



**Hiribae v Kenya Pipeline Company Limited (Cause 476 of 2019)  
[2024] KEELRC 2045 (KLR) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2045 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 476 OF 2019  
B ONGAYA, J  
JULY 26, 2024**

**BETWEEN**

**RAYMOND SOLOMON HIRIBAE ..... CLAIMANT**

**AND**

**KENYA PIPELINE COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 19.07.2019 through Macharia Nderitu & Co. Advocates praying for judgment against the respondent for:
  - a. An order compelling the respondent to reinstate the claimant to his employment on the same terms and conditions of work as prevailed before 2<sup>nd</sup> March 2016.
  - b. An order of injunction prohibiting the respondent from evicting the claimant from the house provided to the Claimant at Kenya Pipeline Estate, Outering Road, House Number 47.
  - c. Outstanding and unpaid salary for days worked from 2nd March 2016 to date.
  - d. And in the alternative, damages for unfair termination computed at 12 months' pay.
  - e. Costs of the suit.
2. The claimant averred that he was employed as Technician III (Operations) on 3<sup>rd</sup> November 2006 after a recruitment done by the respondent and that his terms of employment were contained in the Letter of Employment of even date. That his annual salary was 23,571 Kenya Pounds and was entitled monthly to a house allowance of Kshs. 22,950/-, commuter allowance of Kshs. 10,000/- and annual leave travelling allowance of Kshs. 19,000/-. That at the time of termination of his employment, his gross monthly pay was Kshs. 105,000/-.



3. The claimant's case was that the respondent unfairly terminated his contract of employment vide a letter dated 22<sup>nd</sup> July 2016. He recounted that on 2<sup>nd</sup> March 2016, the respondent suspended him from employment on allegations that he was involved in a petroleum products theft syndicate. That he was subsequently issued with a show cause letter on 20<sup>th</sup> May 2016 to which he responded through a written explanation dated 23<sup>rd</sup> May 2016. He averred that he explained that from the six periods listed in the show cause letter, he was on duty on two periods between 6<sup>th</sup> and 7<sup>th</sup> July 2015 and 7<sup>th</sup> and 8<sup>th</sup> November 2015, during which periods no incidents, spillages or near misses were reported at the end of his shifts.
4. It was the claimant's averment that he received a letter on 6<sup>th</sup> June 2016 requiring him to appear before the Staff Disciplinary Committee on 9<sup>th</sup> June 2016. That he was then summarily dismissed from employment on grounds that he was negligent in the performance of his duties. He contended that prior to the summary dismissal the respondent had at no time accused him of the said negligence. He further averred that on 4<sup>th</sup> August 2016, he appealed the decision of his summary dismissal, to the respondent's Managing Director, as required under the HR Manual. That however, the appeal was never determined, as he received no communication.
5. The claimant pleaded that termination of his employment was unfair,unlawful and illegal upon the following grounds:
  - a. The claimant was not afforded a fair hearing. That the nature of his employment and the responses he offered to the show cause letter required the input and interpretation of his immediate supervisors in the Engineering, Safety and Operations Departments, which had no representation at the hearing.
  - b. It was impossible to siphon fuel as there was no loading facility at the station where he worked and the fuel passing at very high pressure endangered any person attempting to siphon the fuel.
  - c. The claimant was the only one summarily dismissed out of more than six (6) employees on duty on the aforesaid two periods and the respondent's action was thus selective and discriminatory.
  - d. The claimant having been charged with conspiracy, it was necessary and logical that one or more conspirators be subjected to the same disciplinary proceedings with him yet in this case, no other employee was subjected to a disciplinary hearing.
  - e. The respondent failed to investigate the motor vehicles and drivers alleged to have siphoned fuel and made no attempt at seeking police assistance to obtain evidence linking the claimant to the said vehicles.
  - f. The alleged theft was neither reported to the Police who also had a post at the claimant's place of work nor was there any internal report made for the same at the respondent's Security Officer.
  - g. The respondent never preferred criminal charges against any party for the alleged theft.
  - h. The place the theft is alleged to have occurred is a high security zone with three gates that have seals and which area no motor vehicles or persons can access without the respondent's authority. That notably, the respondent did not allege that any of the seals were broken by trespassers at the time of the alleged incidents.
6. It was the claimant's case that the unsubstantiated and unproved allegations of theft are defamatory to him. Further, that he had never been issued with a warning letter prior to 2<sup>nd</sup> March 2016 and that no



