



Njoroge v Norbrook Kenya Limited (Employment and Labour Relations Cause E496 of 2023) [2025] KEELRC 152 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 152 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E496 OF 2023**

**BOM MANANI, J
JANUARY 30, 2025**

BETWEEN

PERIS WANJIRU NJOROGE CLAIMANT

AND

NORBROOK KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed this suit to challenge the Respondent's decision to terminate her contract of service. She contends that the decision was without justification and is therefore unlawful.
2. Conversely, the Respondent contends that it terminated the Claimant's services because of her failure to adhere to its regulations whilst discharging her duties. As such, it avers that the decision was justified.

Claimant's Case

3. The Claimant avers that the Respondent hired her services as a Sales Manager from July 2007. She contends that because of her diligent service, the Respondent promoted her to the position of Area Sales Manager.
4. The Claimant avers that on 10th June 2022, the Respondent issued her with a notice to show cause letter in which it made outrageous accusations against her. She contends that through the letter, the Respondent also invited her to a disciplinary hearing scheduled for 16th June 2022.
5. The Claimant avers that the Respondent accused her of inter alia: failure to disclose to it information which was given to her in the course of her work thus exposing it (the Respondent) to unnecessary risk; failure to advise its (the Respondent's) distributors regarding its debt handling regulations; failure to take action against her direct report after she discovered that he was trading in non-approved accounts/products; and willful failure to perform her duties in accordance with the laid down procedures.



6. The Claimant contends that she responded to the show cause letter. She avers that she provided a cogent account of the circumstances surrounding the malicious accusations which the Respondent had made against her.
7. The Claimant says that she had two technical representatives working under her. She avers that these two used to report directly to her. She further contends that the role of the two was to establish markets for the Respondent's distributors.
8. The Claimant avers that whilst discharging the aforesaid function, one of the technical representatives took products worth Kenya Shillings One Million and Six Hundred Thousand from one of the distributors without paying for them. She contends that the technical representative and the distributor entered into an agreement on how the technical representative was to pay the aforesaid amount of money. She avers that this agreement was entered into without her involvement.
9. The Claimant contends that the technical representative began paying the outstanding amount to the distributor in line with the agreement between them. However, he subsequently defaulted on the payments due to the economic challenges which had been occasioned by the effects of the Covid 19 pandemic.
10. The Claimant avers that when she began following up the matter, she discovered that the technical representative and distributor in question had entered into several other similar credit agreements. She avers that all these agreements were concluded between the two without her knowledge and involvement.
11. The Claimant contends that technical representatives who took products from distributors for sale were required to obtain clearance forms from the distributors showing that there was no outstanding debt between them on account of such products. She contends that the technical representatives were required to present these forms to her to evidence the financial state of affairs between them and the distributors.
12. The Claimant contends that the technical representative in question presented clearance forms from the distributor showing that he had no debt arising from the products he had taken from the distributor. She contends that she took these forms for gospel truth and approved them for onward transmission to the Respondent's management.
13. The Claimant contends that distributors had discretion to give credit to customers and technical representatives. She contends that in view of this, she had no powers to stop them (the distributors) from giving such credit.
14. The Claimant further contends that the distributor and technical representative in the instant case entered into an agreement on how the debt in question was to be paid. As such, the Respondent did not suffer any loss.
15. The Claimant denies that she had initial knowledge of the debt or the agreement to repay it. She contends that this was a matter which was within the exclusive knowledge of the distributor and the technical representative. Yet, the Respondent sought to burden her with the issue after the technical representative resigned without settling the debt.
16. The Claimant contends that the disciplinary proceedings which the Respondent subjected her to were contrived to justify a predetermined outcome. She contends that the Respondent had already made up its mind to terminate her employment.



17. The Claimant avers that the Respondent did not grant her one (1) rest day every week from the time she was employed until the time her contract was terminated. At the same time, the Respondent allegedly did not give her monetary compensation for the rest days she was entitled to. As such, she prays for an order to monetize the aforesaid rest days and remit the amount to her.
18. The Claimant also contends that she had outstanding leave days when her contract was terminated. As such, she prays for leave commutation for the untaken leave days.
19. The Claimant further claims that the Respondent frustrated her clearance from the workplace after her contract was terminated thus forcing her to incur added costs in the process. As such, she claims for reimbursement of Ksh. 50,000.00 allegedly incurred on this account.

