

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

CAUSE NO. E973 OF 2023

**REBECCA MASESE MAINA.....
....CLAIMANT**

-VERSUS-

**CARTON MANUFACTURERS LIMITED.....
RESPONDENT**

JUDGEMENT

Introduction

1. The Claimant instituted this suit against the Respondent alleging unfair and unlawful termination of her employment.

She prayed for the following reliefs:-

a) Declaration that the termination of her employment was unfair.

b) Salary in lieu of notice, Kshs75000

***c) Salary for 25 days worked in September Kshs
62,500***

d) Severance pay, Kshs 75000

e) Compensation for unfair termination, Kshs 900,000

f) Salary for the unexpired term of her contract, 4,500,000

g) Damages

h) Accrued leave of one month, kshs.75,000.

i) Certificate of service.

j) Costs of the suit.

2. The Respondent filed Defence denying the alleged unfair termination and averred that the Claimant absconded duty, necessitating her summary dismissal. Therefore it prayed for the suit to be dismissed with costs.

Background and Pleadings

3. The Claimant averred that she was employed by the Respondent as a Human Resource Officer on 8th March 2023 at a monthly salary of Kshs. 75,000/= . She began advocating for salary increments, opposing abusive language and ensuring compliance with labour laws. Her actions strained

her relationship with senior management and on 18th September 2023, her supervisor, Mr. Vivek, introduced one Dennis Nyongesa as an investigator to probe workplace abuse. However, instead of focus on the reported work place abuses, the investigation focused on her relationship with management.

4. She claims her computer access was revoked from 15th September 2023, frustrating her ability to work. This happened without being issued with any warning, subjected to a disciplinary hearing, or given a valid reason.

5. On 22nd September 2023, Dennis allegedly informed her orally that her employment was terminated and instructed her to return on 25th September 2023 to sign discharge documents and collect dues. On 25th September 2023, and although she arrived at 8,00AM, she was stopped at the gate by security to wait until the meeting at 9.00 AM. Finally, she attended the meeting accompanied by her advocate. Present were Dennis, Mr. Vivek, and the HR Manager,

Hannah Njine. During this meeting, the Respondent, realized the irregularity of involving Dennis, and attempted to persuade her to resume work but she declined citing a poisoned work environment.

6. The Respondent admitted that it employed the Claimant but denied that it terminated the employment on 22nd September 2023 as alleged. It averred that on 23rd September 2023 (a Saturday), the Claimant absented herself from work and when contacted by her supervisor, she stated that Dennis, an external consultant, had informed her that her employment was terminated.

7. The Respondent further averred that it immediately assured the Claimant, orally and in writing, that her employment was not terminated and instructed her to resume duty. However, the Claimant reported to the office on 25th September 2023 with her lawyer, insisted that she was dismissed and demanded payment.

8. The Respondent stated that, despite the assurance that her employment was not terminated, she refused to resume duty and resorted to threats to force payment of service pay. As a result, she was invited to a disciplinary hearing on 9th October 2023 to show cause why disciplinary action should be taken against her for her absence from 23rd September 2023. She failed to attend leading to her summary dismissal for absconding duty via a letter dated 13th October 2023. The Respondent maintained that the dismissal was lawful and procedural. It opposes all the Claimant's prayers.

Evidence

9. The Claimant, testified as CW1 and adopted her written witness statement as her evidence in chief. She then produced bundles of documents dated 18th September 2025 and 24th September 2025 as exhibits, (exhibit 1&2). She further produced as exhibit, a letter dated 26th April 2023, confirmation letter dated 3rd July 2023, an undated summary dismissal letter, letter dated 6th October 2023 and letter dated 9th September 2023, a letter on clarification of

employment status dated September 2023, and a show cause letter dated 29th August 2023. (exhibit 3-8).

10. In brief the Claimant testified that she was employed by the Respondent and that her employment relationship deteriorated after she escalated a complaint concerning the use of abusive language by a Sales Manager against another employee. She stated that she reported the complaint to her seniors and copied the Chief Executive Officer. Thereafter, an investigator, Dennis Nyongesa, was sent to her office, following which she was allegedly labelled a trade unionist. She testified that her working conditions worsened, to the extent that her access to her phone and computer was restricted.

11. According to the Claimant, on 22nd September 2023, she was summoned to a meeting in the Boardroom where Dennis Nyongesa who informed her that the Board feared her and offered her one month's salary for separation. However, she was later informed by management to resume duty, but due

to what she termed a hostile work environment, she did not report back.

12. Subsequently, she received correspondence assuring her that she had not been dismissed and asking her to report back to work but she refused. Subsequently, she received a summary dismissal letter through her by email but no terminal dues were paid to her. Therefore she prayed for compensation for unfair termination per terminal dues.