- appraisal of his work was ever made to him for the 10 years he worked for the respondent. He pleaded that the respondent should be directed to reinstate him into employment as claimed.
7. The respondent's statement of response is dated 25.02.2020 and was filed through Gumbo & Associates Advocates. It prayed that the claimant's suit is dismissed with costs.
  8. The respondent's case was that the claimant's services with the respondent were terminated following a severe breach of the employment contract and upon going through the laid down disciplinary procedures. That it had suspended the claimant in line with the Collective Bargaining Agreement (CBA) and the respondent's Staff Rules so as to pave way for investigations. It was alleged that it was established that the claimant was involved in the theft syndicate where oil products were being siphoned while being conveyed to the inland depots.
  9. The respondent asserted that it accorded the claimant an opportunity to present his defence to the allegations that he was heard, and his submissions considered. It was pleaded that the claimant had played a key role in the theft of products that caused the respondent losses and he was summarily dismissed. It urged that considering the relationship between the employer and employee is based on mutual trust and confidence, the claimant's conduct struck the heart of their relationship thus its decision to dismiss him.
  10. The respondent further averred that the mere absence of a warning letter having never been issued to the claimant neither portrays him as a person with clean hands nor exculpates him of his conduct and wrongdoing against the respondent.
  11. The claimant testified to support his case. The respondent's witness (RW) was Nelson Nyandua, the respondent's Acting Senior Legal Officer. The parties filed their respective submissions. The Court has considered the material on record and returns as follows.
  12. To answer the 1<sup>st</sup> issue the Court returns that parties are in mutual agreement that they were in a contract of service.
  13. To answer the 2<sup>nd</sup> issue, the Court returns that the contract of service was terminated by the letter of summary dismissal dated 22.07.2016. The letter stated that after the disciplinary process and investigations, it was established that products were stolen using unauthorized trucks that entered the station on the nights of 26<sup>th</sup>/27<sup>th</sup> June 2015; 5<sup>th</sup>/6<sup>th</sup> November 2015; and, 7<sup>th</sup>/8<sup>th</sup> while the claimant was on duty. The letter further stated that the claimant had been negligent in performance of duty amounting to gross misconduct and a breach of the respondent's staff rules and regulations clauses 8.5.5 (iii), the Collective Bargaining Agreement (CBA) clause 40(c) and section 44 (c) and (g) of the Employment Act, 2007. He was therefore summarily dismissed from duty effective 22.07.2016. He was to be paid a month's salary in lieu of notice; salary up to 22.07.2016; payment for outstanding annual leave days; and, pension per the Kenya Pipeline Staff Retirements Benefits Scheme Regulations.
  14. To answer the 3<sup>rd</sup> issue, the Court returns that the termination was unfair upon the following findings:
    - a. The allegation was that products were stolen on the material dates. The claimant's role per his unrebutted testimony was to pump the product through the underground pipes at a high pressure and per instructions. Further, his testimony that he could not interfere with the high-pressure products in the pipe was not rebutted. The quantity of the product allegedly stolen was not quantified at all and was not established by way of relevant documents, as being attributable to the claimant. The culpability of the claimant as alleged was not established at all as at the time of the disciplinary hearing. The respondent has failed to show that the reason for termination was genuine as per section 43 of the Employment Act and per section 47(5) of the Act.



- b. The claimant's role was to pump the products per instructions. The products were in underground pipes and at high pressure. It appears to the Court that if unauthorised trucks accessed the products, it is not shown how the claimant was involved and it was not his role to perform security functions. In the circumstances, the Court finds that the reason for termination did not relate to the claimant's conduct, compatibility, or the respondent's operational requirements in that regard and as per section 45 of the Act. For the alleged negligence of duty, the duty in issue, and, breach thereof have not been established for the respondent. As submitted for the claimant the termination was based upon unfair or unjustified reason.
  - c. As relates to procedure, the claimant has established that the staff rules and regulations require the disciplinary panel to include Head of HRD; Section Head of concerned officer; and one other Section Head. The claimant's evidence that the provision was not complied with has not been rebutted. Further, while the respondent submits that the failure did not prejudice the claimant, the Court finds that the failure went to the jurisdiction of the disciplinary panel. An improperly constituted disciplinary panel rendered the proceedings incurably defective. Further, parties agreed upon the appeal procedure but the respondent failed to consider and determine the administrative appeal. It cannot therefore be found that the respondent adopted a fair procedure to summarily dismiss the claimant.
  - d. Thus, the termination was unfair both in procedure and in substance.
15. The 4<sup>th</sup> issue is on remedies. The Court returns as follows:
- a. The remedy of reinstatement is time barred per section 12 of the *Employment and Labour Relations Court Act*, 2011 because the attached statutory time of limitation of three years has since lapsed. The prayer will fail.
  - b. Injunction to continue occupying the housing accommodation was based upon the prayer for reinstatement. An order for reinstatement is found overtaken and not available, as the contract of service has since been terminated. The prayer for the injunction will fail and the submission made for the respondent in that regard is upheld.
  - c. The claimant prays for 12 months' salary for compensation in view of the unfair termination. He had served for around ten years and desired to continue in employment. The Court has considered the factors in section 49 of the Act. The mitigating factor is that the respondent made the payments per the letter of summary dismissal especially the one-month notice payment. In that consideration and to balance justice for parties, the claimant is awarded 6 months' gross salaries thus 6 x Kshs.105, 000.00 making Kshs.630, 000.00 payable less payee.
  - d. The certificate of service is exhibited and as submitted for the respondent, the same issued. Considering the margins of success, the respondent to pay costs of the suit.
- In conclusion, judgment is hereby entered for the claimant against the respondent for:
- 1. Payment of Kshs. 630, 000.00 (less PAYE) by 01.09.2024 failing interest to be payable thereon at Court rates from the date of this judgment until full payment.
  - 2. Payment of costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 26TH JULY 2024.**

**BYRAM ONGAYA**



**PRINCIPAL JUDGE**

