



REPUBLIC OF KENYA



KENYA LAW
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**Malonza v Amicabre Travel Services Limited (Cause 494 of 2018)
[2025] KEELRC 197 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 197 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 494 OF 2018
J RIKA, J
JANUARY 31, 2025**

BETWEEN

ANDREW MALONZA CLAIMANT

AND

AMICABRE TRAVEL SERVICES LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 10th April 2018.
2. He avers that he was employed by the Respondent as a driver, on 24th February 2017.
3. He avers that the Respondent terminated his contract on 20th January 2018, without any explanation. He was not given a hearing, in accordance with Section 41 of the *Employment Act*. He found at the end of the month, that there was no salary deposited by the Respondent in his bank account, and considered his contract to have been terminated.
4. He was denied annual leave; notice; and the Respondent made deductions from his monthly salary, without remitting to the relevant bodies.
5. He earned a monthly salary of Kshs. 18,650.
6. He prays for: -
 - a. Notice at Kshs. 18,650.
 - b. Annual leave from the year 2017 at Kshs. 13,055.
 - c. 12 months' salary in compensation for unfair termination at Kshs. 223,800.
Total... Kshs. 255,505.
 - d. Certificate of Service.



- e. Costs.
 - f. Interest.
7. The Respondent filed its Statement of Response, on 3rd September 2018. It is conceded that the Claimant was employed by the Respondent, as pleaded in his Claim.
 8. He was dismissed by the Respondent for flouting workplace policy, by carrying unauthorized passengers. He was taken through the disciplinary process and dismissed.
 9. He signed the Drivers Code of Conduct, when he joined the Respondent. Items 4 and 5 of the Code, prohibited drivers from carrying excessive and unauthorized passengers.
 10. The Respondent issued a memo to drivers, on or about 16th August 2017, cautioning them that it had been noted there was an increase in the number of drivers, found carrying unauthorized passengers. The drivers were warned that if found carrying unauthorized passengers, they would face disciplinary sanctions.
 11. The Respondent had a contract with Kenya Airways, to offer transport services to its Employees, in particular, the flight attendants. The Claimant's duty was to exclusively pick and drop these Employees to and from the airport. The Employees usually wore distinctive uniforms and were easily identifiable.
 12. On 20th January 2018, the Claimant was spotted by the Respondent's Senior Managers, carrying unauthorized passengers, while assigned the duty to carry a Kenya Airways Employee, between the airport and South B estate in Nairobi. The vehicle was overloaded, in breach of the Respondent's policy, concerning unauthorized and excessive passengers.
 13. The Claimant was requested by the Respondent to give a written explanation, on 22nd January 2018. He was uncooperative. He had received previous warnings, on the same subject.
 14. He was required to attend the Respondent's offices on 25th January 2018, to answer to a letter to show cause. He attended, read the letter, but declined to acknowledge receipt. He repeatedly engaged in acts of insubordination.
 15. He was invited for disciplinary hearing, through a letter dated 26th January 2018. He was advised on his right to be accompanied by a representative of his choice. Hearing was scheduled for 29th January 2018. He was called to confirm his attendance. He, in aggravating insubordination, categorically stated that he would not attend hearing.
 16. The Respondent conducted disciplinary hearing in the Claimant's absence, as shown in the minutes on record. The disciplinary committee recommended summary dismissal. He was summarily dismissed on 31st January 2018. He was called to collect his dismissal letter, which again, he declined.
 17. He was asked to clear, to access his tabulated terminal dues. He declined to clear. His annual leave balance was tabulated and included in his final dues. He was fairly and lawfully dismissed, and is not entitled to notice and compensation. He does not have a valid Claim, and his prayers are misplaced.
 18. The Claimant gave evidence and closed his case, on 18th October 2023. Human Resource Manager, Nancy Gathoni Kuria, and Transport Manager Maxlide Mugaisi, gave evidence for the Respondent on 26th July 2024, closing the hearing. The Claim was last mentioned on 6th November 2024, when the Claimant confirmed filing and service of his closing submissions.
 19. The Claimant restated details of his employment with the Respondent, as captured in his Statements of Claim and Witness, on record. He exhibited documents, contained in a list dated 9th April 2018. He



