



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. E239 OF 2021

ALEX MULINGE.....**CLAIMANT**

VERSUS

METRO LOGISTICS LIMITED.....
.....**RESPONDENT**

JUDGMENT

1. Through the Amended Statement of Claim dated 23rd November 2022, the Claimant prays for the following reliefs:

- a. A declaration that his termination was unfair, wrongful and hence unlawful.
- b. Pay for April, May, June and July 2020 – Kshs. 640,000/-
- c. Pay for 6 days in August 2020 – Kshs. 36,923/-
- d. Pay in lieu of notice - Kshs. 160,000/-
- e. Pay for leave days not taken (7 days) – Kshs. 43,076/-
- f. Gratuity – Kshs. 1,053,333/-

- g. Compensation (12 months' salary) – Kshs. 1,920,000/-
- h. Costs of the suit.
- i. Interest at 14% on (b), (c), (d), (e) and (f) from the date of filing suit until payment in full.
- j. Interest at 14% on (g) and (h) above from the date of Judgment.

2. The Claimant averred that the Respondent employed him on or around September 2013 and that his last position was Plan/Customer Care Manager, earning a gross salary of Kshs. 160,000/- per month. The Respondent is a transport and logistics company with a fleet of over 300 vehicles, and is based in Nairobi with yards along Garden Estate and Mlolongo Road. The Claimant's case was that on or around 31st May 2020, he received an email from the legal office sending him on compulsory leave effective 1st June 2020 “until further notice” on account of allegations of gross misconduct and informed that investigations were being conducted. On 9th June 2020, the Respondent sent him a scantily worded show cause letter containing allegations that lacked material particulars to enable him respond. He

responded in an email letter of 17th June 2020, requesting better particulars of the allegations against him, but the Respondent ignored the letter. He wrote a reminder email letter of 11th July 2020, which the Respondent also ignored. The Respondent, instead, sent him an email on 4th August 2020 summoning him to a meeting, to which he responded by confirming his attendance for 6th August 2020.

3. It was the Claimant's averment that when he went to the Respondent's offices as required, there was no meeting and he was instead handed a summary dismissal letter effective 6th August 2020. Further, despite his being without pay from April 2020 to August 2020, he was only to be paid for April and May 2020. The reason cited in the summary dismissal letter was that his response to the show cause was unsatisfactory, yet the Respondent had ignored his request for particulars of his misconduct on more than one occasion. In effect, he was not allowed to respond at all as no discernible allegations existed in the show cause letter. The Claimant asserted that the Respondent also attempted to coerce him to sign away his rights by signing a statement

that he had no further claims against the Respondent, but he declined. The Respondent also verbally informed him that he would be deducted an unspecified amount of money because of a client of the Respondent who owed the Respondent, yet he personally did not owe the alleged debt. It was the Claimant's further case that his dismissal from employment grossly violated the requirement for a fair procedure under the law, including ILO Conventions. There was a further failure of substantive fairness, as the Respondent failed to demonstrate a valid, fair and just reason to dismiss his services. The Respondent also treated him callously, inhumanely and inequitably despite his long period of service and relative seniority. The Claimant stated that he was neither paid his dues nor compensated for the unlawful dismissal, entitling him to the reliefs as prayed hereinabove.

Respondent's case

4. The Respondent filed a Statement of Response and Counterclaim dated 3rd February 2023 seeking:

- a. A permanent injunction restraining the Claimant from further breach of the confidentiality clause under the Employment Contract and the Company's HR Manual.
- b. Damages for breach of confidentiality.
- c. Costs of the suit.

5. The Respondent denied that the notice to show cause letter issued to the Claimant lacked material particulars to enable him respond. They averred that the Claimant and another employee in the commercial department had incorporated a company that was fraudulently dealing with logistics and transport business in the same line as the Respondent. The said company fraudulently traded using the Respondent's company name and property, and the Claimant used his position to solicit drivers to work for his company using the Respondent's vehicles. This made the Claimant occasionally fail to realize the set goals, which conflicted with the Respondent's policy on conflict of interest and resultantly affected decision-making at work and the ability to meet set targets. It was the Respondent's averment that there were several complaints regarding the Claimant's conduct and

performance during the period of his employment, and he was subjected to a disciplinary hearing.

6. The Respondent's case was that by virtue of the position the Claimant held at the Respondent, he was bound by provisions of his employment contract to devote all his time to the Respondent's business. He was therefore prohibited from directly and/or indirectly engaging in any other business during his employment with the Respondent. They averred that the Claimant was provided with the Respondent's trade secrets and confidential information for him to properly and effectively carry on his duties. He was exclusively in charge of the customer care services and finances, and the financial operations in the Respondent Company. He therefore owed them a fiduciary duty and a duty of fidelity, which he breached when he incorporated a company to directly compete with and fraudulently trade with the Respondent during his employment at the Respondent. Subsequently, the Respondent denied having unfairly terminated the Claimant's employment. They stated that the Claimant's terminal dues were duly paid and that he

had utilized all his leave days, if any, with full pay. They further denied being served with any demand and or notice and contended that the Claimant was not entitled to get any costs in any event.

