



**Gachu v Methodist Church in Kenya & another (Cause 1341 of 2018)
[2025] KEELRC 580 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 580 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1341 OF 2018
S RADIDO, J
FEBRUARY 27, 2025**

BETWEEN

HELLEN MWENDWA GACHU CLAIMANT

AND

METHODIST CHURCH IN KENYA 1ST RESPONDENT

**METHODIST CHURCH IN KENYA TRUSTEE REGISTERED 2ND
RESPONDENT**

JUDGMENT

1. The Cause was heard on 29 October 2024. Hellen Mwendwa Gachu (the Claimant) and the Chair of the Board of Methodist Church in Kenya and Methodist Church in Kenya Registered Trustees (the Respondents) testified.
2. The Claimant filed her submissions on 7 February 2025 (should have been filed and served on or before 4 February 2025) and the Respondents on 21 February 2025.
3. The Claimant identified 2 Issues for adjudication:
 - i. Whether the Claimant’s dismissal was unfair and unlawful?
 - ii. Whether the Claimant is entitled to the relief sought?
4. The Respondents set the Issues for determination as:
 - i. Whether the Claimant’s employment was fairly terminated and for a valid reason?
 - ii. Whether the termination of the Claimant’s employment was procedural?
 - iii. Whether the Claimant is entitled to the reliefs sought?
 - iv. Who bears the Cost of this Suit?



5. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural fairness

6. The Respondents sent an email on 30 May 2018 to the Claimant requesting her to respond to several allegations before 7 June 2018. The email informed the Claimant that she could meet the auditors by appointment through the Chief Consultant.
7. The Claimant replied to the email the same day and indicated that she would report on Monday to respond fully once the auditors had given her further information.
8. The Claimant responded on 7 June 2018. The response noted that the Claimant had met with the auditors and the Chief Consultant on 5 June 2018.
9. On 9 July 2018, the Respondents' Chief Executive Officer issued another show-cause to the Claimant alleging abscondment from work, refusal to cooperate with auditors, rudeness and verbal assault to the auditors.
10. The Claimant was instructed to show cause within 3 days. The Claimant responded on 11 July 2018.
11. On 21 July 2018, the Chief Executive Officer invited the Claimant to a disciplinary hearing to be held on 27 July 2018. The Claimant was informed of the right to be accompanied by a fellow employee and that she was free to seek further information to assist her in preparing for her defence.
12. The Claimant attended the disciplinary hearing after which the Disciplinary Panel recommended summary dismissal, and on 30 July 2018, the Chief Executive Officer notified the Claimant of the termination of her employment.
13. The Claimant opted not to appeal despite being informed of a right of appeal.
14. Before the Court, the Claimant contended that the disciplinary process was rushed and was inconsiderate.
15. In the submissions, the Claimant asserted constructive dismissal. Since the Claimant did not plead a cause of action for constructive dismissal, the Court will not examine this head of the claim.
16. Sections 35(1) and 41 of the *Employment Act* speak to procedural fairness in cases of termination of employment.
17. The Claimant was notified of the allegations to confront. She was requested to give a written response. The Respondents were not satisfied with the response and invited the Claimant to an oral hearing. The Claimant was notified of the right to be accompanied by a fellow employee. She attended the hearing after which her employment was terminated. The Respondents alerted the Claimant of a right of appeal which she did not exercise.
18. The disciplinary process took about 2 months (from 30 May 2018 to 30 July 2018), and the Claimant did not explain how the process was rushed.
19. The Court finds that the Respondents substantially complied with the statutory precepts of procedural fairness.



