



**Engoke v Maridadi Flowers Limited (Cause 461 of 2014)
[2024] KEELRC 13603 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13603 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 461 OF 2014
DN NDERITU, J
OCTOBER 31, 2024**

BETWEEN

DOLPHINE GEHA ENGOKE CLAIMANT

AND

MARIDADI FLOWERS LIMITED RESPONDENT

JUDGMENT

I. Introduction

1. The claimant commenced this cause by way of a memorandum of claim dated 30th September, 2014 through Muthanwa & Co. Advocates. As it is the procedure, the statement of claim was accompanied with a verifying affidavit sworn by the claimant, a list of witness, a written statement by the claimant, a list of documents, and a bundle of copies of the listed documents.
2. The claimant is seeking for the following reliefs –
 - i. A declaration that the termination of the claimant was unfair, wrongful, unlawful and illegal.
 - ii. Find that the claimant is eligible for payment of: -
 - a. Days worked and not paid 6,800 x 4/26 Kshs1,046.15
 - b. One month pay in lieu of Notice 6,800 x 1 Kshs6,800
 - c. Leave earned and taken on Prorata 6,800 x 21/26 Kshs5,492.30
 - d. House Allowance Kshs266.66
 - e. Travelling Allowance Kshs2,500
 - f. Underpayments



- g. Gratuity/Severance Pay for 2 Yrs At 15 days per year 6,800 x 2 x5 Kshs6,800 30
 - h. 12 Months Compensation as per Section 49(c) of the Employment Act 6,800 x 12 Months Kshs81,600
3. The respondent entered appearance through the Agricultural Employers' Association on 30th October, 2014 and filed a memorandum of defence to the claim on 28th November, 2014. In the defence to the claim the respondent denies the claim and prays that the claimant's cause be dismissed with costs for want of merits. Annexed to the defence the respondent filed a bundle of copies of documents.
 4. A witness statement by Susan Kihara was filed by the respondent on 11th June, 2018 but this witness was substituted with Joyce Kuria (RW1) whose statement was filed on 6th November, 2023.
 5. The claimant filed a reply to the memorandum of defence on 14th January, 2015 dismissing the defence and reiterating that judgment be entered against the respondent as prayed in the memorandum of claim.
 6. After a lengthy period of dormancy, the claim was dismissed for want of prosecution on 22nd July, 2021 but later on reinstated on 1st November, 2023.
 7. The cause came up for hearing in open court on 27th November, 2023 when the claimant (CW1) testified and closed her case. The defence was heard on the same day with RW1 testifying and the respondent's case was closed as well.
 8. Counsel for both parties addressed the court by way of written submissions. Mr. Muthanwa for the claimant filed his written submissions on 5th March, 2024 while Miss Wachira for the respondent filed on 8th March, 2024.

II. The Claimant's Case

9. The claimant's case is expressed in the memorandum of claim, the oral and documentary evidence adduced by the claimant (CW1), and the written submissions by her counsel.
10. In the memorandum of claim, it is pleaded that the claimant was engaged by the respondent, a floriculture firm based in Naivasha, on 2nd June, 2012 as a general worker at a starting monthly salary of Kshs6,800/=. She was allegedly unfairly and unlawfully dismissed on 4th August, 2014 for allegedly being a member of a trade union and participating in lawful activities of the union.
11. It is pleaded that the claimant's constitutional rights under Articles 36, 37, & 41 of *the Constitution* were violated culminating in the allegedly unfair and unlawful dismissal.
12. Further, it is pleaded that the claimant was denied fair hearing in that she was not served with clear charges or allegations; she was denied adequate time to prepare her defence; she was not informed of her right to representation during the hearing; and, she was not informed of the outcome of the hearing to enable her appeal. It is pleaded that the disciplinary process lacked in substance, procedure, and merit.
13. In her testimony in court, the claimant adopted her filed statement as her evidence-in-chief. She stated that on 2nd August, 2014 she reported to duty and worked until 2pm. Further, she stated that at no time did she attempt to attack her supervisor as alleged by the respondent in the defence.
14. She stated that she was issued and served with a show-cause letter on 2nd August, 2014 and she responded thereto in writing. She stated that she was invited to a disciplinary hearing on 4th August, 2014 but when she attended she was denied an opportunity to defend herself yet her supervisor and



