



REPUBLIC OF KENYA



KENYA LAW
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**Ouma v Shree Swaminarayan Academy (Cause E827 of 2022)
[2025] KEELRC 639 (KLR) (28 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 639 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E827 OF 2022
SC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

JOAB ISAAC OUMA CLAIMANT

AND

SHREE SWAMINARAYAN ACADEMY RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 8th November 2022, the Claimant avers that he was employed by the Respondent as a School Principal with effect from 12th March 2013 until 14th April 2022 when he was unfairly and illegally terminated from employment.
2. According to the Claimant, he faithfully and dutifully executed his tasks as stipulated in his employment contract for the entire period he was the Respondent's employee without having any reported or unreported issues with the school management.
3. It is the Claimant's case that on 14th April 2022, he was summoned by the school management and issued with a Voluntary Separation Agreement to sign. He contends that he was not accorded a chance to consult and or peruse the said Agreement nor was any explanation given for the termination. He was thus forced to append his signature on the Voluntary Separation Agreement.
4. The Claimant further avers that the Voluntary Separation Agreement was all the workings of the school management as he had not willingly volunteered or appended his signature on the said Agreement.
5. The Claimant further avers that his termination from employment was unfair and unlawful termination for the following reasons:
 - a. There had never been any reported or unreported issues between himself and the school management during his employment period thus negating any grounds on which his dismissal would be fair and lawful;



- b. He was manipulated, coerced and forced into signing a voluntary separation agreement that he was not aware of nor had been given time to peruse and/or consult.
 - c. He was not provided with a Certificate of Service upon his dismissal, which is evidence of the hurried manner of terminating his contract.
 - d. He was not issued with the statutory notice under the Employment Act in relation to the termination of employment contract.
 - e. No valid reasons were afforded for the termination of his services.
6. To this end, the Claimant's claim against the Respondent is for the sum of Kshs 593,263.35 being one month's salary in lieu of notice and maximum compensation for unfair and unlawful termination. He has further sought a declaratory order that his termination from employment was unfair and unlawful as well as an order compelling the Respondent to issue him with a Certificate of Service.
 7. The Respondent has opposed the Claim through its Response dated 1st December 2022. In its Response, the Respondent has denied the Claimant's assertions that he was unfairly and unlawfully terminated from employment.
 8. It is the Respondent's case that the parties mutually parted ways. In this regard, the Respondent has averred that they were in consensus with the Claimant over the terms of the Separation Agreement, and as evidenced by the Claimant willfully appending his signature and then collecting the separation package cheque and chasing it in.
 9. The Respondent further avers that the Claimant voluntarily signed the Separation Agreement whereby he waived his right to make any claim against it. Consequently, the Respondent has asked the Court to dismiss the Claim with costs.
 10. The matter proceeded for hearing on 5th December 2024 during which both sides called oral evidence in support of their respective cases.

Claimant's Case

11. The Claimant testified in support of his case and at the outset, he sought to adopt his witness statement to constitute his evidence in chief. He proceeded to produce the initial list and bundle of documents filed alongside his Statement of Claim and his further list and bundle of documents as exhibits before Court.
12. It was the Claimant's evidence that when he resumed duty from leave on 14th April 2022, he was presented with the Voluntary Separation Agreement to sign. According to him, he had no prior information of the said Agreement, hence it came as a surprise to him.
13. The Claimant further averred that he was informed that the voluntary separation was a decision of the School's Board and that he was not given time to go through it, hence he went ahead and signed it.
14. It is the Claimant's further assertion that he was informed that his last day of work would be 16th April 2022 and that he was required to vacate the school house allocated to him by 20th April 2022.
15. He further averred that he was not issued with a Certificate of Service and that this has affected him so much as he has not been able to get employment as he does not have a reference.



