary hearing as resignation and termination are different in law and in the human resources manual of the respondent. She emphasized that the resignation by the claimant was voluntary and all his terminal dues were paid in accordance with the contract and the law and as such there is nothing pending between the parties as to have necessitated the filing of this cause.
30. It is the basis on the foregoing evidence and circumstances that the respondent prays that the claimant's cause be dismissed with costs. The submissions by the respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the claimant.

#### **IV. Submissions**

31. On the one hand, the claimant's counsel identified the main issue for determination to be - Whether the claimant voluntarily resigned or was unfairly and unlawfully terminated.
32. It is submitted that resignation is essentially termination of employment at the instance of an employee as it was held in *Edwin Beiti Kipchumba V National Bank of Kenya (2018) eKLR* and in *Public Service Commission & 4 Others V Cheruiyot & 20 Others (2022) eKLR*. However, it is submitted that the email of 28<sup>th</sup> June, 2018 by the claimant only expressed his intention to resign in case the respondent company was to change hands in ownership. It is vehemently submitted that the said email did not amount to a letter of resignation or notice thereof. It is submitted that after the claimant wrote and submitted the impugned email the managing director, Mr. Dennis Wedd, held talks with the claimant and assured the claimant of security of his job and the other employees under him and more so gave assurance that the respondent was not about to change hands.
33. It is submitted that at no point in time did the claimant resign from his job as the general manager of the respondent. It is submitted that the circumstances under which the claimant left employment is that he was terminated in a meeting called by the directors of the respondent on 10<sup>th</sup> July, 2018. It is submitted that the dismissal, which the claimant views as humiliating and embarrassing, did not comply with the law and more so Sections 35, 41, 43, 45, & 47 of the *Employment Act* (the Act). It is therefore submitted that the termination was unfair and unlawful for lack of both substance and procedure. Counsel cited *Galgalo Jarso Jillo V Agricultural Finance Corporation (2021) eKLR* in support of the above position taken by the claimant.
34. It is submitted that it is only after the meeting of 10<sup>th</sup> July, 2018, wherein the claimant was allegedly orally terminated, that the respondent wrote a letter dated 18<sup>th</sup> July, 2018 purportedly acknowledging and accepting the resignation by the claimant.
35. Interestingly, counsel for the claimant did not submit or comment on the reliefs sought and or the quantum thereof. The court shall comment on this aspect of the claim in a succeeding part of this judgment.
36. On the other hand, counsel for the respondent submitted on two identified issues – Whether the claimant voluntarily resigned or whether he was unfairly and unlawfully terminated; and, Whether the claimant is entitled to the reliefs sought.



37. On the first issue, it is submitted that the claimant terminated his own employment through voluntary resignation as per the email he authored on 28<sup>th</sup> June, 2018. It is submitted that the respondent accepted the resignation in accordance with Section 35 of the Act. It is further submitted that the wording of the above emailed letter/notice of resignation was clear and unambiguous and the respondent acknowledged and accepted the resignation in a letter dated 18<sup>th</sup> July, 2018.
38. Citing *Rose Mwikali Nzuki V Food for the Hungry Kenya* (2015) eKLR, it is submitted that the resignation by the claimant was unilateral, unambiguous, and voluntary which is distinguishable and far off what constitutes constructive dismissal. In any event, it is further submitted, following the resignation the claimant was paid and he accepted and received his terminal dues alongside a certificate of service.
39. On reliefs, it is submitted that the claimant having been paid and received his terminal dues this cause is an afterthought aimed at unjust enrichment. It is submitted that the claimant has failed to prove dismissal, unfair and unlawful or otherwise, and as such there is no basis whatsoever for an award in compensation. Counsel has cited Sections 107, 108, & 109 of the *Evidence Act* on the basic legal principle of burden of proof, that he who alleges must prove.
40. It is therefore submitted and the court is urged to dismiss the cause with costs.

#### **V. Issues for determination**

41. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for the parties. The following issues commend themselves to the court for determination-
  - a. Whether the claimant resigned voluntarily or he was unfairly dismissed or terminated from his employment.
  - b. Whether the claimant is entitled to the reliefs sought.
  - c. Who should bear the costs of the cause?

#### **VI. Resignation Or Termination**

42. On 28<sup>th</sup> June, 2018 the claimant emailed the managing director of the respondent as follows –

Re: Notice Of Resignation

Dennis,

I did ask you a while back concerning your future strategy for Tulaga? You however declined to divulge any information of your intentions to let go. It has therefore come as a shock for me to learn about it only at this very late stage of discussions with SFL. Maybe a lack of trust in me I would say?