his witnesses were allowed to testify against her. She stated that the minutes of the disciplinary hearing produced in court by the respondent were falsified to imply that she was given a chance to defend herself during the disciplinary hearing contrary to what allegedly took place. She admitted to signing the minutes of the hearing. She produced her filed documents as exhibits 1 to 4.

15. In cross-examination the claimant reiterated the foregoing insisting that she was denied a fair hearing rendering the dismissal wrongful, unfair, and unlawful. She stated that she was not paid any terminal benefits or at all.

III. The Respondent's Case

16. The respondent's case is expressed in the filed memorandum of defence to the claim, the oral and documentary evidence adduced through RW1, and the written submission filed by its counsel.
17. In the filed memorandum of defence, it is pleaded that the claimant was at first engaged as a seasonal general worker on 2nd June, 2012 but she was on 30th November, 2012 confirmed on permanent terms at an agreed monthly gross salary of Kshs6,800/=.
18. It is pleaded that on 2nd August, 2014 the claimant refused to take up duties and roles allocated to her by her supervisor and threatened to physically attack him thereby causing and occasioning commotion and chaos at the workplace.
19. It is pleaded that for her misconduct, the claimant was issued with a show-cause letter to which she responded. It is pleaded that the claimant was invited for a disciplinary hearing that was conducted as per the minutes availed and filed in court by the respondent.
20. It is further pleaded that the claimant was found guilty of gross misconduct and summarily dismissed. It is pleaded that the terminal dues payable to the claimant were tabulated and due to a loan balance that she owed to Maridadi Sacco the dues were applied to payment of the said loan. It is pleaded that the claimant left an unpaid balance of Kshs7,095/=. It is pleaded that upon dismissal the claimant was issued with a certificate of service.
21. It is therefore pleaded that the dismissal of the claimant was fair and lawful both in substance and procedure and the court is urged to dismiss the claim with costs.
22. In her testimony in court RW1, the human resources manager, relied on her filed statement dated 3rd November, 2023 as her evidence-in-chief. She produced the documents filed by the respondent as exhibits 1 to 11.
23. In cross-examination she admitted that she was not in the employment of the respondent in 2014 and that she did not take part in the disciplinary process against the claimant.

IV. Submissions

24. The claimant's counsel identified the following two issues for determination –
 - i. Whether the Claimant was unlawfully and unfairly terminated; and,
 - ii. Whether the Claimant is entitled to the reliefs sought
25. On the first issue, it is submitted that the respondent did not afford the claimant substantive and procedural fairness leading up to her dismissal. Counsel cited *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR* in demonstrating what constitutes the two ingredients of fair hearing above and the central role that fair hearing occupies in assessing the lawfulness of a termination or dismissal as envisaged under Sections 43, 45 & 47 of the *Employment Act* (the Act).



