



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT KISUMU

CAUSE NO. E086 OF 2024

TOO.....

.....**CLAIMANT**

VERSUS

WEZA CARE SOLUTIONS.....

.....**RESPONDENT**

JUDGMENT

1. The Claimant filed a memorandum of Claim dated 25th October 2024 against the Respondent, Weza Care Solutions alleging unlawful and unfair termination of employment. It was his case that he was employed by the Respondent as a Partner Relations Coordinator on 4th March 2022, having worked with its directors since 2013 through its subsidiary

organizations Agape Children's ministry and Reach Network Solutions. He averred that he worked diligently, without any complaints being raised against him till 6th August 2024 when he was terminated from employment on account of unsubstantiated allegations of sexual harassment. He stated that this was done despite the absence of a sexual harassment policy. It was his further case that the dismissal was procedurally unfair as he was denied a fair hearing, including the right to representation, access to evidence used against him, and the opportunity to cross-examine adverse witnesses. Additionally, he asserted that the disciplinary panel was biased and had a predetermined outcome in mind. Consequently, he sought for a declaration that his termination of employment violated the Employment Act and the Fair Administrative Action Act. He further sought Damages and terminal dues amounting to Kshs. 1,780,750/-, comprising: one months' salary in lieu of notice, service pay, unpaid house allowance, unpaid leave and twelve months' compensation for unfair termination. He also sought a certificate of service, interest on the monetary award and

costs of the suit and any other award the court may deem fit to grant.

2. In response to the claim the Respondent filed a response to memorandum of claim dated 21st November 2024. It refuted that the Claimant worked with its directors from 2013 asserting it employed him on 21st March 2022. The Respondent maintained that the termination of employment was both procedurally and substantively fair. It pointed to the show cause letter 22nd July 2024 which he responded to via a letter dated 23rd July 2024, after which a hearing was conducted on 31st July 2024 culminating in his summary dismissal on 6th August 2024. The Respondent averred that it informed the Claimant of his right to be accompanied by a fellow employee, an option he decided to forego. It maintained that the Claimant was afforded an opportunity to fully present his defence including all the evidence he needed save for evidence revealing the identity of the complainant. It was the Respondent's further case that the disciplinary panel was impartial and the disciplinary process as a whole complied with statutory stipulations. Regarding

the Claimant's request for disciplinary hearing minutes the Respondent asserted that there was no such request and that despite having a right to appeal he did not do so. In respect of substantive fairness, the Respondent averred that the allegations of sexual harassment were substantiated through internal investigations justifying the Claimant's dismissal. It averred that the Claimant failed to present credible evidence to counter the accusations against him. On the dues sought the Respondent's case was that the Claimant's prayer for 9 years' service pay for working with Agape Ministries was misleading as he only worked there for two years. As for service pay from Weza Care Solutions the Respondent stated that the Claimant was a member of NSSF therefore the sum was not awardable. In regard to unpaid leave days, the Respondent averred that it only remained unpaid for 2 days not 13 days as claimed. Consequently, it urged the Court to dismiss the claim with costs.

3. At the hearing the Claimant testified on his own behalf, while the Respondent called four witnesses. Testifying as CW1, the Claimant adopted his statement dated 25th October 2024 as

his evidence in chief. He also produced the documents in his list of documents dated the same day as exhibits 1-15. He narrated that he had a cordial relationship with the complainant, who worked as a cleaner with the Respondent. He testified that his request to cross-examine witnesses was denied under the pretext of protection, yet no explanation was given on the nature of such protection. He also claimed that he never received the minutes of the disciplinary hearing, as a coded copy was sent to his email. He further testified that it was improper for his medical procedure to be used against him.

4. On cross-examination he testified that his decision not to appeal was informed by the unpleasant experience during the disciplinary hearing and lack of access to evidence. He also confirmed that he was an NSSF member. The Claimant thereafter closed his case.

