

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E908 OF 2022

KUDHEIHA WORKERS

.....**CLAIMANT**

VERSUS

CARITAS COMMUNITY HOSPITAL.....

RESPONDENT

JUDGMENT

Introduction

1. The Claimant union lodged this claim on behalf of two of its members (the grievants) namely Mr. Kataka Nabwera Derick and Ms. Elizabeth Wairimu Ndung'u on 6th December, 2022 vide a Memorandum of Claim dated 5th December, 2022. The Claimant seeks the following reliefs:-
 - i. One month salary in lieu of notice
 - ii. 21 days' pay in lieu of annual leave for the year 2020/2021
 - iii. Service pay for their two years in employment
 - iv. 12 months' salary as compensation for unlawful termination.

2. The Respondent filed a Memorandum of Appearance dated 20th November, 2023, but did not proceed to file a response

to the claim and the court directed that the matter proceeds undefended.

3. The matter proceeded for formal proof hearing on 24th April, 2025 when the two grievants testified in support of the Claimant's case. They adopted their witness statements and CW1-Kataka Nabwera Derick produced the documents filed in the matter as exhibits.
4. The Claimant filed submissions in the matter which have been duly considered.

The Claimant's Case

5. The Claimant's case is that on 25th March, 2021, it recruited 32 employees of the Respondent through the Check -Off - System into its membership. It states that when the Respondent received the Check -Off Forms where the employees' authorized deduction and remittance of the union dues into the Claimant relevant Bank Account, they chose to victimize the two grievants herein.
6. The Claimant states that Mr. Kataka Nabwera Derick was employed by the Respondent on 1st September, 2017 as a Clinical Officer at a consolidated Monthly Salary of Ksh.33,000/- inclusive of a house allowance.
7. It states further that on 1st January, 2021 the Respondent changed Mr. Kataka's form of employment, and offered him a one year contract with effect from 1st January, 2021 to 3rd

December, 2021, as a Clinical Officer with a taxable consolidated gross monthly salary of Ksh.36,000/= inclusive of House Allowance, and contrary to the initial arrangement.

8. The Claimant states that Mr. Kataka rendered the Respondent services with a very clean record as there was no warning letter recorded in his employment file. That despite the clean record of service, the Respondent issued Mr. Kataka with a termination letter dated 30th March, 2021 which termination was to take effect on the date of the letter.
9. The Claimant avers that at the time of termination of service, Mr. Kataka was earning a gross salary of Ksh.41,000/- per month. It states further that according to the letter of termination, the Respondent opted to pay him one month basic salary in lieu of Notice instead of giving him notice, but which has not been paid to date.
10. The Claimant states that it is clear that the grievant was only victimized for joining the Union Membership, as he had not committed any form of misconduct under the Respondent's terms of employment. The Claimant further avers that no valid reasons were given by the Respondent for the termination of Mr. Kataka's contract, though he was verbally accused of allegations of being involved in joining and recruiting the Respondent's workers into the Claimant's membership.

11. On the 2nd grievant, Ms. Elizabeth Wairimu Ndung'u, the Claimant avers that she was employed by the Respondent on 1st December, 2018 as a Matron at Ksh.45,000/= per month. It states that on 1st February, 2021 she was issued with another appointment letter reverting her initial employment to a one year renewable Contract with effect from 1st February to 31st December, 2021 at a taxable consolidated gross salary of Ksh.46,000/=.
12. The Claimant states that by the Respondent giving Elizabeth another letter of a renewable contract is a bad labour practice and discrimination in employment contrary to Section 5 of the Employment Act, 2007. It states that the Contract letter was also made in bad faith and was intended to deny Elizabeth the social security benefits like pension, National Hospital Insurance Fund (NHIF), and the National Social Security Fund (NSSF) contrary to the existing Labour Laws.
13. It states that similar to Mr. Kataka, she was on 30th March, 2021 issued with a letter of termination that was to take effect the same day. The Claimant states that according to the letter of termination, the Respondent opted to pay her one month basic salary in lieu of Notice, but which has not been paid to date.
14. The Claimant avers that just like the first grievant, it is clear that this grievant was only being victimized for joining the Union Membership, noting that she did not commit any

form of gross misconduct nor commit any offense to warrant termination of her services.

15. It is the Claimant's case that for the grievant herein to join the Claimant's membership is not a criminal offense or gross misconduct for the Respondent to terminate their services. That Article 36 of the Constitution of Kenya guarantees the grievants freedom of Association, which includes, the right to form, join or participate in the activities of an association of any kind.
16. The Claimant further states that Article 41 of the Constitution of Kenya, guarantees the grievants right to form, join or participate in activities and programs of a trade union, and so does the ILO Conventions No. 87 and 98.
17. The Claimant states that it was unlawful for the Respondent to terminate the services of the grievants for exercising their fundamental right of joining the union membership. It states further that it was unlawful for the Respondent to terminate the services of the two grievants without being heard and being represented in accordance with Section 41 of the Employment Act, 2007.
18. The Claimant avers that the two employees were not given an opportunity to be heard at any disciplinary meeting and represented by the Claimant before their services were

terminated, and that the Respondent totally failed to cooperate with the Claimant to resolve the issue amicably.