26. It is submitted that the claimant having established and proved dismissal in her pleadings, oral, and documentary evidence, it was incumbent upon the respondent to justify the termination. It is submitted that the respondent did not tender evidence to dislodge that of the claimant to the effect that the dismissal was wrongful, unfair, and unlawful.
27. It is further submitted that the claimant was informed of her rights prior to the disciplinary hearing and was not allocated adequate time to respond to the allegations against her both in the show-cause letter and during the hearing. Further, it is submitted that the claimant was denied an opportunity to appeal the decision of the disciplinary panel.
28. It is submitted that the respondent further failed to comply with the provisions of Section 41 of the Act.
29. It is on the basis of the foregoing that the court is urged to allow the claim and grant the reliefs as sought.
30. On the other hand, the respondent's counsel identified the following three issues for determination –
 - a. Whether the Claimants dismissal was fair, lawful, and procedural?
 - b. Whether the Claimant is entitled to reliefs sought?
 - c. Who should pay cost of the suit?
31. On the first issue, counsel cited Pius Machafu Isindu V Lavington Security Guards (2017) eKLR in laying emphasis that the respondent indeed complied with Sections 41, 43, & 45 of the Act before, during, and after the dismissal. It is submitted that the show-cause served upon the claimant was specific and categorical on the charges/allegations that she faced, provided her with the timelines to respond, and informed her of the right to bring along a witness of her choice, as well as her right to have a union representative of her choice present during the disciplinary hearing. Besides, it is submitted that the claimant was afforded a chance to give her side of the story and her defence during the hearing.
32. It is submitted that it is for the foregoing reasons that the claimant freely and willingly appended her signature on the minutes of the disciplinary hearing and the attendance form as availed and presented in court by the respondent.
33. It is submitted that the reason for the disciplinary hearing and the termination are clearly stated in the show-cause letter, the minutes of the disciplinary hearing, and in the letter of dismissal. It is submitted that the claimant was dismissed for failure to comply with orders from her duly authorized supervisor and threatening to attack and injure the supervisor.
34. It is submitted that the above misconduct formed the substantive basis upon which the disciplinary action was founded. Further, it is submitted that the respondent complied with the foregoing provisions of the law as emphasized by the Court of Appeal in Postal Corporation of Kenya V K. Tanui (2019) eKLR.
35. It is submitted that the claimant was, as of right, entitled to appeal the dismissal but she opted not to. It is submitted that the respondent should not be blamed for indolence on the part of the claimant who failed to appeal as provided for in the respondent's human resources management manuals.
36. It is submitted that based on the foregoing the respondent had a right to proceed against the claimant as it did and to dismiss her under Section 44(4)(c)(d) & (e) of the Act. It is submitted that the respondent fully complied with the litany of provisions in the Act that require an employee to justify a termination or dismissal. It is submitted that the misconduct by the claimant was gross enough to warrant the dismissal.



37. The submissions by both counsel on reliefs shall be considered in a succeeding part of this judgment.

V. Issues For Determination

38. 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 both parties. The following issues commend themselves to the court for determination -
- a. Whether the dismissal of the claimant was wrongful, unfair, and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought.
 - c. Who should bear the costs of the cause?

VI. Employment

39. The facts and evidence on the employment of the claimant by the respondent is by and largely not contested. The claimant was engaged by the respondent as a general worker in the latter's flower farm in Naivasha on 2nd June, 2012 at a monthly gross salary of Kshs6,800/= . The evidence on record is that on 30th November, 2012 the claimant was confirmed as a permanent employee carrying out general duties.
40. The claimant was dismissed on 4th August, 2014.

VII. The Dismissal

41. However, the parties are not agreeable on the circumstances that led to the dismissal of the claimant. According to the claimant, she was dismissed for engaging in lawful union activities for which she was victimized and singled out for disciplinary action and the subsequent dismissal. She denies that she led, organized, or took part in an illegal strike.
42. According to the respondent, however, the claimant was dismissed for gross misconduct for refusing to take lawful instructions from her duly authorized supervisor and threatening to attack the supervisor using a pair of secateurs.
43. While the claimant's case is that she was wrongfully, unfairly, and unlawfully dismissed, the respondent takes the diametrically opposed view that the dismissal was fair and lawful, both in substance and procedure.
44. Sometimes when I sit and listen to cases I wonder and marvel at how two sides or persons can have and hold such diametrically opposed views and positions over the same occurrence or incident. While the claimant denies disobeying lawful orders from her supervisor, let alone threatening to attack the said supervisor, the respondent insists that that is exactly what happened. According to the respondent the disciplinary action and the subsequent dismissal had absolutely nothing to do with union activities. However, it is the duty of this court to unearth the truth, based on the facts, evidence, and the law placed before the court, and I am not whining about anything here. Only that it puzzles that either one or both of the parties in a cause must have taken the path of not being forthright.
45. The jurisprudence on what constitutes or does not constitute fair and lawful dismissal or termination is now somehow settled through a multitude of decisions from this court (ELRC). Broadly speaking, it comprises of two components – substantive and procedural fairness. Justice is about fairness founded on fair hearing based on the known rules of natural justice. The rules of natural justice are populated



and contextualised in Kenya through various provisions in *the Constitution*, applicable and adopted international instruments, statutes, and binding and persuasive judicial pronouncements.

