



Onyango v Africa International University (Employment and Labour Relations Cause E6570 of 2020) [2025] KEELRC 148 (KLR) (30 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 148 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6570 OF 2020
BOM MANANI, J
JANUARY 30, 2025**

BETWEEN
VIOLET ADHIAMBO ONYANGO CLAIMANT
AND
AFRICA INTERNATIONAL UNIVERSITY RESPONDENT

JUDGMENT

Introduction

1. This action challenges the Respondent’s decision to terminate the Claimant’s contract of service. Although the Memorandum of Claim is not elegantly crafted and has conflated a number of issues, it demonstrates that the central contest between the parties revolves around the legitimacy of the Respondent’s decision to terminate the contract between them. Whilst the Claimant avers that the decision was unlawful, the Respondent holds a contrary view.

Claimant’s Case

2. The Claimant contends that the Respondent employed her in the position of Hospitality Manager on an indefinite term contract as from 18th August 2014. She avers that the two agreed on her monthly remuneration at Ksh. 185,000.00 before the figure was revised to Ksh. 196,384.00.
3. The Claimant avers that on 11th December 2018, the Respondent’s management informed her that her contract was to be converted from indefinite to fixed term for a period of three years. She contends that the Respondent informed her that this decision was informed by the fact that the rest of the staff in the hospitality department and the industry generally were on fixed term contracts. As such, it was necessary to convert her contract for consistency.
4. The Claimant contends that the Respondent’s management further informed her that she was to be given key performance indicators (KPIs) to aid her in achieving the set targets. She claims that



- the management informed her that going forward, she was going to work under a new hospitality committee which expected heightened results.
5. The Claimant avers that she asked the management to provide her with minutes of the meeting in which the decision to convert her contract from indefinite to fixed term was made. However, the management allegedly informed her that the minutes could not be shared with her. She further contends that the management informed her that the decision to convert her contract was final and she had to sign a new contract of service.
 6. The Claimant avers that she informed the management that she required time to consult on the matter. As such, she was not prepared to sign the contract immediately.
 7. The Claimant contends that on 20th January 2019, her supervisor sent her an email with the KPIs and asked for her input on them. She contends that the supervisor asked her to meet him at the close of that week to sign the document.
 8. The Claimant avers that during their aforesaid meeting she informed the supervisor that she had concerns with some of the proposed targets and required the matter to be addressed before she could sign the document. However, he allegedly declined her request emphasizing the need to sign the documents as soon as possible.
 9. The Claimant contends that the supervisor informed her that the hospitality department was in need of urgent turnaround. As such, she had to make up her mind to execute the documents without further delay or face action from the Respondent.
 10. The Claimant asserts that she felt pressured by the Respondent to execute the documents without her input. As such, she sought legal advice on the matter.
 11. The Claimant avers that on 13th February 2019, the Human Resource Manager visited her office and demanded that she signs off the KPIs by 5 PM on 15th February 2019 even if she was yet to sign the new contract. She contends that she yielded to the pressure and sent her supervisor comments on the targets which she felt were too high to attain.
 12. The Claimant avers that her supervisor summoned her to a meeting on 20th February 2019 to review the KPIs. She contends that although she attended the meeting, the two were unable to agree on the KPIs.
 13. The Claimant contends that the supervisor insisted that she signs the instrument without inserting comments on it. Yet, she felt that it was necessary to inscribe her reservations on the instrument for purposes of future reviews.
 14. The Claimant contends that the Respondent informed her that her salary would be withheld if she did not sign the instruments. She contends that her salary had indeed been withheld for about four (4) months due to their disagreement on the new contract and KPIs.
 15. The Claimant says that her lawyers wrote to the Respondent beseeching it not to force her to sign the contract. However, the Respondent's management was allegedly unrelenting on the matter. She avers that the Respondent ignored the aforesaid letter and insisted that she signs the documents.
 16. The Claimant avers that on 5th March 2019, the Respondent issued her with a letter directing her to sign the new contract and KIPs by 6th March 2019. She contends that the Respondent's Human Resource Manager told her that she had been afforded sufficient time to review the documents and that she had up to 6th March 2019 to sign and hand them back to him.



