



**Kimeu v Metsec Cables Limited (Cause E451 of 2020)  
[2024] KEELRC 2047 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2047 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E451 OF 2020**

**B ONGAYA, J  
JULY 25, 2024**

**BETWEEN**

**SYLVESTER KIOKO KIMEU ..... CLAIMANT**

**AND**

**METSEC CABLES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 18.08.2020 through Hiram Christopher Advocates LLP seeking the following:
  - a. One Month’s salary in lieu of notice.....Kshs. 84,500/=
  - b. Salary for March - April 2020.....Kshs. 84,500/=
  - c. Accrued Leave balance.....Kshs. 31,000/=
  - d. Damages for unlawful termination being 12 months’ salary
  - e. An Order directing the respondent to issue a certificate of service to the claimant.
  - f. Costs of the suit.
  - g. Any other award that the Court may deem fit to award.
  
2. The claimant averred that he was employed by the Doshi Group of Companies and seconded to the Respondent Company, who appointed him as a Sales Executive Officer at its premises situated at Doshi Group of Companies premises on Mombasa Road next to City Cabanas. He asserted that he worked for a period of nine (9) years and was earning a gross salary of Kshs. 89,000/= per month at the time of his termination from employment. The claimant also noted that his tenure was marked with impeccable service, diligence and integrity that the respondent issued him a Letter of Recognition dated 4<sup>th</sup> February 2017 for saving the Company from a fraudulent loss of around Kshs. 2,000,000/=.



3. The claimant's case is that on or about 2<sup>nd</sup> April 2020 during the period of the COVID-19 Pandemic, the respondent unlawfully terminated his employment by a letter of the same date, with effect from 3<sup>rd</sup> April 2020. That before the termination of his employment, the respondent did not conduct any disciplinary hearing to enable him answer any charges against him. That the respondent also failed to pay him his salary for the month of March-April 2020 and his pay for annual leave not taken, and withheld his certificate of service. According to the claimant, the respondent falsely propped up a claim of Kshs. 781,311/= against him as a device to avoid paying his terminal dues and further alleged a set-off action that he did not agree to.
4. The respondent's memorandum of response and counterclaim is dated 06.07.2022 and filed through Simiyu and Partners Advocates LLP. The Respondent prays for the following remedies:
  - a. Dismissal of the claimant's entire claim against the respondent with costs.
  - b. A sum of Kshs. 781,311.00 being the total loss incurred by the respondent as a result of erroneous discounts issued by the claimant be refunded with interest thereon at commercial rates.
  - c. Costs of this suit (including the counterclaim) to be borne by the claimant.
  - d. The Honourable Court be pleased to issue any other orders as it may deem fit and appropriate in the interest of justice and fairness.
5. The respondent averred that contrary to the claimant's averment, his gross consolidated salary was Kshs. 84,500.00 as at March 2020. Its case is that during the subsistence of the claimant's employment, he had been issuing discounts of 50% to several customers without full authorization or exceptional approval, leading to the Company making huge financial losses. That the said actions, being against the respondent's company procedures and policies, warranted the institution of a disciplinary process against the Claimant.
6. It was the Respondent's averment that it issued the Claimant a notice to show cause letter dated 27<sup>th</sup> March 2020, on why disciplinary action should not be taken against him on account of the threat to the business, risk of job losses and breach of the relevant labour laws. As stated by the respondent, the claimant's explanation in his response made in the handwritten letter dated 30<sup>th</sup> March 2020 did not justify why he had issued several customers excess a discount of 10% on top of the 40% he was mandated to offer. It thus invited the claimant for a disciplinary hearing whereat its management committee listened to his submissions and the respondent then concluded that the claimant's actions amounted to gross misconduct before it dismissed him from employment.
7. The respondent noted that the claimant read the contents of his termination letter before appending his signature in acknowledgement of the terms contained therein. It denied the claimant's particulars of breach of contractual and statutory duty and of malice as outlined in his claim, stating that the claimant never at any time officially complained about his mistreatment or unfair termination of employment. It maintained that it followed due process in terminating the claimant's employment and that he was therefore not entitled to the reliefs sought.
8. The respondent further averred that the claimant owed the Company Kshs. 781,311.00 owing to the money lost from the unwarranted discounts he issued to customers. That when the same was communicated to the claimant through a letter dated 14<sup>th</sup> April 2020, he signed the said letter in acknowledgement of the contents therein and in his letter dated 20<sup>th</sup> April 2020, he asked the respondent to waive the afforested owed amount. The respondent contended that the claimant instituted the instant suit after it declined his request to forego the owed amount.