13. Upon cross-examination, the Claimant confirmed that although she was informed in several correspondences that her employment had not been terminated, she did not report back to work. She admitted that her last day at work was 22nd September 2023. She further admitted receipt of a show cause letter and an invitation to attend a disciplinary hearing dated 6th October 2023, but she neither responded to the letter nor attended the disciplinary hearing on 9th October 2023. She confirmed receipt of the email dated 13th October 2023 attaching the dismissal letter.

14. She maintained that her refusal to report back to work because she was informed by Dennis not to report to work after 22nd September 2023, that her system access had been deactivated, and that the work environment had become intolerable. She prayed for judgment against the respondent.

15. On the other hand, the Respondent called its HR Officer, Hannah Mugure Njine, who testified as RW1. She also adopted her written statement dated 7th December 2023 as her evidence in chief and produced sixteen documents in support of the Respondent's case.

16. In brief, she confirmed that the Claimant was reporting to her and that the Claimant absented herself from duty starting 23rd September 2023 until the date of dismissal. She stated further that the Claimant was invited to a disciplinary hearing on 9th October 2023 to explain her absence from work, but she failed to attend. As result a dismissal letter

was forwarded to her by email on 13th October 2023 citing the reason for the dismissal as absconding duty. She confirmed that the Claimant did not resign.

17. Upon cross-examination, RW1 stated that no meeting was held on 22nd September 2023 and maintained that it was held on 25th September 2023. She clarified that Dennis Nyongesa was not an employee of the Respondent but an external investigator. She confirmed that the Claimant had raised a grievance regarding abusive language, which was not fully concluded. She further testified that the Claimant had not been issued with prior warning letters before the show cause letter for her absence from duty.

18. During cross-examination, RW1 admitted that her signature on the dismissal letter differed from her usual signature. She confirmed that Dennis Nyongesa was engaged to deal with issues involving the Claimant, he had access to company facilities, and he attended meetings. She admitted that the Claimant's computer access was denied from 15th September

2023 and that there was a strained relationship between the Claimant and her supervisors.

Issues for Determination

19. After careful consideration of the pleadings, evidence, and submissions, the following issues fell for determination:-

- a) Whether the Claimant's employment was terminated on 22nd September 2023, or whether she absconded duty leading to her dismissal on 13th October 2023.
- b) Whether the termination of the Claimant's employment was unfair and unlawful.
- c) Whether the Claimant is entitled to the remedies sought.

Analysis and Findings

(a) The factual matrix of termination

20. The central factual dispute is whether the Claimant was dismissed orally by Dennis on 22nd September 2023 or whether she absconded duty from 23rd September 2023.

21. The Claimant's consistent evidence is that Dennis Nyongesa was introduced by Director Vivek as an investigator, enjoyed free access to the company, and acted with apparent authority. On 22nd September 2023, he informed her that her services had been terminated and further told her to return on 25th September 2023 for payment of her dues.

22. The Claimant complied by not attending work on Saturday, 23rd September 2023 and by attending the said meeting on 25th September 2023 with senior management, Dennis and her lawyer. RW1 admitted in evidence that Dennis was engaged to "deal with" issues relating to the Claimant. The question that arises is whether the Claimant was justified to comply with what Dennis communicated to her without first verifying with her supervisor.

23. The Claimant admitted that on 23rd September 2023, her immediate supervisor (RW1) called her enquiring why she was not on duty. She admitted in evidence that Dennis never gave her any termination letter and confirmed that a

termination letter would have come from either the Director or HR Manager. She admitted that she was not given any termination letter during the meeting on 25th September 2023 but she was told to resume duty. The same day she was given a letter clarifying that she had not been dismissed. More letters and WhatsApp texts were exchanged between her and RW1 whereby she was assured that her employment had not been terminated. However, she refused to report back to work.

24. RW1 reiterated that the Claimant was never dismissed on 22nd September 2023 and that efforts were made to assure her that she was still an employee of the company but she refused to respond to letters. Thereafter she was invited to a disciplinary hearing on 9th October 2023 to show cause why disciplinary action should not be taken against her but she still failed to respond to the letter or attend the hearing. As a result, she was dismissed for absconding duty from 23rd September to 13th October 2023 when the dismissal letter was dispatched via email.

25. Having considered the foregoing contentions, I find that the weight of evidence tilts in favour of a finding that the respondent did not terminate the services of the Claimant on 22nd September 2023. The Respondent made every effort to assure her that the company had not terminated her employment and even persuaded her to resume work but she declined. In the circumstances, I hold that the termination of the Claimant's employment was done on 13th October 2023 when the dismissal letter was emailed to her. The letter was signed and emailed by RW1. Until then, the Claimant was still an employee of the Respondent.

(b) Fairness and lawfulness of termination

26. Section 45(1) & (2) of the Employment Act provides that:-

“(1) No employer shall terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove:

(a) that the reason for the termination is valid;

(b) that the reason for the termination is a fair reason—

(i) related to the employee's conduct, capacity or compatibility; or

(ii) based on the operational requirements of the employer; and

(c) that the employment was terminated in accordance with fair procedure.”