5. On the Respondent's side the first witness (RW1) was the complainant in the sexual harassment case who is anonymized as RE. She adopted her statement dated 16th January 2025 as her evidence in chief. She narrated that on

8th July 2024 while undertaking her normal duties the Claimant approached her and uttered “I asked you for sex and you declined”. After that he approached her, opened his trouser zipper and pulled out his penis. She stated that she pushed him away, injuring him slightly, after which he stopped. At the time, she was five months pregnant, and they were alone in the office. She further claimed that the Claimant used to send her nude photos on WhatsApp and later delete them. She reported the matter to her supervisor, who escalated it to the Human Resource Department, after which the harassment ceased.

6. The second defence witness was Ms. Grace Njeri (RW2), a safeguarding officer, adopted her statement dated 16th January 2025. She testified that she conducted investigations and concluded that there was inappropriate sharing of nude photos and attempts to initiate unwelcome sexual relations. She produced her investigation report as REXH 1. On cross-examination, she admitted that she did not interview both the complainant and the Claimant.

7. The third defence witness was Mr. Cornell Ogutu, RW3, the Respondent's Director of Consulting, adopted his statement of 16th January 2025. He testified that he chaired the disciplinary committee. He confirmed that although the Claimant had complained about inadequate time to prepare, he chose to proceed without representation. He stated that the complainant was not availed for cross-examination to avoid victimization, given the Claimant's senior position. On cross-examination, he conceded that some of the alleged messages and photographs had been deleted. He maintained that the Claimant's conduct violated the Respondent's Sexual Harassment Policy.

8. The fourth defence witness was Mr. Richard Ogembo (RW4) the Human Resource Manager. He adopted his statement dated 16th January 2025 as his evidence and produced the documents in the list of documents dated 17th January 2025 and further list of documents dated 23rd January 2025. He testified that he received the report and initiated the disciplinary process, which he maintained was conducted in compliance with the HR Policy. He stated that the Claimant

was then suspended to pave way for investigations. He added that the minutes of the hearing were sent to the Claimant, who acknowledged receipt. He confirmed that the Claimant's salary was consolidated, inclusive of all allowances. The Respondent then closed its case, and parties directed to file written submissions.

Claimant's Submissions

9. The Claimant submitted that the termination of his employment was unjustified, unlawful, and procedurally unfair contrary to the provisions of sections 41, 43, and 45 of the Employment Act, and section 4 of the Fair Administrative Action Act. He asserted that under section 43(1), the employer bears the burden of proving the reasons for termination, and where the employer fails to do so, such termination is deemed unfair. The Claimant submitted that the Respondent summarily dismissed him on false and unsubstantiated allegations of sexual harassment, which were based on inconsistent and uncorroborated accounts by RE. He asserted that the allegations were fictitious, maliciously fabricated, and unsupported by any credible

evidence such as emails, text messages, audio, or CCTV footage. The Claimant further submitted that the accuser's reluctance to have the matter reported to the employer or law enforcement, coupled with her admission of having received snacks and money from him, cast serious doubt on the credibility of her complaint. The Claimant further submitted that the investigations and disciplinary process were fundamentally flawed, biased, and contrary to the principles of procedural fairness under Articles 41(1) and 47(1) of the Constitution as well as the Fair Administrative Action Act. He highlighted that the investigators, who lacked professional qualifications, failed to review the office's CCTV footage or the staff attendance register and relied solely on hearsay. Additionally, the disciplinary hearing, which lasted over six hours, was conducted in an oppressive manner without any adjournment, and he was denied the right to representation, to cross-examine his accuser, or to access evidence relied upon by the Respondent. He relied on the decision in **Gilbert Kasumali Kithi v Nyali Beach Holiday Resort [2015] eKLR**, where the Court held that an employee must be accorded both procedural and substantive

justice before termination. The same principle, he submitted, was affirmed in the case of **Kimani v Rosslyn Academy (Cause E251 of 2022) [2025] KEELRC 1892 (KLR)** and **Manyara v Phoenix Aviation Limited (Cause E1034 of 2023) [2025] KEELRC 33 (KLR)**, in which the Court underscored the employer's obligation to accord the employee a fair hearing and to disclose the identities of accusers so as to enable the employee to prepare an adequate defence.