Respondent's Case

20. The Respondent admits that the Claimant was its employee. It confirms that at the time her contract was terminated, she was serving in the position of Area Sales Manager.
21. The Respondent contends that it has sales regulations which control interactions between its salespersons, distributors and stockists. It contends that the regulations require that all products picked by its salespersons from its distributors on behalf of customers must be documented by: invoicing the customers for whom the products have been collected; and the salespersons signing a delivery note for the products.
22. The Respondent contends that the regulations also obligate the salesperson to collect payment for the products either in cash or cheque form once he has delivered them to the customer. It contends that the salesperson is required to remit the amount collected to the distributor within seven days from the date of collection of the goods from the distributor on behalf of the customer. Once this is done, the distributor is required to issue the customer with a receipt to support the transaction.
23. The Respondent contends that a sale transaction relating to products which have been entrusted with a distributor is deemed to be between the distributor and the purchasing customer. As such, only the distributor has discretion to extend credit in respect of such a sale. It contends that its employees have no discretion to grant credit for this type of sale.
24. The Respondent further contends that all transactions between its distributors and their customers must be tracked through documentation. It contends that the distributor and salesperson are required to sign the distribution tracking form at the point of collection of the goods and at the point of payments. Thereafter, the salesperson is to handover a copy of the form to its (the Respondent's) Sales and Marketing Manager within seven days of the transaction. It further contends that if a customer is unable to pay for products delivered to him by its distributor within seven days of such delivery, he (the customer) is required to return the goods to the distributor.
25. The Respondent contends that its members of staff are required to adhere to the above regulations. It avers that failure by an employee to adhere to the regulations constitutes a grave infraction which will attract disciplinary action.
26. The Respondent contends that the Claimant failed to adhere to these regulations whilst discharging her duties as its Area Sales Manager. It avers that one of its salespersons working under the Claimant's supervision picked products from one of its distributors in violation of the regulations. It contends that the said employee took goods worth Ksh. 1,611,678.00 from the distributor on credit terms allegedly on behalf of a customer but did not settle the invoice within the seven days' window provided in the regulations.



27. The Respondent contends that although the Claimant became aware of this transaction in June 2021, she did not escalate the matter to its management in breach of its policies. The Respondent contends that the Claimant signed a clearance form for the salesperson purporting that he had no outstanding sales liabilities which had exceeded the seven days' window when she knew this to be untrue.
28. The Respondent avers that the Claimant was responsible for the propriety of transactions between distributors and salespersons operating within her jurisdiction. As such, she was culpable for turning a blind eye to the impugned transaction.
29. The Respondent contends that the Claimant's conduct warranted the taking of disciplinary action against her. Consequently, it avers that the Claimant was issued with a notice to show cause letter requiring her to show cause why disciplinary action should not be taken against her for breaching its policies.
30. The Respondent avers that the Claimant was invited to a disciplinary hearing on 16th June 2022 where she was afforded a hearing. It contends that during the hearing, the Claimant admitted that she was aware of the impugned debt but had not flagged the matter as required by the rules. It further contends that the Claimant admitted her mistake and apologized.
31. The Respondent contends that the disciplinary action against the Claimant was prompted by valid reasons and was undertaken in accordance with fair procedure. As such, it denies that the process was actuated by malice.
32. The Respondent avers that the Claimant has no outstanding rest days. It contends that the Claimant has not given particulars of the rest days she allegedly did not utilize. As such, it prays that this claim be disallowed.
33. The Respondent further avers that the Claimant's outstanding leave days were computed and commuted on her exit. As such, it contends that her claim for accrued leave should be disallowed.

Issues for Determination

34. After evaluating the pleadings, evidence and submissions on record and the law on the subject, I am of the view that the following are the issues which arise for determination in the suit:-
 - a. Whether the Respondent legitimately terminated the Claimant's contract of service.
 - b. Whether the Claimant is entitled to the reliefs which she seeks through this action.'

Analysis

35. The parties to the action agree that at the time of termination of the Claimant's contract, she was serving as the Respondent's Area Sales Manager. They further agree that the Respondent had other employees referred to as salespersons or technical representatives whose mandate was to explore markets for its products which had been entrusted with its appointed distributors. There is also consensus that part of the Claimant's mandate as the Respondent's Area Sales Manager was to supervise the salespersons or technical representatives.
36. The Respondent contends that the Claimant failed to discharge her aforesaid function when she neglected to take action against a salesperson who discharged his duties in contravention of its regulations. It contends that the said salesperson took products worth Ksh. 1,611,678.00 from its distributor allegedly on behalf of a customer but failed to pay for them within the timeframe provided in the regulations. The Respondent further contends that although the Claimant became aware of