17. The Claimant avers that the letter appeared to have drawn the red line for her on the matter. She contends that the management castigated her for divulging confidential information to her advocates. In her view, the Respondent's actions were veiled threats meant to discourage her from consulting her lawyers on the matter.
18. The Claimant contends that because of these threats, she sought guidance from the Respondent's Chaplain who advised her to sign the instruments in order to avoid losing her job. She avers that it is only after she got this counsel that she signed the documents.
19. The Claimant maintains that the new contract was signed through threats and coercion. As such, she contends that she executed the instruments against her free will.
20. The Claimant avers that the KPIs she was given were to cover a period of eight months running from 1st January 2019 until the end of August 2019. Yet, the Respondent forced her to sign them in March 2019 giving her only five months to achieve the targets. She avers that she expressed her reservations on the instrument by highlighting the problem areas.
21. The Claimant contends that the Respondent had an existing appraisal mechanism for all employees. However, the KPI system which was introduced later appeared to have targeted her alone. She contends that this was meant to trap and victimize her.
22. The Claimant asserts that after the parties signed the new contract, she was subjected to heightened hostility at the workplace. She for instance contends that the Respondent allowed other employees to take over some of her responsibilities including signing of purchase requisitions. She avers that this interference affected the running of her department with supplies being mismanaged resulting in complaints by clients.
23. The Claimant avers that in a strange twist, the Respondent begun using the complaints by clients as a weapon against her. She contends that this aggravated the hostility and intimidation that was being visited upon her.
24. The Claimant avers that the Respondent replaced her accountant with an alleged crony of her supervisor. She contends that this was a strategy to frustrate her work.
25. The Claimant contends that on 27th May 2020, the Respondent's management asked her to do a self-appraisal of her work. She avers that the Respondent asked her to meet her supervisor over the evaluation on 28th May 2020 which she did. She further avers that her supervisor evaluated her work and gave her very low marks.
26. She contends that although she had missed her target by a small margin, she was massively underscored. She also avers that although some activities such as customer survey were not conducted, the Respondent somehow evaluated her on them. As such, she contends that the evaluation was unfair.
27. The Claimant contends that she was eventually assessed at 35.55%. She contends that she felt she had been grossly underscored. As such, she requested for an independent evaluator but this was not granted. She avers that her supervisor informed her that the Respondent's regulations did not provide for review of the evaluation process.
28. The Claimant contends that after she left her supervisor's office, the Respondent issued her with a letter terminating her contract on the same day. She contends that although she lodged an appeal against the verdict, the Respondent said its decision was final. She avers that the Respondent did not consider her grounds of appeal.



29. The Claimant believes that the events preceding the termination of her contract were contrived to relieve her of her duties prematurely. She contends that the Respondent advertised her position as soon as her employment was terminated.
30. In the alternative, the Claimant believes that she was a victim of retrenchment. She believes that this was the case because although the Respondent advertised her position, this was done at a lower rank of supervisor and not manager suggesting that her position had been rendered superfluous. She further avers that the contracts for all staff working at the cafeteria were not renewed, a clear sign that the Respondent was downsizing. As such, she asserts that the Respondent ought to have invoked the redundancy procedure to close her contract.

Respondent's Case

31. On its part, the Respondent admits that the Claimant was employed as its Hospitality Manager initially drawing a salary of Ksh. 147,532.00 per month. It avers that the salary was subsequently increased to Ksh. 196,384.00.
32. The Respondent contends that in January 2019, the parties mutually agreed to vary the term of the Claimant's contract from indefinite to fixed term. As a result, they allegedly entered into a new contract for a period of three year starting 1st January 2019.
33. The Respondent contends that the new contract had an exit clause. It contends that the clause allowed either party to terminate the contract by giving the other three months' notice to that effect. It further contends that its Human Resource Manual complemented this provision by underscoring the freedom of the parties to terminate the contract by invoking the notice clause.
34. The Respondent contends that it invoked the notice provisions in the contract and Human Resource Manual to terminate the contract as is permitted by section 35 of the *Employment Act*. As such, the contract between the parties was lawfully terminated.
35. The Respondent contends that it asked the Claimant to utilize her accrued leave days during the notice period and undertake the clearance process in order to be paid her terminal dues. It contends that whilst the Claimant utilized her accrued leave days, she did not undertake the clearance process.
36. The Respondent contends that the Claimant challenged the decision to terminate her contract on the ground that she was not furnished with reasons for terminating the contract. It contends that it informed her that the decision was not premised on disciplinary grounds. Rather, it was based on the termination clause in the contract which did not require prior warning, reasons or hearing.
37. The Respondent denies that the Claimant was subjected to a hostile work environment as she claims. It denies her assertion that she was a victim of constructive dismissal from employment.
38. The Respondent reiterates that the decision to terminate the Claimant's employment was legitimate. As such, it contends that she is not entitled to the reliefs that she seeks through these proceedings.