10. The Claimant additionally submitted that the Respondent failed to comply with section 6 of the Employment Act and the Employment (General) Rules, which require employers with twenty or more employees to maintain and disseminate a sexual harassment policy. He asserted that the Respondent's policy fell far short of statutory requirements and was therefore invalid. On the question of the termination letter, the Claimant noted that it was signed by Mr. Stephen Ogembo, who admitted in testimony that he lacked authority to hire or dismiss employees. The Claimant further asserted that though the right of appeal was provided in the letter, it

was illusory since the same management that investigated and dismissed him would still be the same one hearing the appeal. In support of this position, he cited the decision in the case of **Manyara v Phoenix Aviation Limited** (*supra*) where the Court reiterated that under sections 43(1) and 45(2) of the Employment Act, the employer must prove that the termination was based on a fair and valid reason related to the employee's conduct or capacity, and failure to do so renders the dismissal unfair. The Claimant submitted that the Respondent failed to furnish any proof of the alleged misconduct, and no evidence of prior disciplinary issues was presented, contrary to section 74 of the Employment Act, which obligates the employer to maintain employment records. The termination, he thus asserted, violated his rights under Articles 27, 28, and 41 of the Constitution by subjecting him to discrimination, unfair labour practices, and indignity.

11. On remedies sought, the Claimant relied on the decisions in **National Bank of Kenya v Samuel Nguru Mutonya [2019] eKLR** and **Stella Auma Oduor v Solvit Security**

Solution [2021] eKLR, where the Courts held that non-compliance with section 41 of the Employment Act renders a termination procedurally unfair, and payment in lieu of notice does not cure such unfairness. He therefore urged the Court to declare that he was unlawfully and unfairly dismissed and is entitled to compensation as sought in the claim under section 49(1)(c) of the Employment Act. In conclusion he urged the Court to find that the Respondent's actions were in flagrant breach of the Employment Act, the Fair Administrative Action Act, and the Constitution, and to grant him the reliefs sought, together with costs and interest.

Respondent's Submissions

12. On its part, the Respondent identified the issues for determination as:

- a. Whether or not grounds of termination were established;
- b. Whether or not due process was followed in terminating the Claimant's employment; and

c. Whether or not the Claimant is entitled to reliefs and dues sought.

13. On the first issue, the Respondent submitted that it had established reasonable grounds for terminating the Claimant's employment. It asserted that the law does not require infallible proof of wrongdoing but rather that the employer must have reasonable grounds to believe that an infraction has occurred. Reliance was placed on section 43(1) of the Employment Act, which requires an employer to prove the reasons for termination, failing which the termination shall be deemed unfair under section 45 of the Act. It further cited section 47(5), emphasizing that the burden of proving unfair termination rests on the employee, while the burden of justifying the grounds of termination rests on the employer.

14. The Respondent relied on the decision in the case of **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, where the Court held that for a termination to meet the fairness test, there must be both substantive

justification and procedural fairness. It submitted that the termination of the Claimant's employment was based on findings from an internal investigation that substantiated multiple allegations of sexual harassment, including repeated unwanted sexual advances, sending obscene materials, and the use of sexually suggestive language. Furthermore, the internal report, the minutes of the disciplinary panel, and witness testimonies were all produced in evidence to confirm the validity of the reasons for termination. In view of the foregoing, it asserted it had therefore discharged its burden under section 43 of the Employment Act and that the reason for termination was valid, fair, and lawful. Reliance was placed on the decision in the case of **Charles Musungu Odama v Kenya Ports Authority [2019] eKLR**, where the Court affirmed that once an employer demonstrates a valid reason for termination, the dismissal cannot be deemed unfair. It was further submitted that the Claimant's allegations of discrimination and unfair labour practices were unsubstantiated, as he failed to demonstrate or prove particulars of discrimination. The Respondent cited section 107(1) of the Evidence Act,

