



**Ireri v Cobra Security Company Limited (Cause 365 of 2020)
[2025] KEELRC 154 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 154 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 365 OF 2020
J RIKA, J
JANUARY 31, 2025**

BETWEEN

SAMUEL NJIRU IRERI CLAIMANT

AND

COBRA SECURITY COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 29th July 2020.
2. He states that he was employed by the Respondent Security company, as its Operations Manager, Nairobi, on 1st November 2018.
3. He previously worked with the Respondent's market competitor, Seneca E.A. Limited. He was poached from there, on the promise of superior terms and conditions of service.
4. He was placed on forced leave by the Respondent. Upon resumption of duty, he was informed by the Respondent, on 19th February 2020, that his contract had been terminated.
5. There was no justification to the decision. He states that the conduct of the Respondent amounted to constructive dismissal, was in bad faith, and contrary to the law, and the principles of justice and equity.
6. He was forced to sign the letter of termination, staff clearance certificate, and computation of terminal dues.
7. He earned a monthly salary of Kshs. 175,000.
8. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. General damages for wrongful dismissal, equivalent of 12 months' salary at Kshs. 2,100,000.



- c. Certificate of Service.
 - d. Costs.
 - e. Interest.
9. The Respondent filed its Statement of Response, dated 29th October 2020. It is conceded that the Claimant, was employed by the Respondent as Operations Manager, Nairobi on 1st November 2018. He was not poached from Seneca Limited by the Respondent. His contract was terminated by the Respondent fairly and lawfully. He neglected his duty and was a poor performer. All legal processes were followed, and final dues paid to the Claimant.
 10. He was not forced to sign the letter of termination, staff clearance certificate, and the computation of dues. He is not entitled to compensation or any other orders. He was granted an opportunity to be heard. The Respondent urges the Court to dismiss the Claim with costs.
 11. The Claimant gave evidence on 11th October 2023, and 16th July 2024 when he rested his case. James Gwara, a former Human Resource Manager of the Respondent, gave evidence on the latter date, closing the hearing. The Claim was last mentioned on 23rd October 2024, when the Claimant confirmed filing and service of his closing submissions, and the Respondent gave an undertaking to file and serve its submissions.
 12. The Claimant relied on his witness statement and documents [1-6] in his evidence-in-chief. Without being specific, he told the Court on cross-examination, that he was paid some money in terminal dues, and that he signed acknowledgement and discharge, under duress. He needed the money. He was not satisfied with the computation.
 13. The witness for the Respondent, James Gwara told the Court that the Claimant was paid his terminal dues. He executed acknowledgement and discharge freely. He was paid the sum indicated in the acknowledgement and discharge.
 14. The primary issue in the dispute, is whether the Claimant signed the acknowledgement and discharge voucher voluntarily. If the answer is in the affirmative, the Court does not have any reason to engage into enquiring about other issues.

he Court Finds: -

15. The Claimant signed the discharge voucher on 3rd March 2020, in the presence of 2 witnesses, Hilda Wairimu Githinji and Jones [Ngwalla or Ngila- the handwriting is unclear].
16. He was paid, received and accepted Kshs. 151,970 as the full and final payment of his terminal benefits.
17. He states in the voucher that, "It is hereby mutually agreed that I will not demand any further payment from Cobra Security Co. Limited in relation to my employment, either directly or otherwise."
18. There is no reservation noted by the Claimant in the voucher. There is no indication that he was under any duress. That he needed the money, is not an indicator of duress, or other forms of force, or influence, exercised upon him by the Respondent. Even if he did not need the money, but signed the discharge, nothing would change the voluntary nature of his discharge. He was a Senior Manager, with a proper understanding of employment law, and his terms and conditions of service. He was paid Kshs. 151,970 net terminal benefits, whose details were supplied. He executed a valid discharge agreement.