Issues for Determination

39. After evaluating the pleadings and evidence on record, it is apparent that the following are the issues for determination in the cause:-
 - a. Whether the decision to terminate the Claimant's contract of service was legitimate.
 - b. Whether the Claimant is entitled to the reliefs that she seeks through these proceedings.



Analysis

40. The event which triggered this litigation was the Respondent's decision to terminate the Claimant's contract of service. The decision was communicated through the Respondent's letter dated 28th May 2020. The letter is reproduced here-below for its full import and tenor. It reads as follows:-

“M/S Violet Adiambo Onyango

Box 67212 00200

Nairobi

Dear Violet,

RE: Termination of Services

On behalf of the university management, I wish to thank you for the years that God enabled you to serve at AIU.

We however would like to terminate your services as the Hospitality Manager. In compliance to contractual obligation on the part of the University, we now give you three months' notice effective June 1st 2020. Your last day in office will be 31st August 2020.

You will be required to take all your leave days during this period and to give a detailed handover note[s] and to handover all official items in your possession to your supervisor. You will also be required to fill the attached clearance form to facilitate the finance office to clear your dues in good time.

We wish you God's blessings in your future endeavours.

Sincerely

Nelson Kilonzo

Administration and HR Manager

Cc: Vice Chancellor

Finance Manager”

41. From this letter, it is apparent that the Respondent did not state the reasons for its decision to terminate the Claimant's contract of service. All it did was to indicate that the decision was based on the notice requirement in the contractual documents between the parties.
42. Although during her oral testimony in court, the Respondent's witness sought to blame the Covid pandemic for the Claimant's fate, it is noteworthy that her contention in this respect was not alluded to both in her written witness statement and the Statement of Defense that was filed. As such, the court cannot rely on this contention to find that the Respondent provided the Claimant with reasons for its decision since parties are bound by their pleadings and cannot advance a cause or defense that is not pleaded.
43. The pleasure doctrine under which an employer has a blank cheque to terminate an employee's contract of service without assigning reasons for the decision held sway in Kenya under the retired employment law regime. Under that regime, it was sufficient for the employer to simply issue an employee with notice without more to validly terminate the contract.



44. However, with the enactment of the new employment law regime in 2007, this position changed. Henceforth, the doctrine became of little significance in the country's employment law architecture. Overall, employers can only terminate a contract of service with cause.
45. Alluding to this matter, George Ogembo, in his publication entitled "Employment Law Guide for Employers" second edition (page 430) states as follows:-
- "As a democracy, Kenya applies the pleasure doctrine differently from that in the feudal set up. The need to furnish reasons in both public and private employment has relatively abolished the pleasure doctrine in Kenya. *The Constitution* of Kenya and the *Employment Act* grant employees security of tenure and their employment cannot be terminated without valid and just reasons."
46. Expressing the same view, this court stated as follows in the case of *Livoi v Macnaughton Limited* (Employment and Labour Relations Cause E410 of 2021) [2023] KEELRC 2630 (KLR) (26 October 2023) (Judgment):-
- "Upon phasing out of the previous statutory framework on employment in Kenya in 2007, the doctrine of employment at will in the country's laws was done away with. In effect, an employer is no longer entitled to terminate an employee's contract of service at will.
- Except where an employee agrees to mutual separation, the employer can only terminate a contract of service with cause. In addition, the employer must ensure due process in releasing the employee.
- Even in instances where the letter of appointment provides for notice to terminate the contract, this does not absolve the employer of the twin responsibilities of ensuring that: there is a valid reason to terminate the contract; and the procedure for release of the employee that is inscribed in law is adhered to."
47. The Respondent contends that it terminated the contract in question by invoking the notice clause in the contract as read with its Human Resource Manual and section 35 of the *Employment Act*. It contends that it had no obligation to furnish the Claimant with the reasons for its decision.
48. I do not think that provisions of the *Employment Act* should be applied in isolation of each other. The Act needs to be conceptualized as a whole. A holistic reading of the Act implies that apart from the employer complying with the requirements with respect to notice to terminate a contract of service, he must provide a justification for his decision.
49. Alluding to this requirement, the Court of Appeal in the case of *Kenfreight (E.A.) Limited v Benson K.Nguti* [2016] eKLR expressed itself as follows:-
- "Apart from issuing proper notice according to the contract (or payment in lieu of notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service is taken."
50. It is noteworthy that in the *Kenfreight* case, the proposition of the employer was that its decision to terminate the contract was based on the contractual clause on notice. As such and having complied