- worked for 1 year. He was alleged to have been found carrying unauthorized passengers. He was aware about the Drivers Code of Conduct. He worked in accordance with the Code.
20. He was not called for disciplinary hearing and was not issued a letter of summary dismissal as alleged. He was told by the Human Resource Manager Nancy, that he was wasting the Respondent's time.
 21. Cross-examined, he confirmed that he was called to the office by Nancy, and told that he was found carrying unauthorized passengers. His contract defined his duties and responsibilities. He was not allowed to carry unauthorized passengers. He did not respond to the letter to show cause, because the Respondent ought to have lodged a complaint with the Police. He did not go on leave. On 7th August 2017, he was unwell and at home. He did not sign the leave form, exhibited by the Respondent.
 22. Nancy relied on her witness statement dated 29th August 2019. She exhibited documents filed by the Respondent [1-12]. The Transport Manager reported to her, that the Claimant was seen carrying unauthorized passengers. The vehicle was also overloaded. He was issued letter to show cause. He read it, but declined to acknowledge receipt. He was invited for disciplinary hearing. He did not attend. The disciplinary committee deliberated and recommended that he is dismissed.
 23. Briefly cross-examined, Nancy told the Court that she has been the Respondent's Human Resource Manager from July 2013. The car driven by the Claimant was registration KBQ 711 C. He refused to signed statements and letters issued to him.
 24. Redirected, Nancy told the Court that the Claimant read the statement on the incident, and left without signing.
 25. Maxlide relied on his witness statement, dated 29th August 2019. Cross-examined, he told the Court that he had been in the position of Transport Manager since the year 2017. He spotted the Claimant carrying unauthorized passengers. The car was overloaded. He was to ferry Kenya Airways crew only. He had previously been warned.
 26. The issues are whether the Claimant's contract was terminated fairly; whether termination was based on valid reason; and whether he merits the remedies pleaded. The applicable law is contained in Sections 41, 43, 44, 45 and 47 of the [Employment Act](#).

The Court Finds: -

27. The Claimant was employed by the Respondent as a driver, on 24th February 2017. He was summarily dismissed through a letter dated 31st January 2018, with effect from 1st February 2018. He worked slightly under 1 year. His salary was Kshs. 18,650 monthly.
28. The letter of summary dismissal states that the Claimant was dismissed for carrying unauthorized passengers, and for compounding this policy violation, by overloading the car. The Claimant was also dismissed for various acts of insubordination, which he was said to have engaged in, in the disciplinary process.
29. Procedure: The Court has found no reason to fault the procedure adopted by the Respondent, leading to the summary dismissal of the Claimant.
30. He was alleged to have been found carrying unauthorized and excess passengers, by the Transport Manager. He had previously been warned about similar violation. He was called to office and required to sign a statement concerning the incident. He refused to sign. He was required to read and acknowledge receipt of the letter to show cause. He read the letter and the statement, but did not acknowledge receipt. He did not give any written explanation.



31. He told the Court that he did not respond, because the Respondent ought to first have filed a complaint with the Police against him, for carrying unauthorized and excess passengers.
32. He was called to attend disciplinary hearing. He was advised of his right to be accompanied. He did not attend hearing, in keeping with his deviant workplace behaviour. The Court did not believe him, when he explained that he did not receive the disciplinary hearing invitation. The Respondent correctly proceeded with the disciplinary hearing as scheduled, in the absence of the Claimant. A recommendation was made to summarily dismiss him. He was summarily dismissed, but again, refused to receive the letter of summary dismissal.
33. He was issued a clearance form, which he ignored. His terminal dues were tabulated, and would be paid upon his clearance. He did not clear.
34. The procedure adopted by the Respondent was fair, and in conformity with the minimum statutory standards of fairness, under Sections 41 and 45 of the *Employment Act* 2007.
35. Validity of Reason [s]: The Claimant admitted that he was aware about the Drivers Code of Conduct. There was sufficient evidence from the 2 witnesses for the Respondent, to confirm that on 20th January 2018, he was found by the Transport Manager, not only carrying unauthorized passengers, but also carrying excessive passengers.
36. He was aware about the Drivers Code of Conduct. His contract did not allow him to turn the Respondent's vehicle into a matatu. He was aware about the memo issued by the Respondent on 16th August 2017, warning against misuse of the Respondent's vehicles.
37. On the particular occasion, he was to transport Kenya Airways crew, between the airport and South B estate. He loaded [overloaded] other passengers, which would go a long way, in sabotaging the contract between the Respondent and Kenya Airways, for exclusive provision of transport services. He subjected Kenya Airways crew, to travel-by-matatu experience. He was not concerned about the demand of flight schedules, which binds Kenya Airways staff to be at work promptly.
38. It is also correct that the Claimant compounded his violations of the Drivers Code of Conduct, and the fundamental breach of his contract, by engaging in acts of insubordination, when placed through the disciplinary process. He did not acknowledge or respond to the letter to show cause; the statements under enquiry; and the disciplinary hearing invitation.
39. Instead of answering to the letter to show cause, the Claimant suggested that the Respondent reports his employment offences to the Police first. This was an Employee who was prone to hard-core insubordination, and scornful of his Employer, at every opportunity.
40. He was correctly found to have engaged in acts of gross misconduct under Section 44 [4] of the *Employment Act*. He violated the Drivers Code of Conduct, and breached his contract of employment. The Respondent demonstrated valid reasons, to justify termination, in accordance with Sections 43, 44, 45 and 47 of the *Employment Act*.
41. Remedies: The remedies pleaded by the Claimant are not merited. He was dismissed fairly and on valid grounds. He was offered terminal dues, including pending leave of 11 days. He did not clear, to enable the Respondent release his cheque.

It is ordered: -

- a. The Claim has no merit and is declined.



- b. The Claimant is at liberty to clear with the Respondent, and collect his terminal dues as tabulated.
- c. 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**