- this misconduct, she did not escalate the matter to its management for appropriate action. Instead, she aided in the concealment of the infraction by facilitating the presentation to its management of a distributor tracking form in respect of the transaction purporting that there was no outstanding liability when she knew this to have been untrue.
37. The Respondent relies on its regulations which set out control measures for transactions involving its distributors, salespersons and stockists to anchor its case. The regulations, inter alia, provide as follows:-
- a. All goods picked from a distributor's point by a Norbrook salesperson must bear full documentation as required for a normal business transaction including invoice to the intended distributor's customer and delivery note signed by the Norbrook salesperson picking the goods.
 - b. The Norbrook salesperson must collect payment (cash or cheque as agreed with the distributor) upon delivery of goods to the specific distributor's customer and in turn hand it over to the distributor as soon as possible (but not later than seven days from the delivery date). A receipt should be given to the customer for all payments.
 - c. The contract for the sale of goods is between the distributor and the customer and it is the distributor's responsibility to decide if a customer can receive credit. Therefore, Norbrook staff do not have any discretion with regard to credit terms and if a customer is unable to pay for the goods when delivered, the goods must be returned to the distributor.
 - d. All transactions at the distributor's point must be recorded on the distributor's tracking form in duplicate, signed for together by the distributor and Norbrook salesperson for both picking of goods and payments received. All accounts must be fully settled within 7 days from the date of invoice. The distributor tracking form must be sent out by the Norbrook salesperson at the end of each week to reach Norbrook Sales and Marketing Manager's office on Monday (the salesperson is encouraged to retain a photo copy for record).
38. Evidently, the above regulations obligated the salespersons to ensure that delivery notes and invoices for any merchandise which they collected from the Respondent's distributors were prepared and executed to evidence the transactions. Further, the salespersons were to ensure that such merchandise were paid for within seven (7) days of the transaction. If this was not done, they were to ensure that the customer returned the goods to the distributor.
39. The Claimant concedes that the salespersons were working under her supervision. Therefore, she was obligated to ensure that they complied with these regulations.
40. The Claimant is said to have failed to ensure that the salesperson who was involved in the impugned transaction adhered to these regulations. As such, she was accused of, inter alia, dereliction of duty.
41. In the Claimant's response to the notice to show cause, she admitted that indeed the salesperson in question had incurred a debt of Ksh. 1,611,678.00. However, she contended that he (the salesperson) had agreed with the distributor on how to settle the debt and the two had entered into an enforceable agreement on the matter.
42. The Claimant further stated that although she informed the distributor that the matter required to be escalated to the Respondent, the distributor allegedly threatened to withdraw business if she made the report. She said that after weighing the matter, she elected to hold onto the decision to report the incident to the Respondent in order to avoid the distributor withdrawing business.
43. The Claimant expressed a similar view in her email to the Respondent dated 28th May 2022. She said that when she advised the distributor in June 2021 to report the matter, the distributor's director



expressed strong opposition to the proposal because it was going to jeopardize the salesperson's job. She averred that the distributor indicated that the two had entered into an arrangement on how to settle the matter.

44. During the disciplinary hearing, the Claimant reiterated the same sentiments. She further admitted that she accepted a distributor tracking form from the salesperson purporting that he had no outstanding account with the distributor when she knew this to have been incorrect. She however said that she did not find this suspicious because she was aware that the distributor and salesperson had entered into a binding agreement on how the latter was to pay the outstanding debt. She conceded that her decision not to report the incident was due to poor judgment on her part, a decision which she regretted.
45. What emerges from the above evidence is that although the Claimant may not have initially been aware of the impugned transaction between the salesperson and distributor, she subsequently learned of it. As a matter of fact and if her email to the Respondent dated 28th May 2022 is anything to go by, she eventually got to learn of the transaction in June 2021.
46. The evidence on record also confirms that the Claimant was aware that the conduct of the salesperson and distributor contravened the Respondent's regulations. This is why she informed the distributor in June 2021 that the matter needed to be reported to the Respondent.
47. For some reason and despite the Claimant's knowledge of what was required of her, she succumbed to the manipulation by the distributor and decided to hold the matter in abeyance. As such, she failed to report the incident to the Respondent.
48. The Claimant's decision to accept a distributor tracking form from the salesperson suggesting that the latter had no outstanding debt with the distributor when she knew this to have been untrue was a clear attempt by her to conceal the impugned transaction from the Respondent. This cast aspersions on her integrity as an employee.
49. This is where she went wrong. Her action violated her duty to be loyal to her employer.
50. In her documents filed in court, it is clear that the Claimant was aware that her conduct violated the Respondent's regulations. That is why she regretted her decision during the disciplinary hearing.
51. Having regard to the foregoing, it is apparent that the Respondent had acceptable grounds to terminate the Claimant's contract. As such, I find that the Respondent had substantive justification to anchor its decision.
52. The evidence on record shows that when the Respondent learned that the Claimant may have committed the various infractions which she was accused of, it issued her with a notice to show cause letter dated 10th June 2022. In turn, the Claimant responded to the show cause through her letter of 15th June 2022.
53. The Respondent invited the Claimant for a disciplinary hearing through its show cause letter of 10th June 2022. It notified her that her response to the show cause was to be considered during the session which was scheduled for 16th June 2022.
54. The evidence on record further shows that the disciplinary session was convened as scheduled. It is also apparent that the Claimant was heard in her defense before the decision to terminate her contract was made.