27. In view of the above provision, the Respondent was barred from dismissing the claimant from service without a valid reason and/or without following a fair procedure. In the instant case, the reason for the dismissal was absconding duty from 23rd September 2023 to 13th October 2023. I have already made a finding that the Claimant failed to report to work throughout that period without leave or letter from the employer suspending or terminating her services.

28. The Claimant also admitted that she was expressly informed that her services had not been terminated and that she was called back to work but she declined. It is now settled principle of law that an employer can dismiss his employee

for absconding duty if the employer has made efforts give the employee a chance to show cause why action should not be taken against him/her for failing to attend work for a reasonable period. Consequently, I find and hold that the respondent has proved that it had a valid reason for dismissing the Claimant because she demonstrated, by her continuous absence, and failure to attend disciplinary hearing, that she was unwilling to continue being employed

29. As regards procedural fairness, section 41 of the Employment Act provides that:-

“(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the

employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

30. There is no dispute that the claimant was invited for a disciplinary hearing on 9th October 2023 but failed to attend or even make any written response. No good cause was shown for the failure to attend the hearing and as such she cannot blame the employer for not giving a fair hearing. In **Mathew Lucy Cherusa v Poverelle Sisters of Belgamo T/A Blessed Louis Palazzalo Health Centre [2013]** eKLR the court held:-

“The Claimant did not respond to the Respondent’s letters because according to her she had already been dismissed and a demand letter been sent by her Advocates to the Respondent....

From the evidence on record, I find that the claimant failed to avail herself of the internal grievance handling procedure provided by the Respondent and cannot therefore complain that she was not heard. For this reason, the claim for unfair termination and one month's salary in lieu of notice fail and are hereby dismissed."

31. Again in **Jackson Butiya v Eastern Produce Kenya Limited [2017] eKLR** the court held that:-

"An employee who squanders the internal grievance handling mechanisms provided by the employer cannot come to court and say, " I refused to talk with those people and therefore I was not heard, order them to pay me." It is not the role of the court to supervise the internal grievance handling process between employers and employees. The role of the court is to ensure that such processes are undertaken within the law."

32. The Court of Appeal in **Energy Regulatory Commission v John Sigura Otido [2021] KECA 1060(KLR)** affirmed the legal principle developed by this court in the above decisions when it held that:-

“The respondent, having failed to present himself before the disciplinary body of the appellant as required, cannot fault the appellant for the decision taken.”

33. In the instant case, the Claimant failed to utilize internal grievance mechanisms provided by the employer and therefore she can only blame herself for squandering the opportunity availed to her to save her job or to raise her grievance about her interaction with the external investigator, Mr. Dennis Nyongesa. In the circumstances, I find that the respondent has proved that it followed a fair procedure before terminating the Claimant’s employment on 13th October 2023.

34. Having found that the Respondent has proved by evidence, that the termination of Claimant’s employment contract was

grounded on a valid reason and that it was done in accordance with a fair procedure, I must now hold that the termination of the Claimant's employment on 13th October 2023 was fair and lawful within the meaning of section 45(2) of the Employment Act.

(c) Remedies

35. In view of the foregoing conclusion I decline to make declaration that the termination of the Claimant's employment was unfair. For the same reasons I find that the Claimant is not entitled to compensation for unfair termination and salary in lieu of notice under Section 49 of the Employment Act.

36. The Claim for salary for 25 days worked in September 2023 was not contested by the Respondent even in the written submissions. The Claimant's monthly salary was Kshs. 75000 and therefore 25 days' pay equaled Kshs. 62,500.

37. The Claim for Severance Pay must fail because it is a relief payable only upon redundancy under Section 40 of the Act. There was no redundancy in this case.
38. The Claim for Salary for the unexpired term of the contract being a claim for 5 years' salary is wholly misconceived. There is no evidence on record to support it and there is also no legal basis for same.
39. The prayer for "damages" lacked material particulars or other basis upon which to award it. Consequently, I decline to say anything more on it.
40. The Claim for accrued Leave Pay must also fail because there are no particulars as to how the leave equal to one month came about considering that she had only served for seven (7) month. Besides, the Claimant admitted during cross-examination that she had taken her leave.
41. The prayer for a Certificate of Service is granted because under section 51 of the Employment Act, an employee who

serves for two week continuous period is entitled to the certificate.

Conclusion

42. I have found that the Claimant has failed to prove unfair termination as required under section 47(5) of the Employment Act. However she has proved the claim for salary for the 25 days worked in September 2023 and certificate of service. Consequently, I enter judgment for her against the Respondent as follows:-

- a) Salary for 25 days worked in September 2023 being the sum of Kshs 62,500 plus interest at court rate from the date of filing the suit.
- b) Certificate of service to be issued forthwith.
- c) Since the suit has largely failed, I direct that each party shall bear own costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

ONESMUS MAKAU

JUDGE

Appearance:

Maruja for the Claimant

Njuguna for the Respondent