



**Njoroge v Bio Foods Production Limited (Cause E019 of 2024)  
[2025] KEELRC 596 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 596 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E019 OF 2024  
J RIKA, J  
FEBRUARY 28, 2025**

**BETWEEN**

**MIRIAM WAITHERA NJOROGE ..... CLAIMANT**

**AND**

**BIO FOODS PRODUCTION LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 23<sup>rd</sup> April 2024.
2. The Notice of Summons and the Pleadings were served upon the Respondent by Court Process-Server, Arasa Kinara, on 16<sup>th</sup> May 2024, at its premises next to Sameer Industrial Park, in Nairobi.
3. The Affidavit of Service is on record.
4. Parties appeared before the Court on 18<sup>th</sup> September 2024. An Advocate instructed by the Respondent, informed the Court that the Respondent had not responded to the Claim, and asked for 14 days to comply.
5. The Respondent was granted 14 days as requested, with the next mention date scheduled for 15<sup>th</sup> October 2024.
6. The Respondent did not file its Response. It was granted another 14 days to comply, with the mention date scheduled for 21<sup>st</sup> November 2024.
7. On 21<sup>st</sup> November 2024, there was no representation for the Respondent. The Claimant's Advocate informed the Court that there was no Response filed by the Respondent, and hearing was scheduled for 29<sup>th</sup> January 2025.



8. On 29<sup>th</sup> January 2025, an Advocate, Ms. Wamuyu, appeared for the Respondent. She applied for adjournment, on the ground that her colleague, seized of the brief, was bereaved and therefore unavailable.
9. There was no explanation why the Respondent had not filed its Statement of Response. Service of the Summons and the Pleadings by the Claimant, way back on 16<sup>th</sup> May 2024, was not contested. It was not contested that the Respondent had subsequently been granted extension of time by the Court to respond to the Claim severally, but completely failed to respond.
10. It was not explained to the Court by Ms. Wamuyu, how bereavement of her colleague, would have affected filing of the Statement of Response, from 16<sup>th</sup> May 2024 to 29<sup>th</sup> January 2025.
11. The application for adjournment was declined and the Claimant gave evidence, and rested her case, on 29<sup>th</sup> January 2025.
12. She pleads and told the Court that, she was employed by the Respondent on 25<sup>th</sup> February 2013, as a Sales and Marketing Officer. She initially earned a gross monthly salary of Kshs. 36,000.
13. She later became the Manager, Nakuru Depot. She held this position at the time the Respondent terminated her contract, on 16<sup>th</sup> February 2024. Her last gross monthly salary was Kshs. 107,426.
14. She went on annual leave in August 2023. She was set to resume in October 2023. Before she could resume, she was served a letter dated 18<sup>th</sup> October 2023, to show cause why she should not be disciplined, on the following allegations: -
  - a. Failing to report to work, and using an Employee named Raphael, to get her job done.
  - b. Forging car wash receipts with the intention of defrauding the Respondent.
  - c. Not paying for milk she had consumed.
  - d. Giving out stock to family and friends without paying for the same.
  - e. Tampering with stocks.
15. She replied on 25<sup>th</sup> October 2023, denying the allegations.
16. She attended disciplinary hearing on 20<sup>th</sup> December 2023.
17. She was called by the Human Resource Manager, on 6<sup>th</sup> January 2024, and informed that the In-Charge Nakuru, was not comfortable serving with the Claimant.
18. She was advised to select between transferring to the Respondent's business at Nairobi, or having her contract terminated.
19. She called the Human Resource Manager on 9<sup>th</sup> January 2024, expressing her willingness to move to Nairobi.
20. She was instead informed that her suspension had been extended, and disciplinary hearing would be re-opened. The grounds for the proposed fresh disciplinary hearing, were not contained in the letter to show cause. The Respondent also sought to bring a fresh witness in the new round of hearing.
21. The Claimant avers that the Respondent's conduct amounted to her constructive dismissal, and amounted to violation of her constitutional rights under Articles 28 and 41 of *the Constitution*. It was in violation of the *Employment Act*.



