



**Kisuya v Necst Motors Kenya Limited (Cause E010 of 2023)  
[2024] KEELRC 1979 (KLR) (31 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1979 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E010 OF 2023**

**B ONGAYA, J  
JULY 31, 2024**

**BETWEEN**

**ANGELA KISUYA ..... CLAIMANT**

**AND**

**NECST MOTORS KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 24.10.2023 through A.I Musee & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the termination of the claimant's employment without according him a fair hearing and lacking proper, fair administrative procedure was unfair consequently void and unlawful.
  - b. Salary for June 2023 Kshs.550, 400.00.
  - c. 12 months' salary compensation for unfair termination Kshs. 6, 604, 600.00 per section 49 of the *Employment Act*, 2007.
  - d. One-month salary in lieu of termination notice Kshs.550, 400.00.
  - e. Pay in lieu of annual leave 17 days for 2022 and 13 days for 2023 Kshs.786, 286.00.
  - f. Service pay Kshs.688, 000.00.
  - g. Gratuity for 1.5 years at 30% of gross pay Kshs.247, 680.00.
  - h. Remittance or refund of PAYE Kshs.287, 289.00.
    - i. Reinstatement of service.
  - j. Issue of certificate of service.



- k. Cost of the claim.
  - l. Interest at Court rates on (b), (c), (d), (e), (f), (g) and (h) above from the date of termination of employment.
2. The claimant pleaded as follows:
- a. The respondent employed the claimant by the letter dated 15.12.2020 and confirmed by letter dated 14.06.2021 as the Head of People Development and Human Resource. It was a fixed term contract and it was renewed on 21.12.2022 for a term of two years lapsing on 20.12.2024.
  - b. On 21.03.2023, the supervisor used derogatory remarks against her in presence of her colleagues when she sought permission to travel to Tanzania to clear the Human Resource Officer who had recently resigned and to attend a Court case. The supervisor declining to grant her permission and instead directed that one Alex Mwangi, the Head of Sales and Key Accounts to instead travel in place of the claimant and while rejecting the claimant's explanation on the applicable policy stated, "I don't "fucking" care those policies are not well written." Again, on 17.05.2023 instead of referring to her properly instead referred to her as "Lawrence's Girlfriend". Such contributed to a hostile working environment. The claimant alleged bullying, threats, intimidation, harassment, sexual harassment and unfair treatment and on 23.05.2023, she approached the supervisor to discuss the arising issues and the Key Performance Indicators for the Human Resource Department. The supervisor rescheduled to discuss on 25.05.2023.
  - c. On 24.05.2023 the claimant received a notice to show cause why disciplinary action should not be taken against her for gross misconduct and incompetence in discharging her duties. She was given 7 days' compulsory leave commencing on 25.05.2023 and to respond to the letter to show cause in 7 days.
  - d. On 01.06.2023, she replied to each allegation raised in the letter to show cause.
  - e. The claimant requested for a separation agreement dated 05.06.2023 by email but it was not answered. On the afternoon of 08.06.2023, the claimant received an invitation to attend a disciplinary hearing on 09.06.2023 via Microsoft Teams. Her case is that on 09.06.2023, she was unwell and requested to postpone the disciplinary hearing due to short notice but she was asked to defend herself. The claimant was compelled to attend and her doctor's sick off note was disregarded. She pleaded that the disciplinary hearing was a sham and no evidence was provided and no witness attended. The gross misconduct was not explained to her at all. At the hearing, the claimant complained about the supervisor's reference to her as "Lawrence's Girlfriend" but the CEO Erik Eberhardson dismissed it stating that the supervisor had been joking and that she ought not to take that seriously. The supervisor told her that it was clear that she did not like him, and that the outcome would be known to her soon. Thereafter, the meeting ended abruptly.
  - f. After the meeting, it was apparent that she had been constructively dismissed and she tendered in her resignation letter on 12.06.2023 by giving a month's notice with her last working day as 12.07.2023. The respondent did not acknowledge the letter.
  - g. On 27.06.2023, she arrived home and discovered a termination letter had been put in her handbag. No reasons or explanation was given for her termination. She was not informed about the right to appeal per respondent's policies.





of her ill health, was declined. The Court awards her 12 months as prayed for making Kshs. 6, 604, 600.00.

- d. One-month salary in lieu of termination notice Kshs.550, 400.00 is awarded per contract.
- e. Pay in lieu of annual leave 17 days for 2022 and 13 days for 2023 Kshs.786, 286.00 are per respondent's computation of pending leave days in the letter on terminal dues dated 12.07.2023.
- f. The claimant prayed for service pay Kshs.688, 000.00. The contract stated NSSF applied and on a balance of probability, the claimant is not entitled to the prayer per section 35 of the Act.
- g. The claimant has not pleaded and offered evidence and submissions to justify gratuity for 1.5 years at 30% of gross pay Kshs.247, 680.00.
- h. The claimant while claiming remittance or refund of PAYE Kshs.287, 289.00, the basis of the claim and due evidence was not provided and the same is declined. She is however entitled to full indemnity by the respondent against all KRA claims for unremitted PAYE in 2021.
- i. The relationships between parties were irreparable and the claimant showed that she had designed to resign in view of the harassment but the termination issued. Reinstatement is not available in the circumstances.
- j. The claimant is entitled to a certificate of service.
- k. As the claimant has succeeded, the respondent will pay costs of the claim.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

1. The declaration that the termination was unfair.
2. The respondent to pay the claimant Kshs.7, 941,286.00 less PAYE by 01.10.2024 failing interest at court rates be payable thereon from the date of this judgment until full payment.
3. The respondent to deliver the certificate of service in 30 days from today.
4. The respondent to fully indemnify the claimant with respect to Kenya Revenue claims with respect to failure to remit claimant's PAYE for 2021.
5. The respondent to pay costs of the suit.
6. The Deputy Registrar to forthwith, within two days, deliver the case file herein back to the Machakos Sub-Registry.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 31<sup>TH</sup> JULY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