19. In E&LRC decision *Corrugated Sheets Limited v. Oganyo* [2024] KEELRC 1775 [KLR] [4th July 2024] [Judgment], it was held that where evidence is tendered by the Employee, establishing that execution of the discharge voucher was involuntary, the Court would nullify the contract.
20. In E&LRC [Mombasa] decision, *Stanley Meroka Mosomi v. Severin Sea Lodge Limited*, the Court found that where discharge had voluntarily been executed, the Court does not have ground to warrant revisiting the circumstances surrounding termination, by enquiring whether termination was executed fairly, and for valid reasons.
21. Further, in E&LRC decision, *Jane Vuligwa v. Good Earth Group Limited*, [2021] e-KLR, the Court held that discharge vouchers are binding agreements, particularly where the Employee executes discharge, while seized of all relevant information and knowledge. Vuligwa was a Procurement Manager. The Claimant herein, Samuel Njiru Ireri, was similarly a Senior Manager, holding the position of Operations Manager, Nairobi. He was well-informed and knowledgeable, when he executed discharge.
22. In E&LR Cause No. 473 of 2018, *Vincent Kebari v. Stephen Gikera & Punit Vadgama t/a Gikera & Vadgama Advocates* [2020] KEELRC 426, it was held that the Employee, an Advocate of the High Court of Kenya, executed discharge from the position of information and knowledge, and was bound by the discharge agreement.
23. By way of comparative jurisprudence, the English Employment Appeals Tribunal [EAT], in *Clifford v. IBM United Kingdom Limited* [2024], held that future cases can be waived by Employees in settlement agreements, and that the key factor, is the use of appropriately clear language, within the agreement. The EAT went further, holding that a future claims waiver, may even be valid and enforceable, where employment is continuing. Waiver does not only apply, in termination of employment. A continuing Employees can enter into a valid agreement, with the Employer, waiving the right to bring certain claims, against the Employer.
24. Clifford was a physically challenged Employee of IBM. He went on extended sick leave, in 2008. In 2012, he lodged a complaint that his Employer, did not increase his salary, or pay holiday pay, during the extended sick leave. He argued that this amounted to employment discrimination.
25. In 2013, Clifford and IBM entered a settlement agreement. He was paid 8,685 pounds to settle his complaint about holiday pay. He would be paid around 54,000 pounds per year, until retirement, with any pay increment left to the discretion of the Employer. IBM would also pay pension contribution based on his full salary of about 72,000 pounds. Clifford agreed to waive his right to bring claims about matters raised in his complaints against the Employer; waived his right to bring a long list of other possible claims; waived his right to bring future claims where grievances were ‘substantially similar’ to the subject of the settlement agreement; and waived his right to bring any future claims, connected with the matters subject matter of the settlement agreement.
26. In 2022, nearly 10 years after execution of the settlement agreement, he brought a claim against the Employer, alleging that he was only paid 75% of his previous salary throughout the year, and that he was entitled to 100% pay during periods of annual leave. He also submitted that it was discriminatory, not to have awarded him pay increment while he continued to receive 54,000 pounds a year, until retirement, under the settlement agreement.
27. IBM successfully applied for striking out of the Claim. The EAT struck out the Claim, holding that it did not have a reasonable prospect of success. It was held that Clifford had expressly and validly waived his right to litigate against the Employer, based on the same, or related subject matters. The future



claims waived by Clifford, were held to be matters, which were well-known to the Parties, and which were dealt with by the settlement agreement 10 years back.

28. The Court of Appeal in *Thomas De La Rue v. David Opondo Omutelema* [2013] e-KLR; and *Coastal Bottlers Limited v. Kimathi Mithika* [2018] e-KLR, endorsed the principle that discharge vouchers, voluntarily executed, are valid agreements. They should not however, negate any lawful dues the Employee is entitled to, in terms of Section 18 of the *Employment Act*.
29. Caution must be exercised by the Court, not to uphold discharge /settlement agreements that are not in clear language, and which are not understood by the Employee on execution; agreements which are blighted by other factors such as would render a contract invalid or voidable; or where waiver would violate public policy. An Employee in a sexual harassment complaint, cannot for instance, waive her right to bring future claims for sexual harassment, after settlement of the complaint at the workplace, because such waiver, would leave her exposed to future sexual harassment. It would violate public policy.
30. In the dispute before the Court, the Claimant was paid all his terminal dues. He told the Court that he did not agree with the computation, but never registered his reservation, at the time he executed the discharge. He did not establish that he was entitled to other lawful dues, not factored in what he was paid. He was in a position of information and knowledge, and exercised his will freely, in discharging the Respondent. Nothing in the discharge agreement, can be interpreted as being in violation of the law, or public policy. The Court has no obligation to look beyond the discharge agreement, in disposal of this Claim.

It is ordered: -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF JANUARY 2025.

JAMES RIKA

JUDGE