46. Articles 27 & 50 of *the Constitution*, Sections 35, 41, 43, 45, & 47 of the *Employment Act* (the Act), the *Fair Administrative Action Act* are just some of the laws that provide and guide on rules of natural justice. Disciplinary process is an administrative action to which the rules of natural justice shall apply. In terms of judicial pronouncements, see – Walter Ogal Anuro V Teachers Service Commission (2013) eKLR and Mary Chemweno Kiptui V Kenya Pipeline Company Limited (2014) eKLR.
47. In terms of substance, the respondent’s position is that the claimant’s adamant refusal to take orders from her supervisor and her attempt to attack the supervisor placed in authority by the employer amounted to gross misconduct. It is the respondent’s case that for her misconduct the claimant was issued with a show-cause letter dated 2nd August, 2014 which was served upon the claimant on even date. The said letter stated as follows –

Maridadi Flowers Ltd
Nairobi-nakuru Highway
Opposite Delamare Farm
BOX 1800-20117
Naivasha – Kenya
Tel: +254 50 50430
Mob: +254 733333491/2
Fax: +254 50 50429
Email: farm@maridadiflowers.com

2nd August, 2014

To: Dolphina Geha Engoke

Payroll: 6077

Show Cause Letter

We note with concern that today the 2nd August, 2014 you attempted to pierce/injure your supervisor with secateurs in the greenhouse when she allocated you duty in a different location.

The management considers the same to be an act of gross misconduct and is considering taking serious disciplinary action against yourself that may include summary dismissal.

You are now required to show cause in writing why the intended action should not be taken. You are further required to appear before disciplinary committee on Monday the 4th of August, 2014 at 11.00am to offer any further explanation that you may have. During the said meeting, you are entitled to be represented by an employee of your choice.

Should you not comply with the content of this notice, action will be taken in your absence.

Yours Faithfully,

Esther Kamau.

Eor.



Maridadi Flowers Limited

I Acknowledge receipt of this letter. Sign

Date

48. There is no evidence on record as to whether the claimant responded to the show-cause letter in writing. However, the minutes of the disciplinary hearing held on 4th August, 2014 were availed and produced as evidence by the respondent. From those minutes, the claimant attended the hearing and even signed the minutes. The attendance sheet availed by the respondent as evidence indeed confirms that the claimant attended the hearing.
49. During the hearing in court the claimant alleged that the minutes of the disciplinary hearing were doctored to imply that she was given a hearing. She alleged that she was forced to sign the minutes and threatened that if she did not sign she would not leave the office (meeting room). However, it is paramount to note that the claimant attended the meeting accompanied by her witness, Francis Mwaura, who also signed the two documents - the minutes and the attendance sheet. If at all the claimant was forced or coerced into signing the minutes, she ought to have called the said witness to court in support of her serious allegations of denial to be heard and being forced or coerced into signing the minutes.
50. There is no evidence on record that the respondent was in collision course with the claimant over her alleged union activities. There is no evidence on record that indeed the claimant was a member of a union or that there were union activities in the respondent's farm including an alleged strike. There is also nothing on record to suggest that prior to the incident leading to the show-cause letter there were differences between the claimant and the respondent in the manner of execution of her duties.
51. Although no criminal charges were preferred against the claimant for her alleged criminal attempt to attack her supervisor, there was no obligation on the part of the respondent to report the matter to the police as it took the option of applying internal disciplinary mechanism as it did. In any event, the allegations/charges against the claimant did not only relate to the alleged criminal act but also to refusal by the claimant to take lawful directions from a supervisor placed in authority by the employer.
52. The letter of dismissal stated as follows –