As mentioned in passing today I wish to let you know that I too intend to leave Tulaga soon after it changes hands. Remember I had planned to leave last year but you prevailed upon me to continue.

After 10 years continuous service I think it is the right time for me to bow out and allow Avinash to bring a new team on board. Of course, I will hang on for as long as he wants but not for too long.



I've asked Dan to send through my gratuity payment sheet at earlier consolidated salary of Kshs.400,000.00

I'm already on Shs351,250.00 following salary adjustment on 1<sup>st</sup> February but you know this is Shs50,000 less what was agreed on. You are also aware of other outstanding claims and contractual matters including medical insurance, etc that I trust you will include in order for us to end our long and happy journey on an amicable note.

Please advise should you require me to do a formal letter of resignation to trigger everything off.

Many thanks in anticipation.

With best regards,

Steve

43. It is the claimant's case that on 10<sup>th</sup> July, 2018, the respondent's directors summoned all the employees for an assembly wherein the claimant was allegedly terminated. The respondent's position is that the claimant voluntarily resigned from his employment and responded to the email dated 28<sup>th</sup> June, 2018 vide a letter dated 18<sup>th</sup> July, 2018. In this response, the respondent calculated the claimant's final dues including one-month's pay in lieu of notice, 2 months' salary pay for July and August 2018, gratuity, and leave travel allowance. The total amount due was paid to the claimant via his bank account. The claimant admitted that he was paid and received the said terminal dues.
44. Subsequent to the foregoing, the claimant filed this cause in court on 17<sup>th</sup> April, 2019 seeking for the reliefs set out in the introductory part of this judgment. Although it is alleged and pleaded that a demand notice was served upon the respondent before action, no such notice was exhibited in court by the claimant notwithstanding that he was put to strict proof of such notice by the respondent in the filed response to the claim.
45. The court has scrutinized the contents of the email by the claimant dated 28<sup>th</sup> June, 2018 as reproduced verbatim above. The header thereof is clear and unambiguous that the same is a notice of resignation. At no time thereafter did the claimant withdraw or amend the said notice. As if to confirm the resignation, if such confirmation was needed, the claimant was paid and he accepted the terminal dues as tabulated by the respondent and deposited into his bank account. No complaint was thereafter raised by the claimant until when he filed this claim in court.
46. It is the finding and holding of the court that the claimant initiated his resignation by way of the email cited above and the resignation was perfected when the claimant was paid his terminal dues which dues he accepted without any complaint at all. In any event, in the letter of 18<sup>th</sup> July, 2018 the respondent was categorical on the resignation and again no complaint or objection was raised by the claimant.
47. The claimant alleges that he was dismissed or terminated in a meeting of employees called by the respondent's management on 10<sup>th</sup> July, 2018. The meeting is denied by the respondent and in any event the cumulative evidence as enumerated above categorically confirms that the claimant left employment on his own volition through resignation.
48. It is my finding, and I so hold, that this cause is an afterthought intended to unjustly enrich the claimant. The claimant was not just another employee of the respondent. He was the general manager and hence presumably knowledgeable in the law and procedures applicable in employment, otherwise he would not have qualified to be the general manager. Surely, if the claimant was terminated as alleged,



why did he not protest in writing to the letter dated 18<sup>th</sup> July, 2018 by the respondent confirming his resignation? Why did he not reject the terminal dues that were calculated and paid to him by the respondent? Why was a demand notice not issued to the respondent by the claimant before the filing of this cause in court?

49. It is the finding and holding of this court that the claimant herein voluntarily resigned, he was paid his terminal dues which he readily accepted, and as such the claim herein is an afterthought intended to unjustly enrich the claimant.

#### **VIII. Reliefs**

50. Flowing from the finding and the holding in the foregoing part of this judgment there are no grounds for making any award or compensation to the claimant.
51. Without prejudice to the contents of the above paragraph, the claimant sought for general damages for wrongful dismissal as the substantive relief. The said damages were neither quantified nor proved in the hearing. Counsel for the claimant submitted nil on reliefs. So, even if the court held that there was dismissal or termination, which is however not the case, it could still have been hard for the court to compute the claimed general damages as that is not one of the remedies provided for in the general architecture of compensation under the Act. Anyway, the claim is denied and dismissed.

#### **IX. Costs**

52. The court makes no order as to costs.

#### **X. Orders**

53. For all the foregoing reasons, the claimant's cause is hereby dismissed with no order as to costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 25<sup>TH</sup> DAY OF JULY, 2024.**

.....

**DAVID NDERITU**

**JUDGE**