19. It is the Claimant's case that on 7th April, 2021, it reported a trade dispute to the Cabinet Secretary Ministry of Labour & Social Protection in accordance with Section 65 (1) of the Labour Relations Act, 2007 and that on 11th May, 2021, the Chief Industrial Relations appointed Amedeo K. Nyaga of Thika Labour Office as a Conciliator. The Claimant avers that the Conciliator convened several joint conciliation meetings, but which were only attended by the Claimant.
20. It states that in spite of having many meetings, the Conciliator failed to release the conciliation report in reasonable time and that it was only when the Claimant contemplated to invoke Section 69 (b) of the Labour Relations Act, 2007, that a letter was received dated 14th September, 2022 from the Conciliator pertaining the Conciliation report.
21. The Claimant states that it accepted the Conciliator's Report, but regrettably, the Respondent kept mum forcing it to file the matter before this court.
22. The Claimant prays that the court allows its claim.

Analysis and Determination

23. I have considered the pleadings, the Claimant's witnesses' testimonies and the Claimant's submissions. The issues for determination are:-

- i. Whether the grievants were unfairly terminated
- ii. Whether the Claimant deserves the remedies sought
- iii. Who bears the costs of the suit.

Whether the grievants' were unfairly terminated

24. The Claimant's case is that the two grievants it represents herein, were initially employed on permanent and pensionable terms of service, but which terms were later in 2021 reverted to one year contract terms.

25. It is the Claimant's assertion that the grievants were only victimized for joining her Membership, as they had not committed any form of misconduct. It states further that no valid reasons were given by the Respondent for the termination of Mr. Kataka's contract, though he was verbally accused of allegations of being involved in joining and recruiting the Respondent's workers into the Claimant's membership.

26. The Claimant's further position is that it recruited 32 employees of the Respondent to its membership in March, 2021, and that this is the only reason the Respondent terminated the services of the grievants as they were not accused of any misconduct.

27. The Respondent did not defend this suit and hence the Claimant's evidence is uncontroverted.

28. The Respondent by the evidence before this court, did not issue the grievants with notices to show cause nor did it allow them an opportunity to defend themselves against any accusations or whatever other ground the Respondent could have had to terminate their services.

29. The Court also notes that the grievants terms of service were revised from permanent and pensionable terms to one year contracts without consultation. Section 10(5) of the Employment Act, 2007, expressly states:-

“Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the changes in writing.”

30. The Respondent evidently did not consult the grievants before changing their employment terms from permanent to contract, which in itself is unlawful.

31. It is also clear from the record that the same year the grievants joined the Claimant's union, is the same time their employment terms were revised to contract. Article 41 of the Constitution of Kenya explicitly recognizes trade unions and grants every worker the right to form, join and participate in the activities of trade unions. These rights are further crystalized under the Labour Relations Act, and an

employer cannot therefore ignore the existence, role and importance of trade unions in the place of work.

32. By dint of the foregoing, terminating the services of an employee is automatically considered unfair if it is adjudged to be based on the employee's membership or proposed membership of a trade union and/or participating in the activities of a trade union.
33. The constitutional provisions granting rights to form, join or participate in the activities of a trade union cannot be curtailed for whatever reason except by constitutional means. **(Richard Painter & Anne Holmes, cases and materials on Employment Law, Oxford University Press, (2002) 4th edition at page 9).**
34. In light of the foregoing, the Respondent not having issued the grievants with show cause notices spelling out the ground of their intended termination, or by any other means notifying them of its intention to separate, the termination of the grievants' services can only be attributed to their joining and participating in the activities of the Claimant's union. This leads me to the conclusion that the two grievants were unfairly terminated, and so I hold.

Whether the Claimant/grievants deserve the remedies sought

35. The Claimant's prayers are that the grievants are awarded one month salary in lieu of notice, 21 days' pay in lieu of annual leave for the year 2020/2021, service pay for their

two years in employment and 12 months' salary as compensation for unlawful termination.

36. The Respondent did not defend this suit and therefore, no evidence was led to show that the grievants do not deserve the reliefs sought. The Claimant on its part has proved a case of an unfair termination of the services of the two grievants.

37. On the prayer for 12 months' salary as compensation for the unfair termination, the grievants' terms of service were revised to their detriment without consultation and their services subsequently terminated without being given any reason (s) nor heard prior to the termination. Further, the court reached the conclusion that the only apparent reason for the grievants' termination was for joining and participating in the activities of the Claimant's union, which is unconstitutional and amounts to an unfair labour practice.

38. I find and hold that the Claimant has justified an award of maximum compensation, and which is hereby awarded.

39. In whole, I grant the following reliefs:-

In respect of Mr. Kataka Nabwera Derick

- a) One month salary in lieu of notice at Kshs.41,000
- b) 21 days in lieu of leave at Kshs.28,700/=
- c) Service pay for his 3 years in employment at Kshs.61,500/=

d) 12 months' salary as compensation for the unfair termination at Ksh. 492,000/=

In respect of Ms. Elizabeth Wairimu Ndung'u

a) One month salary in lieu of notice at Kshs.46,000/=

b) 21 days in lieu of leave at Kshs.32,200/=

c) Service pay for his 3 years in employment at Kshs.46,000/=

d) 12 months' salary as compensation for the unfair termination at Ksh.552,000/=

40. I make no orders on costs.

41. Judgment accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Kioko present for the Claimant

N/A for the Respondent

Esther S - C/A