Respondent's Case

16. The Respondent called oral evidence through its Director, Mr. Dhirajlal Patel who testified as RW1. Equally, RW1 adopted his witness statement and the list and bundle of documents filed on behalf of the Respondent to constitute his evidence in chief.
17. It was RW1's testimony that during the Claimant's period of engagement, there were several instances where the Respondent's Board of Management took issue with his performance and duly informed him in writing through Notice to Show Cause letters.
18. That despite those run-ins with the Board of Management, they chose to indulge the Claimant and allow him to continue serving as principal.
19. RW1 averred that in the year 2022, the Board of Management was of the view that the school wanted to take an alternative direction in regards to leadership and running of the school due to persistent unsatisfactory academic performances by the school. Additionally, there were administrative lapses that necessitated prompt action to bring the school to good standing with parents and students alike.
20. That the Board of Management engaged various stakeholders, including the Claimant and fellow teachers, on the way forward. Following lengthy discussions and deliberations, the school, in consultation with the Claimant, thought it prudent to part ways. The parties sat down and negotiated the terms of their separation.
21. These negotiations led to the formulation of the Voluntary Separation Agreement that captured the mutually agreed terms between the parties. The Claimant was presented with the document on 14th April 2022 and accorded time to peruse the same to confirm it captured the position as negotiated between the parties.
22. Upon his perusal of the same, the Claimant proceeded to append his signature as a signifier of his willingness and consent to be bound by the terms. The school additionally signed the agreement as a demonstration of its willingness to be bound by the terms.
23. RW1 averred that contrary to the claim by the Claimant that he was coerced into signing the document, the Claimant was engaged in the formulation of the agreement, and by the time the same was presented for his signature, he was fully conversant with the terms, perused through the same for verification, and thereafter signed the document to affirm his approval of the terms.
24. It was RW1's contention that no evidence has been presented of any coercion and/or manipulation to induce the Claimant into signing the agreement.
25. RW1 was categorical that the terms in the Agreement were negotiated and mutually agreed between the parties, following which the Claimant was issued with a cheque of Kshs. 485,477/=. That the Claimant duly acknowledged receipt of the cheque, and proceeded to cash in the same.
26. In RW1's view, the Claimant's conduct after signing of the agreement is a demonstration of his knowledge and awareness of the terms of the agreement, and the subsequent filing of this claim is an abuse of the court process with the hope of unjustly enriching himself.

Submissions

27. The Claimant submitted that he was unfairly coerced into signing a Voluntary Separation Agreement after returning from annual leave, which constitutes unfair termination.



28. Referencing Article 50 of *the Constitution*, the Claimant further submitted that his rights were infringed upon due to the denial of a fair hearing in the signing of the Voluntary Separation Agreement.
29. The Claimant further posited that an agreement is not valid if the party signing it is under coercion or duress. In the same vein, the Claimant argued that an employee who is not given a fair chance to negotiate or consider the terms of a Voluntary Separation Agreement is considered to have been forced.
30. In the Claimant's view, even where an employee agrees to the termination, the employee's consent must be voluntary and informed. It was his further submission that if the employee is misled or under any duress, the agreement is void. In support of these submissions, the Claimant placed reliance on the case of *Godfrey Allan Tolo vs Tobia O. Otieno & another* (2022) eKLR.
31. Further, it was the Claimant's position that providing a reasonable time frame for review is an integral part of ensuring that consent is not obtained under duress, fraud, or undue influence. On this score, he posited that he was not provided the opportunity to obtain legal advice at the time he received the Voluntary Separation Agreement. Rather, he was presented with a standard ultimatum of "take it or leave it," which constituted economic duress. In further support of the Claimant's submissions, the Court was invited to consider the decisions in *Chiloba & another vs Chebukati & 6 others; Attorney General (Interested Party) (Petition 29 of 2018 & Cause 617 of 2019) (Consolidated)* [2022] KEELRC 14636 (KLR) (27 October 2022) and *Catherine Nyambura & 3 others vs Airtel Networks Kenya Limited* (2015) eKLR.
32. In closing, the Claimant submitted that the termination of his employment was unjust due to the coercive and inequitable conditions under which he was presented with the Voluntary Separation Agreement.
33. On the other hand, the Respondent posited that any employer-employee relationship can be concluded on the basis of a mutual agreement between the parties to the initial contract. To buttress this position, the Respondent made reference to the case of *Frederick Kariuki Kamau vs Bank of India* [2015] eKLR and *William Barasa Obutiti vs Mumias Sugar Company Limited*, Civil Appeal No. 198 of 2004 (2006) eKLR.
34. The Respondent further submitted that pursuant to a Voluntary Separation Agreement executed on the 14th April 2022, the parties mutually agreed to discontinue the employment contract.
35. According to the Respondent, the burden of proof lies with the Claimant to demonstrate that he was indeed coerced into executing the Voluntary Separation Agreement on 14th April, 2022. In the Respondent's view, the Claimant has failed to discharge this burden.
36. Placing reliance on the case of *Beatrice Kananu Imathiu vs British American Tobacco (K) Ltd* (2020) eKLR and *Gitaari vs Kenya Hospital Association t/a The Nairobi Hospital* (2024) KEELRC 1846 (KLR), the Respondent further submitted that the Claimant was not terminated, but instead the parties mutually agreed to part ways pursuant to the Voluntary Separation Agreement that was duly executed by both parties, after which the Claimant cashed in his benefits from the agreement and proceeded to enjoy the same.

Analysis and Determination

37. Having considered the issues raised in the pleadings by both parties, the evidentiary material on record and the rival submissions, the following issues stand out for determination by the Court:
 - a. Whether the Voluntary Separation Agreement dated 14th April 2022 is binding on the Claimant;



- b. Depending on (a) whether the Claimant was terminated from employment unfairly and unlawfully;
- c. Is the Claimant entitled to the reliefs sought?