asserting that he who alleges must prove. Reference was also made to the case of **Peter Omolo v Bidco Africa Limited [2018] eKLR**, in which the Court held that an employer only needs to demonstrate that it reasonably believed misconduct occurred based on available evidence. The Respondent equally referred to the case of **Masaba v Teachers Service Commission & another (E020 of 2023) [2024] KEELRC 2232 (KLR)**, where Keli J. held that the standard of proof in employment disciplinary proceedings is on a balance of probabilities, not proof beyond reasonable doubt. The Court in that case adopted the reasonableness test articulated by Lord Denning in **British Leyland UK Ltd v Swift [1981] I.R.L.R 91**, stating that dismissal is fair if a reasonable employer might have dismissed the employee in similar circumstances. In view of the evidence it had produced, the Respondent submitted that it had met this test.

15. On the second issue, the Respondent referred to section 41(2) of the Employment Act, which requires an employer to give an employee an opportunity to be heard before

termination. It submitted that it fully complied with the procedural requirements laid down in the Act and its internal Sexual Harassment Policy. The Respondent highlighted that the process entailed a preliminary investigation conducted by a manager chosen by the complainant, issuance of a show cause letter on 22nd July 2024 to which the Claimant responded on 23rd July 2024, placement of the Claimant on administrative leave pending further investigations, and a disciplinary hearing held on 31st July 2024 at which the Claimant was heard but failed to offer a substantive defence. To reinforce this point, it cited the decision in **Anthony Mkala Chitavi v Malindi Water & Sewerage Company Limited [2013] eKLR** and **David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014] eKLR**, which underscore the requirement that an employee must be given sufficient opportunity to prepare, understand the charges, and access documentation. Additional reliance was placed on the decision in **Boniface Mzungu v Base Titanium Limited [2020] eKLR**, where the Court recognized that disciplinary proceedings in cases of sexual harassment are sensitive and may require confidentiality without compromising fairness.

The Respondent also cited the decision of the Court of Appeal in the case of **Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union [2025] KECA 830 (KLR)**, where it was held that there is no legal requirement that victims of sexual harassment testify either at a disciplinary hearing or in Court. What matters, is the sufficiency and credibility of the evidence adduced. Reliance was also placed on section 6(3) of the Employment Act, which prohibits disclosure of the complainant's identity except where necessary for investigation or disciplinary purposes. The Respondent referred to **GMV v Bank of Africa Kenya Limited [2013] eKLR**, where the Court upheld the dismissal of an employee for sexual harassment after a fair disciplinary process. It reiterated that the Respondent's internal policy on sexual harassment, as contained in its Human Resource Management Manual, was duly followed, and that the Claimant himself acknowledged awareness of the applicable penalties in his response to the show cause letter. The Respondent submitted further that, in any event, once a case of sexual harassment is established, the existence or absence of a sexual harassment policy is

immaterial, since such conduct is a recognized offence under Kenyan law. Reliance was placed on the case of **Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union** (*supra*) for this proposition. On the question of police involvement, it cited the decision in **WNN v TF (Cause E399 of 2023) [2024] KEELRC 13275 (KLR)**, where Manani J. held that an employer may choose to handle an incident with criminal implications internally, externally, or simultaneously through both processes.

16. On the final issue regarding reliefs, the Respondent maintained that the Claimant's claims were unmerited. It submitted that the termination was substantively and procedurally fair and that the Claimant was not entitled to compensation. Regarding the claim for service pay, the Respondent asserted that the Claimant was only employed by Agape Ministries for two years and not nine as alleged, and that the Respondent, Weza Care Limited, was a distinct entity. It further avowed that since the Respondent was a member of NSSF he was barred under section 35(6) of the Employment Act from service pay. On the claim for unpaid

house allowance, the Respondent submitted that the Claimant's salary was consolidated to include house allowance, as expressly indicated in his contract and payslips. Reference was made to **Ngugi & 16 others v Safaricom PLC [2025] KEELRC 1521 (KLR)**, where the Court dismissed a similar claim for lack of evidence showing that the claimants had sought clarification regarding the inclusion of house allowance in their pay structure. Concerning leave days, the Respondent submitted that the Claimant was entitled to only 0.25 of a leave day, having already utilized part of his annual entitlement. It drew attention to the testimony of Mr. Stephen Ogembo (RW4). In respect of twelve months' salary compensation the Respondent asserted that it was not awardable, as the Claimant's contract had only six months remaining. It cited the decision in the case of **Opiyo v Amma Consulting Engineers Limited [2025] KEELRC 1664 (KLR)**, where the Court held that wages are only payable for services rendered and that a claimant cannot assume continuation of employment to justify payment for unserved time. It also cited the decision in the case of **Kamundia v National**