22. She prays for: -
  - a. Compensation for unfair termination.
  - b. Service or gratuity pay.
  - c. Notice.
  - d. Certificate of Service.
  - e. Costs.
23. The Claimant adopted in her evidence, her Witness Statement and Documents, listed as (2-14), in the list dated 22<sup>nd</sup> April 2024.

**The Court Finds: -**

24. Details of the Claimant's employment with the Respondent are not contested. The circumstances surrounding her leaving employment are not contested.
25. She was taken through a disciplinary process, which did not yield a clear finding of guilt. She was simply told that her In-Charge was not comfortable working with her. She was given an option to transfer to Nairobi which she took. Before she could transfer, the Respondent instead extended her suspension and proposed to conduct fresh disciplinary hearing. She was not told why her transfer to Nairobi had been recalled.
26. She exhibits a letter of termination dated 16<sup>th</sup> February 2024. It is disclosed that the second disciplinary hearing took place on 12<sup>th</sup> February 2024. She was dismissed on account of falsification of car wash receipts, which the Respondent felt, was an act of gross misconduct.
27. Contrary to her assertion that she was dismissed on account of allegations that were not raised on notice to show cause, falsification of car wash receipts was one of the allegations made through the notice to show cause, which the Claimant responded to.
28. There is no evidence at all, that the Claimant was constructively dismissed. There was issued by the Respondent an express letter of termination, detailing the reasons for the decision.
29. While the Claimant was issued a letter to show cause, given a chance to respond to the allegations contained in the letter to show cause, and granted a disciplinary hearing, procedure was flawed after that hearing.
30. She was not given a clear verdict on the first hearing. She was told that her In-Charge, did not want to continue working with her, and offered transfer to Nairobi. She accepted transfer, but instead, was subjected to a fresh round of disciplinary hearing. It was irregular to subject her to this fresh round, having completed the initial hearing, and resolved the issues subject matter of the hearing, through an offer for transfer to Nairobi. It was procedurally flawed, to reopen disciplinary hearing, and purport to present a fresh witness. Why was not the witness availed at the first hearing? Disciplinary hearing should not be open-ended, with witnesses called at and when an Employer thinks they should be presented. Witnesses must be known to both Parties, and availed at the first hearing.
31. The Respondent did not establish valid reason, to justify termination, under Sections 43 and 45 of the *Employment Act*. It was alleged that the Claimant was involved in falsification of carwash receipts. There is no evidence placed before the Court, establishing the allegation, or indeed any other allegation made against the Claimant.



32. The Court does not think that it is necessary for the Claimant, to invoke Articles 2[5], 27, 28, and 41 in pursuing this Claim. The dispute falls squarely under the *Employment Act*, 2007 and there are adequate remedies, granted by this Act.
33. Her prayer for service/gratuity pay is not founded on the law or her contract of employment. She was actively subscribed to the N.S.S.F, as shown in her pay slips, and therefore, not entitled to service pay, under section 35[5] & [6] of the *Employment Act*. Service / gratuity is declined.
34. Although the Claimant states that her last monthly salary was Kshs. 107,426, she claims notice at Kshs. 76,024. Notice is granted as prayed, at Kshs. 76,024.
35. There is no specific amount in compensation pleaded. The Claimant worked for 11 years. She is not shown to have caused or contributed to the circumstances leading to her dismissal. She did not inform the Court how long she expected to go on working. She did not state, whether she secured alternative employment, but stated that she is a resident of Dubai, UAE. The Court got the impression that she has secured alternative work in Dubai, like thousands other Kenyans have, in the recent times.
36. She is granted equivalent of 7 ½ months' gross salary in compensation for unfair termination at Kshs. 805,695.
37. Certificate of Service to issue.
38. Costs to the Claimant.

**In Sum, It Is Ordered: -**

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Claimant notice at Kshs. 76,024 and compensation for unfair termination equivalent of 7 ½ months' gross salary at Kshs. 805,695 – total Kshs. 881,719.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, THIS 28<sup>TH</sup> DAY OF FEBRUARY 2025.**

**JAMES RIKA**

**JUDGE**