9. The claimant's reply dated 17<sup>th</sup> November 2023 was to effect that the respondent's defence and counterclaim is false and self-serving. He denied the allegations of negligence and breach and prays that the respondent's memorandum of response and counterclaim be dismissed with costs and judgment be entered as prayed in his memorandum of claim.
10. The parties tendered their evidence before the Court and thereafter filed their respective submissions. The claimant testified to support his case and the respondent's witness (RW) was Alice Mutitu. The Court has considered the material on record and returns as follows.
11. To answer the 1<sup>st</sup> issue the Court finds that parties were in a contract of service. Per the payslip of March 2020, the last claimant's monthly gross pay was Kshs.84, 500.00. The claimant worked as the Sales Executive per letter of appointment dated 01.11.2011.
12. To answer the 2<sup>nd</sup> issue, the contract of service was terminated by the letter dated 02.04.2020 effective 03.04.2020. The reason for dismissal was that the claimant gave customers an extra discount of 10% without authorization as per company policies and procedures. Consequential to the dismissal the claimant was to be paid salary up to 03.04.2020 and accrued leave balance.
13. To answer the 3<sup>rd</sup> issue, the Court returns that the termination was not unfair. The claimant testified that his discount limit was 40%. However, the exhibited invoices showed that under his credentials a 50% discount had been allowed under his name. The evidence was that he had therefore given 10% extra discount without due approval or authorization as was required. The dismissal was upon that established reason which has been shown to exist as at the time of the termination as envisaged in section 43 of the Employment Act, 2007. The reason related to the claimant's conduct and the respondent's operational systems per section 45 of the Act. The dismissal was after due process of service of a letter to show cause and a disciplinary hearing. The Court finds that the summary dismissal was not unfair in procedure and substance. The claims and prayer for compensation for unfair dismissal will collapse. The prayer for one-month payment in lieu of notice will similarly collapse. While making that finding the Court has considered the claimant's testimony that indeed his password was used and one beneficiary of the extra discount of 10% was a company associated with his wife. Confirming his culpability, the claimant stated as follows at paragraph 8 of his witness statement "8. It happened that a sales confirmation and invoice was generated using my name and it gave the client a discount of 50%. As requested by the Customer, I was called to sign the delivery note for the Customer's representative who had come to collect the goods. The invoice was retained at dispatch for the customer to collect at a later date which was common for sales executives. Later on it turned out that some invoices bore a discount of 50% which later turned out to be unauthorised." The invoices having been generated using the claimant's name, he has failed to show how that could have been the case so as to escape culpability. He generated the invoices. He was culpable.
14. The 4<sup>th</sup> issue is about the claimant's prayer for salary up to the date of dismissal. The last payslip issued but the amount appear not to have been credited to the claimant's salary bank account and he is awarded Kshs. 61, 896.00. The claimant has not offered the particulars of the relief on payment for leave, the basis of the amount claimed, and the same is declined. The claimant is entitled to the certificate of service.
15. To answer the 5<sup>th</sup> issue, the Court returns that the respondent has established the counter-claim of Kshs.781, 311.00 and applying a set off of the amount awarded to the claimant, the respondent is entitled to a sum of Kshs.719, 415.00. The Court has considered the margins of success and returns that each party to bear own costs of the proceedings.

In conclusion, the claimant's suit and the counterclaim are hereby determined with orders as follows:



- a. The claimant to pay the respondent a sum of Kshs. 719, 415.00.
- b. The respondent to deliver the certificate of service in 30 days.
- c. Each party to bear own costs of the proceedings.

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

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