Whether the Voluntary Separation Agreement dated 14th April 2022 is binding on the Claimant

- 38. It is not in doubt that the Claimant executed the Voluntary Separation Agreement dated 14th April 2022. The contention by the Claimant now is that he was manipulated, coerced and forced into signing the said Separation Agreement and that he was not aware of the same. The Claimant has further contended that he did not have time to consult or peruse the said Separation Agreement before appending his signature.
- 39. The Respondent has strongly disputed the Claimant's assertions and from its standpoint, the parties were in consensus over the terms of the Separation Agreement and that the same were evidenced by the Claimant willfully appending his signature to the Agreement and thereafter collecting the separation package cheque and cashing it in.
- 40. The law of contract recognizes and respects the freedom of parties to enter into agreements setting out the parameters within which they are to be governed. It is trite that when a document containing contractual terms is signed, then, in the absence of undue influence, coercion, fraud, misrepresentation or non est factum, the party signing it is bound, and it is wholly immaterial whether he has read the document or not.
- 41. In this case, despite the Claimant stating that he was coerced and manipulated into signing the Voluntary Separation Agreement, he did not provide particulars of the said coercion and manipulation.
- 42. On this score, the Court adopts the decision in the case of *Wenslaus Oduki Odinga vs Kenyatta National Hospital Board* [2013] eKLR where it was held as follows:

“Apart from the general claim of duress, the Claimant did not adduce any particulars. An employee alleging duress or inducement to sign a document in a non-custodial environment must provide details of such duress or inducement. It is not enough to say “I was forced or I was confused.” The Claimant failed to provide any such details and his claim that he was forced to sign the admission is therefore rejected. This in effect means that the Respondent had a substantive justification for terminating the Claimant's employment.”
- 43. Similarly, in the case of *Hussein t/a MN Transporters vs Agro-Chemical & Food Company Ltd* [2002] eKLR, the Court in dismissing the suit observed that the plaintiff had no pleading with particulars of duress or such other aspect that could vitiate the contract/agreement.
- 44. Still on vitiating elements, the Court in *Gichara vs Tropiqua Group Limited & another* [2025] KEELRC 389 (KLR), held that the burden to prove undue influence is heavy and it shall not suffice for one to make bald assertions about it. I hold that the same position applies to coercion.
- 45. In this case, the Claimant's assertion that he was coerced and manipulated into signing the Voluntary Separation Agreement is not supported by evidence. Further, and as stated herein, the said coercion and manipulation was not particularized. As such, I have not discerned any vitiating element in the case herein that would warrant the Court to set aside the Voluntary Separation Agreement.
- 46. Further to the foregoing, it is noteworthy that in this case, the Claimant held the position of a School Principal, hence it follows that he was well aware of and had full knowledge of the import of the



Voluntary Separation Agreement when he appended his signature. He cannot therefore run away from the terms of the Voluntary Separation Agreement.

47. I am further guided and bound by the decision of the Court of Appeal in Coastal Bottlers vs Kimathi Mithika [2018] eKLR, where it was held that a settlement agreement is a binding contract between the parties and all the Court is required to do is to give effect to the intention of the parties as discerned from the settlement agreement.
48. The Court went on to cite with approval its decision in Trinity Prime Investment Limited vs Lion of Kenya Insurance Company Limited [2015] eKLR where it was held that:

“The execution of the discharge voucher, we agree with the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”
49. In this case, the Voluntary Separation Agreement executed between the Claimant and the Respondent constituted a binding contract between the parties. Accordingly, the Court is enjoined to give effect to the intention of the parties herein.
50. As per Clause 2 and 3 of the Voluntary Separation Agreement, the parties had mutually agreed to sever the employment relationship subject to the terms and conditions set out therein.
51. Consequently, by signing the said Voluntary Separation Agreement, the Claimant accepted the terms thereto which included cessation of the employment relationship.
52. It is also not in dispute that the Claimant accepted a separation package further confirming the terms of the agreement.
53. Just as the Claimant accepted payment of the separation dues, he is bound by the other terms of the Agreement to sever the employment relationship. The Claimant cannot approbate and reprobate at the same time.
54. The upshot of the foregoing is that the Claimant’s suit is dismissed in its entirety with an order that each party bears its own costs.
55. As the employment relationship is not disputed, the Respondent shall issue the Claimant with a certificate of service in line with Section 51(1) of the *Employment Act*, within 7 days from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF FEBRUARY 2025.

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STELLA RUTTO
JUDGE

In the presence of:

For the Claimant Ms. Gichuki

For the Respondent Mr. Shikanda

Court Assistant Milicent

Order



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