7. In the Counterclaim, the Respondent stated that the Claimant's termination from employment was fair and lawful because he breached confidentiality, conflict of interest and the duty of fidelity. That the Claimant retained important company property, including electronic information, correspondence and documents that he manipulatively and deliberately used for his own financial gains at the expense of the Respondent Company.

8. The Claimant then filed an Amended Reply to the Respondent's Statement of Response and his Defence to Counterclaim dated 10th February 2023. He prayed that the Respondent's Counterclaim be dismissed with costs and judgment be entered in his favour as prayed for in the Amended Statement of Claim. He denied having incorporated a company fraudulently dealing in the logistics and transport business as the Respondent. He contended

that no such allegation was given to him in the show cause letter, summary dismissal letter or any other document, making the said allegation a malicious creation in reaction to the instant court proceedings. The Claimant averred that his work performance was exemplary and he rose from a junior position at a pay of Kshs. 25,000/- to eventually earn Kshs. 160,000/- per month. He further denied that all his leave days were utilized as alleged, contending that the Respondent was the custodian of the employment records.

9. Responding to the Counterclaim, the Claimant denied engaging in any breach of confidentiality, conflict of interest or breach of duty of fidelity. He asserted that no such allegations were put to him and substantiated by the Respondent. He further denied that he retained any important company property or information as alleged. He stated that the Counterclaim being an independent suit, is incompetent for not being verified as required by law. He urged this Court to strike out the Defence and dismiss the Counterclaim *in limine*. The Respondent filed their Reply to Claimant's Defence to Counterclaim dated 3rd March 2023, praying that the Claimant's defence to counterclaim and the

suit against them be dismissed with costs, and that their Counterclaim be allowed with costs and interests at court's rate.

Evidence

10. The Claimant (CW1) testified in Court that he was then farming on his parents' farm and that he had not been able to get employment since the termination of his employment. He adopted his witness statement dated 18th March 2021 as his evidence in chief and produced the documents in the Claimant's Bundle as exhibits. He noted having filed a Certificate of Electronic Evidence. The Claimant further testified that the Respondent's HR Manual provided for gratuity being one month's salary for every year worked for employees who had worked for more than five (5) years. He reiterated that he was never told what he was accused of, and neither traded nor had a business while he was the Respondent's employee.

11. Parties were yet to file submissions as at the date of writing the judgment.

Disposition

12. What falls for determination is the question as to whether the Claimant's termination was unfair, wrongful and therefore unlawful within the meaning of the Employment Act. The Claimant was accused of gross misconduct. He was emailed on 31st May 2020 and was sent on compulsory leave from 1st June 2020. There was no communication with the Claimant till July 2020 despite his request dated 17th June 2020 seeking particulars. The show cause letter dated 9th July 2020 was sent to him and he was expected to respond after which his explanation was stated to be unsatisfactory and he was invited to a disciplinary hearing. In the invitation to the disciplinary hearing, there is no indication that the Claimant was entitled to attend in the company of a witness of his choice in terms of section 41 of the Employment Act.

13. The Claimant was subsequently dismissed and upon dismissal was not paid his terminal dues. He had been on suspension from 1st June 2020 and was not paid for the months preceding his termination. The Claimant was earning

a salary of Kshs. 160,000/- a month. The Claimant was not accorded the safeguards under the law. In the case of **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, Ndolo J. (as she then was) held that a valid termination must satisfy both substantive justification and procedural fairness. In the case of **Alphonse Machanga Mwachanya v Operation 680 Limited [2013] eKLR**, Radido J. (as he then was) held that the procedural requirements under section 41 of the Employment Act include the obligation to explain the reasons for termination to the employee, allow the presence of a fellow employee or union representative, and a requirement to consider any explanation offered by the employee.

14. In this case, these were woefully lacking and in my considered view, the termination meted out was both unfair and unlawful in failing to adhere to the requirements of the law. The dismissal of the Claimant was unfair and unjustified in the circumstances.

15. There was a counterclaim by the Respondent. In it, the Respondent asserted the Claimant had traded with its clients

to the detriment of the business. Whereas there were serious allegations made, no cogent evidence was provided to enable the Court make a finding in the Respondent's favour. The counterclaim being found to lack merit is dismissed albeit with no order as to costs.

16. On the remedies available to the successful Claimant, I find that an award of 2 months salary will suffice for compensation. He will also be entitled to the salary for the months of April, May, June and July 2020, the 6 days worked in August as well as one month salary as notice. He is entitled to leave not taken as well as gratuity payments. He will also have costs of the suit.

17. In the final analysis I enter judgment for the Claimant against the Respondent for:-

- a. Salary for April, May, June and July 2020 - Kshs. 640,000/-
- b. Pay for 6 days in August 2020 - Kshs. 36,923/-
- c. Pay in lieu of notice - Kshs. 160,000/-
- d. Pay for leave days not taken (7 days) - Kshs. 43,076/-
- e. Gratuity - Kshs. 1,053,333/-

- f. Compensation 2 months' salary – Kshs. 320,000/-
- g. Costs of the suit.
- h. Interest at Court rates on the sums in (a), (b), (c), (d), (e) and (f) from date of judgment till payment in full.

Orders accordingly.

Dated and delivered at Kisumu this 10th day of March

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**