



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kyunguti v Selective Safaris (Albatros Travel) (Cause 289 of 2019)
[2025] KEELRC 2 (KLR) (16 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 289 OF 2019
S RADIDO, J
JANUARY 16, 2025**

BETWEEN

ELIZABETH KYUNGUTI CLAIMANT

AND

SELECTIVE SAFARIS (ALBATROS TRAVEL) RESPONDENT

JUDGMENT

1. Elizabeth Kyunguti (the Claimant) sued Selective Safaris (Albatros Travels) (the Respondent) on 30 April 2019, alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 17 June 2019 prompting the Claimant to file a Reply to the Response on 11 July 2019.
3. The Cause was heard on 16 November 2023 and 5 November 2024. The Claimant and an Office and Accounts Manager with the Respondent testified.
4. The Claimant filed her submissions on 21 November 2024. The Respondent filed its submissions on 14 January 2025 (should have been filed and served before 6 December 2024).
5. The Court has considered the pleadings, evidence and submissions.
6. The questions for adjudication are:
 - i. Whether the termination of employment of the Claimant was unfair?
 - ii. Whether the Respondent was in breach of contract?
 - iii. Appropriate remedies.



Unfair termination of employment

Procedural fairness

7. The Claimant was employed by the Respondent as a Systems Administrator in 2013. On or around 19 July 2018, the Respondent issued a show cause notice to the Claimant. The show cause set out the allegations against the Claimant and requested her to respond within 30 minutes. The Claimant responded the same day.
8. The response was followed up with a summary dismissal the same day.
9. In Court, the Claimant asserted that the time she was given to respond was not sufficient and that she was not afforded a physical hearing.
10. The Claimant was a senior person within the Respondent's establishment within the East African region. Section 41(2) of the *Employment Act* requires a mandatory oral hearing in cases of summary dismissal. The Respondent did not grant the Claimant such an opportunity.
11. In fact, the Respondent had instructed the Claimant to respond to the allegations in writing within 30 minutes. She was not given an opportunity to be accompanied. There was no explanation why such a senior person would be granted only 30 minutes to respond to allegations that could lead to loss of employment and income.
12. The Court finds that the process leading to the summary dismissal of the Claimant was not procedurally fair.

Substantive fairness

13. Sections 43 and 45 of the *Employment Act*, 2007 demand that the employer prove as valid and fair the reasons for dismissing an employee.
14. The reason for the summary dismissal of the Claimant was working with another company. (This is Micada Safaris).
15. The Respondent's witness testimony was that an examination of the computer assigned to the Claimant showed that she had used the computer to work for a different company.
16. In the response to the show cause letter, the Claimant stated:

I sincerely wish to let you know that I am not conducting any work for Micada Safaris during office hours, a company belonging to another party and has not been operational until recent when I did a little input that I highly regret.

.....

but sincerely apologise for any human error in the course of my duties which were not intentional.

If there is any chance at all to continue working in my position, I will appreciate and commit not to repeat the said mistakes.
17. An employee should pay full fidelity to the employer. Full fidelity as such enhances trust and confidence.



18. The Claimant admitted conducting business for an entity which appears to have been a competitor to the Respondent. She used her company-issued computer.
19. In the circumstances, the Court finds that the Respondent had valid and fair reasons to bring the employment relationship to an end.

Compensation

20. The Respondent had valid and fair reasons to dismiss the Claimant, but it did not afford the Claimant an oral hearing. She was given an opportunity though not sufficient to make a written representation. The Claimant served the Respondent for about 5 years. The Respondent paid her some terminal dues.
21. Considering the above, the Court is of the view that the equivalent of 1-month gross wage as compensation would be fair (gross monthly wage was Kshs 178,500/-).

Breach of contract/Leave

22. The Claimant sought Kshs 41,192/- on account of accrued leave days by the time of separation.
23. The Respondent produced the Claimant's leave records in Court. The records show that by 8 January 2018, the Claimant had a balance of 16 leave days.
24. The Claimant would be entitled to commutation of the leave days, and since the Respondent did not interrogate the computation, the Court will allow this head of the claim.

Breach of contract/unlawful deductions

25. The computation of the Claimant's final dues shows that the Respondent deducted Kshs 59,500/- on account of leave days overtaken.
26. The Respondent did not explain the basis of this deduction considering that the leave records dated 8 January 2018 indicated that the Claimant had a balance of 16 leave days. The days must have increased by the time of separation.
27. Without an explanation to give a basis for the deduction, the Court finds the deduction was unlawful and should be reimbursed.

Conclusion and Orders

28. The Court finds and declares that the summary dismissal of the Claimant was procedurally unfair and that there was a breach of contract.
29. The Claimant is awarded:
 - i. Compensation Kshs 178,500/-
 - ii. Accrued leave Kshs 41,192/-
 - iii. Unlawful deduction Kshs 59,500/-TOTAL Kshs 279,192/-
30. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 16TH DAY OF JANUARY 2025.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Nyabena Alfred & Co. Advocates

For Respondent Gathaara J.N. & Associates Advocates

Court Assistant Wangu