Maridadi Flowers LTD
Nairobi – Nakuru Highway
Opposite Delamare farm
BOX 1800-20117
Naivasha – Kenya
Tel :050 50430
Mob: +254 733333491/2
Fax: +254 50 50429
Email: farm@maridadiflowers.com
4th August 2014
To Dolphina Geha Engoke
ID No.1084xxxx Payroll: 6077



Naivasha

Re: Dismissal

We wish to inform you that you have been summarily dismissed and relieved from all your duties as a general worker in our company.

Reasons being: -

1. Refusing to obey a lawful and proper command from your supervisor and instead attempting to injure/harm your supervisor with secateurs causing a state of unrest in the greenhouse.

Your wages are calculated as under: -

Wages for the month of August 14 (4 days) 914.82

House allowance 266.66

Travelling allowance 2500.00

Pending leave (20 days) 5907.48

Less Union (2% basic) -137.00

Less NSSF (200.00)

Less NHIF (200.00)

Total 9,051.96

We wish you all the best in your future plans.

Signed Dolphina Geha Engoke

Yours Sincerely,

Maridadi Flowers Ltd

Jack Kneppers

Director

53. The court has keenly and attentively combed through the evidence on record, including the minutes of the disciplinary hearing, the statements by witnesses to the incident that led to the disciplinary process, the oral testimony by witnesses from both sides, and the submissions by counsel. The court is convinced that based on the foregoing the respondent had a genuine and honest believe that the claimant was culpable of gross misconduct and hence the disciplinary action – see Section 43(2) of the Act.
54. In terms of substance, therefore, the court finds and holds that the respondent had substantive grounds upon which to found the disciplinary action against the claimant.
55. On the procedure adopted by the respondent, the court takes the considered view that the respondent satisfactorily complied with the general rules of natural justice for a fair hearing. The claimant was served with a show-cause letter containing specific and particularized charges/allegations. Although she stated that she responded to the show-cause letter, she did not avail her said response in court. Nevertheless, the record clearly shows that the claimant was invited for a hearing in the show-cause letter and she duly attended the hearing as invited alongside her witness of choice, a union representative.



56. Further, the claimant signed both the attendance sheet and the minutes of the disciplinary hearing meeting. The minutes clearly indicate that the claimant and her witness actively participated in the hearing. The minutes do not show any request that was made by the claimant which was either denied or ignored. There is no allegation, for example, that the language used was strange to the claimant, that she asked for more time to prepare her defence, or that she was denied a chance to cross-examine any of the witnesses who were present during the hearing.
57. It is important to point out that disciplinary proceedings are not synonymous to court trials where technical rules of evidence and procedure apply. It is also important to take cognizance of the fact that human resources managers or other officers who constitute disciplinary panels are not lawyers and or judges and as such they are not strictly bound by the technical rules of evidence and procedure that apply in court trials. In my considered view, so long as an employee is informed of the specific charges/ allegations facing him/her and s/he is given an opportunity to respond thereto, invited for a hearing and informed of his/her right to come along with a witness, given an opportunity to state his/her case or defence and tender any evidence that he/she may wish to, such disciplinary hearing adequately complies with the general principles of fair hearing.
58. In terms of the procedure adopted by the respondent, therefore, the court finds and holds that the same was just and the claimant was thus afforded fair hearing.
59. Flowing from the foregoing, the court finds that the dismissal of the claimant by the respondent was fair and lawful, both in substance and procedure.