Cement Company Limited (E070 of 2021) [2025] KEELRC 1927 (KLR), where Mbaru J. awarded no compensation despite a finding of unfair termination, having considered the claimant's conduct and work record under section 45(5) of the Employment Act. The Respondent also cited the cases of **Lilian W. Mbogo-Omollo v Cabinet Secretary, Ministry of Public Service & Gender & another [2020] KEELRC 53 (KLR)** and **Lele v Mwaura t/a Gongoni Market [2025] KEELRC 1076 (KLR)**, where minimal compensation was awarded owing to gross misconduct. In conclusion, the Respondent submitted that it acted within its legal mandate and obligations in terminating the Claimant's employment for gross misconduct. It asserted that the termination was both substantively justified and procedurally fair, and any award of compensation would amount to rewarding misconduct, contrary to the principles of fair labour practices. The Court was therefore urged to dismiss the claim in its entirety with costs.

Disposition

17. The Claimant was dismissed on allegations of sexual misconduct. The complainant did testify before this Court

and the case of **Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union** (*supra*), where it was held that there is no legal requirement that victims of sexual harassment testify either at a disciplinary hearing or in Court. What matters, is the sufficiency and credibility of the evidence adduced. In this case I am satisfied that the requirements of the law were met. The failure to reveal the identity of the complainant was not unreasonable in an open and democratic society in light of the accusations made and the power dynamics between TOO and RE. The Court is satisfied that the Respondent's sexual harassment policy was sufficient despite the Respondent not having put in place a sexual harassment policy in terms of section 6 of the Employment Act. The fact the Claimant understood the ramifications of the accusations levelled against him indicate the absence of the sexual harassment policy in terms of section 6 was neither here nor there.

18. The termination of any employee for misconduct (including sexual misconduct) must comply with the test laid out in section 41 of the Employment Act. In this case the

Claimant was accorded all the safeguards of a proper disciplinary process and both substantive justification and procedural fairness were present. I find and hold that the termination of the Claimant's employment was based on findings from the Respondent's own independent internal investigation that confirmed multiple allegations of sexual harassment, including the repeated unwanted sexual advances by TOO to RE, the sending explicit photos materials, and the use of sexually suggestive language as well as the display of TOO's penis to the complainant RE.

19. The fact the Respondent did not have CCTV footage did not detract from the evidence the complainant gave. Nor does the absence of criminal processes deprive the complaint of her agency as a woman who by virtue of her gender and position deserved respect, dignity and honour from the Claimant. The fact that she had accepted snacks from TOO does not make her complicit in any way in the misconduct by the Claimant. The conduct of the Claimant fits in the classic mould of sexual harassment as he chose the time the victim was cleaning the office, when no one else was around to harass her. The fact this persisted despite her

requests to the Claimant to stop only goes to show the Claimant was undeserving of the employers grace or the leniency of this Court.

20. The foregoing is conclusive that there is no merit absolutely in the claims made by the Claimant against the Respondent. If the Claimant had any claims against Agape who were not joined in the suit, he should have moved against the entity. One wonders how 7 out of 9 years of service could be swept away by the Claimant only to be revived when he filed this suit. In any event, claims for wages are a continuing wrongs whose limitation is 12 months. He ought to have raised this issue even before he started working for Weza Care Solutions. In the final analysis I dismiss the claim with costs to the Respondent. In order to protect the identity of both the Claimant and the victim their names have been anonymised by using initials in place of their names.

Orders accordingly.

Dated and delivered at Kisumu this 30th day of October

2025

Nzioki wa Makau, MCI Arb.

JUDGE

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