55. Having regard to the foregoing, I am satisfied that the Respondent observed the procedural strictures prescribed by law in the process that resulted in the termination of the Claimant's contract of service. As such, I find that the Respondent accorded the Claimant procedural fairness.
56. The Claimant has prayed for accrued leave pay for the duration that she was in the Respondent's employment. She contends that for all the while that she served the Respondent, it did not allow her to take her leave. As such, she is entitled to leave commutation.
57. It is noteworthy the Claimant's claim for accrued leave was contested by the Respondent (see paragraphs 18 and 20 of the Statement of Defense). The Respondent stated that the claim was not tenable since the Claimant was paid for her outstanding leave days as part of her exit dues.
58. It is also noteworthy that before the Claimant moved the court in this action, she issued a demand letter to the Respondent dated 24th August 2022. In the letter, she made the same demand for accrued leave days.
59. The record shows that the Respondent responded to the aforesaid letter on 31st August 2022. In the response the Respondent denied the claim for accrued leave contending that it had been settled. It is noteworthy that the Claimant did not respond to the Respondent's letter to deny its contention that the claim had been settled.
60. During trial, the Respondent presented the Claimant's pay slip for June 2022 to fortify its earlier assertion that it had settled the leave claim. The slip suggests that a sum of Ksh. 139,805.95 was paid to the Claimant to cover accrued leave days.
61. It is curious that despite the Respondent's concerted effort to show that it paid the Claimant the above amount to clear her accrued leave dues, she did not make a direct rebuttal of this contention. Instead, she sought to paint a general picture of not having received any payments on this account.
62. Further, the Claimant exhibited worrying ambivalence on the subject. In her Statement of Claim, she averred that the Respondent was indebted to her on account of accrued leave for a total of fourteen (14) years. However, when she testified in court, she changed her position on the subject and put the years in respect of which she was pursuing the claim for accrued leave to four (4). In the face of such ambivalence, the court cannot be expected to second-guess what the Claimant's actual claim in this respect is.
63. This ambivalence by the Claimant casts aspersions on her truthfulness as a witness. The conduct leaves the court with an image of a litigant who may have been less than candid on critical aspects of her case. For this reason, I am inclined to believe the Respondent's position that the Claimant's leave claim was resolved contrary to her assertion that it was not.
64. The Claimant has prayed for gratuity. However, according to the pay slip for June 2022 which was presented in evidence, it is apparent that she was a registered contributor to the National Social Security Fund where the Respondent was making monthly remittances on her behalf. As such and in terms of section 35 (6) (d) of the *Employment Act*, she is excluded from pursuing this claim.
65. The Claimant has also claimed for unpaid rest days. She contends that for the duration she worked for the Respondent she did not take any rest days.
66. However, the Respondent has denied the claim. In the Statement of Defense, the Respondent contends that the claim is not particularized.



67. In the sworn witness statement by the Respondent's witness, she avers that the Claimant used to work for six days a week. As such, her claim for rest days is unjustified.
68. I have considered this claim against the court's findings regarding the credibility of the Claimant's evidence on the issue of her accrued leave days. She presented contradictory positions regarding the period of leave days that she was entitled to claim in her Memorandum of Claim and oral evidence in court.
69. Having regard to the aforesaid credibility concerns about the Claimant's evidence, the court is hesitant to believe her assertion that she did not take her rest days. As such, I decline this claim.
70. The Claimant has also claimed reimbursement of Ksh. 50,000.00 for expenses she allegedly incurred in clearing with the Respondent's distributors. However, she did not provide proof of having incurred this amount. She described the amount as an estimate of her expenses in this respect.
71. A claim for reimbursement is in the nature of a special damage claim. As such, it requires specific proof through production of receipts.
72. The Claimant did not meet this threshold for proving the aforesaid claim. As such, it must fail.

Determination

73. Based on the foregoing analysis, I arrive at the conclusion that the Claimant's suit against the Respondent is devoid of merit.
74. As such, it is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 30TH DAY OF JANUARY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