VII. Reliefs

60. Flowing from the finding and holding in the foregoing part of this judgment, one can safely argue and conclude that the claimant may not be entitled to any relief. For completeness, however, the court shall consider the reliefs sought as hereunder.
61. It is important to note, upfront, that upon dismissal the respondent tabulated what it considered to be terminal dues payable to the claimant and the same were allegedly settled as per the letter of dismissal reproduced elsewhere in this judgment. The court has to keep in mind that tabulation as it considers each of the reliefs sought as hereunder.
62. Prayer (i) is for a declaration that the dismissal of the claimant was wrongful, unfair, and unlawful. The court has found and held that the dismissal was fair and lawful and a declaratory order shall issue to that effect.
63. Prayer (ii) has several items. Item (a) is for days worked and not paid for in the sum of Kshs1,046.15. The said days are not particularized and no evidence was adduced during the hearing to help the court in identifying them. However, the court notes that in the tabulation in the letter of dismissal, unpaid wages for four days worked in August, 2014 were taken care of and paid in the sum of Kshs914.82 plus house allowance of Kshs266.66. In absence of any evidence or proof from the claimant of any other wages that may have been due and payable and not paid, this claim shall fail.
64. Item (b) is for one month's pay in lieu of notice in the sum of Kshs6,800/=. The claimant was summarily dismissed for gross misconduct as discussed in earlier part of this judgment. This implies that she was not entitled to notice or pay in lieu thereof under Sections 35 & 36 of the Act. A summary dismissal is fundamentally a termination without notice or with a notice less than that provided for in the contract or the law -see Section 44 of the Act. This claim is denied.



65. Item (c) is for leave pay in the sum of Kshs5,492.30. No particulars or evidence was adduced in identifying the period affected. However, the letter of dismissal indicates that the claimant was paid pending leave of 20 days in the sum of Kshs5,907.48. In the circumstances, the court finds and holds that this item was settled upon dismissal.
66. Item (d) is for house allowance in the sum of Kshs266.66. Again, the letter of dismissal confirms that this item was taken care of in the tabulation and the same was hence settled.
67. Item (e) is for travelling allowance in the sum of Kshs2,500/=. Again, this claim is indicated as settled in the letter of dismissal. The court finds and holds that the same has been accounted for.
68. Item (f) is for unspecified underpayments. No evidence was adduced in support of this item and the same is denied and dismissed.
69. Item (g) is for gratuity/service pay in the sum of Kshs6,800/= for the two years served at the rate of 15 days' pay per year. It is important to clarify that gratuity is not synonymous with service pay. Gratuity is paid based on an agreement as a term of the contract or at the discretion of an employer in appreciation of the service rendered by a departing employee. Naturally, it is paid when an employee leaves employment or retires in good record and meets the criterion set out and agreed by and between the parties. On the other hand, service pay is paid to an employee under Section 35(5) of the Act on condition that the employee is not a member of a provident or pension scheme, including the National Social Security Fund (NSSF), and not entitled to gratuity.
70. The letter of dismissal indicates that a sum of Kshs200/= was deducted from the claimant's terminal dues and in her testimony in court the claimant admitted that she was a member of NSSF. For this reason, this item is denied and dismissed.
71. Item (h) is for compensation for the dismissal equivalent to 12 months' gross pay in the sum of Kshs81,600/=. The court has found and held that the dismissal was fair and lawful and this claim is thus denied and dismissed.
72. The letter of dismissal indicates that the terminal dues payable to the claimant, according to the respondent, in the sum of Kshs9,051.96 were to be transferred to a SACCO ostensibly for onward transmission to the claimant or in settlement of a loan owed by the claimant. She acknowledged receipt of the letter and did not object to the said mode of payment and she did not deny receiving the money during the trial.
73. In the circumstances, the court agrees with counsel for the respondent in her submission that no other or further monies are payable to the claimant and the cause is hereby accordingly dismissed.

IX.Costs

74. There is no order as to costs.

X.Orders

75. For all the foregoing reasons the claimant's cause succeeds and the court issues the following orders –
 - a. A declaration be and is hereby issued that the dismissal of the claimant by the respondent was fair and lawful.
 - b. The claimant's cause is dismissed with no order as to costs.



DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 31ST DAY OF OCTOBER, 2024.

DAVID NDERITU

JUDGE