with the clause, it was under no obligation to give the employee reasons for its decision. The court rejected this thesis.

51. This is the very same argument which the Respondent seeks to advance in this cause. Based on the decision in the Kenfreight case which is binding on this court, this thesis is rejected.
52. The only scenarios which permit termination of a contract of service without providing reasons to support the decision are: when parties to the contract have mutually agreed to separate; and where the contract has come to a close through effluxion of time. In such instances, the employer has no obligation to justify closure of the contract.
53. It is also worth of note that the contract between the parties was terminated on 28th May 2020, after the *Fair Administrative Action Act* which is intended to breathe life into the right to fair administrative action under article 47 of *the Constitution* had come into force. At paragraph 12 of the Statement of Claim, the Claimant contends that the Respondent's actions violated this right.
54. The *Fair Administrative Action Act* has wide application. Section 3 (c) thereof provides as follows:-

“This Act applies to all state and non-state agencies, including any person whose action, omission or decision affects the legal rights or interests of any person to whom such action, omission or decision relates.”
55. The Respondent's decision to terminate the Claimant's employment affected the latter's legal rights and interests. As such, the decision was subject to the provisions of the Act.
56. Under section 4 of the Act, every person who is likely to be affected by a decision is entitled to be given written reasons that informed the decision. Further, the affected individual is entitled to be heard on the matter before the decision is made.
57. Consequently, the Claimant was not only entitled to have been notified of the reasons that informed the Respondent's decision to terminate her contract but to also have been afforded an opportunity to respond the reasons before the decision was made. From the record, this was not done. As such, termination of her contract, albeit with notice to her, violated the aforesaid requirements of law and is in this context declared unfair and unlawful.
58. I am aware of the debate regarding whether provisions of the *Fair Administrative Action Act* apply to private law relations. Whilst some courts hold the position that the Act is inapplicable, the general thinking is that it does apply. In, the case of Nyagwa Meshack Onindo & 5 others v Teachers Service Commission & 2 others [2020] eKLR, the court quoted with approval the Court of Appeal position on the matter which was expressed as follows:-

“As correctly observed by the Counsel for the Petitioners and claimants, the jurisprudence emerging from our courts is that the *Fair Administrative Action Act* and Article 47 of *the Constitution* apply to contracts of employment. In Naomi Connie Lusiche vs. Barclays Bank of Kenya [2018] eKLR the Court of Appeal held: -

“...it cannot be gainsaid that the FAA-Act applies to private contracts including contracts of employment. In fact, almost all unfair termination claims usually revolve around fairness of procedure for termination and the right to be heard before the termination is carried out. Further, part IV of the *Employment Act* on termination and dismissal, especially section 41, 42, 44, 45, 46 and 47 are all about fairness of the reason and process of termination of employment.”



Determination

59. Having arrived at the foregoing conclusions, I make the following orders:-

- a. I find and declare that the Respondent's decision to terminate the Claimant's contract of service was in breach of the law and was therefore unfair and unlawful.
- b. I award the Claimant compensation for the unfair termination of her contract which is equivalent to her gross salary for five (5) months, that is to say, Ksh. 196,384.00 x 5 = Ksh. 981,920.00. In making this award, I have considered the duration of the Claimant's service to the Respondent which spanned over five years, a considerably long time.
- c. The amount awarded shall be subject to the applicable statutory deductions.
- d. The amount awarded attracts interest at court rates from the date of this decision.
- e. The Claimant is awarded costs of the case.
- f. The Respondent is ordered to issue the Claimant with a Certificate of Service in terms of section 51 of the *Employment Act*.

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