Substantive fairness

20. Sections 43 and 45 of the *Employment Act* places a burden on the employer to prove as valid and fair the reasons for terminating an employment contract.
21. The show-cause notice dated 9 July 2018 issued to the Claimant outlined 4 allegations, abscondment from duty by not returning to work on 2 June 2018; refusal to cooperate with auditors as evidenced by emails from 31 May 2018 to 4 June 2018; rudeness and verbal assault against auditors and lack of clean opinion on finances.
22. However, the termination letter stated that the termination of employment was on account of absconding duty and being rude and abusive to the auditors. Therefore, these are the reasons the Respondents were to prove as valid and fair.
23. A copy of notes kept by the Disciplinary Committee indicates that the Claimant was discharged on the allegation of not cooperating with the auditors
24. To discharge the burden placed on the Respondent, it called the Chair of the Board. The witness testified that the Claimant was the Finance Manager and acting Human Resource and Administration Manager.
25. On or around 31 March 2018, the Respondents' Consultant had a discussion with the Claimant. The parties agreed that the Claimant proceed on indefinite leave. This is corroborated by an email of the said date from the Consultant to the Claimant.
26. However, on or around 3 April 2018, the Claimant applied for leave to commence on 3 April 2018 and terminate on 31 May 2018. The Claimant was expected to resume work on 2 June 2018. The leave application was approved.
27. The Respondents' witness testified that the approved leave superseded the indefinite suspension and therefore the Claimant was expected back at work on 2 June 2018, but she never reported back to work.
28. According to the Respondents, the Claimant had absconded from work.
29. The Claimant thought otherwise. She testified that she was expected to resume work on 2 June 2018 but the events which happened from 31 May 2018 made it prudent to report on 5 June 2018.
30. According to the Claimant, the sequence of events was that she received an email on 30 May 2018 requesting her to respond to several allegations before 7 June 2018 and that in a call with the Consultant on 31 May 2018, she informed the Consultant that she needed to be in the office in order to respond to the issues raised in the email of 30 May 2018. The Consultant however told her she could only meet with the auditors on 5 June 2018.
31. The Claimant testified that this is what prompted her not to resume work as expected on 2 June 2018 and that in any case, she found a junior employee had occupied her office.
32. It is common that the Claimant and the Respondents' Consultant had communication exchanges from 30 May 2018 to 31 May 2018. After the exchanges, the Claimant reported to the Respondents' offices and had a session with the auditors.
33. The question is whether this state of affairs was indicative of an employee who had formed an intention to abscond from work or repudiate the employment contract by failing to report to work.
34. In the Court's view, the inference can be drawn from the instruction to the Claimant to meet the auditors on 5 June 2018 that the Claimant had not formed an intention to breach her contractual



- obligation by not reporting to work after the lapse of leave and so, the Respondents did not prove this as a valid and fair reason to terminate the employment.
35. As already outlined, the second reason given by the Respondents for terminating the contract was that the Claimant had been rude and abusive to the auditors. The Respondent gave an instance of such conduct as arising from an email of 6 June 2018 from the auditors.
36. The email stated:
- Thank you for availing yourself for the meeting to discuss the draft management letter presented to the Rev Nyota and Senior Accountant Mr Muriithi.
- I will reserve my comments on your attitude and how you handled my team for another forum. Even when one feels aggrieved there are better ways to express oneself without belittling the work of the other.
- We found it prudent to present the matters outstanding to yourself before presenting to the Board because we felt you were better placed to answer – which you did give clarification to some issues which will be removed from the management letter e.g.
37. The Claimant replied:
- I am surprised that even now you want to pursue an avenue that is not useful for the conduct of an independent audit. In the summary after the meeting, I did not hear the issue of attitude being mentioned therefore I do not know the line you intend to pursue with this comment but I will restrict myself to the comments relating to your findings.
38. The emails leave no doubt that the meeting between the Claimant and the auditors must have been quite tense, to say the least.
39. Apart from the emails, the auditors did not participate in the disciplinary hearing. None of the audit team was called to testify before the Court to unravel what happened.
40. Without any corroboration of the emails, can the Court surmise that the Claimant was rude and abusive to the auditors?
41. The Respondents' witness was not present during the meeting between the Claimant and the auditors and the Court finds that his testimony in Court was not sufficient to discharge the burden of proving the validity and fairness of the termination of the Claimant's employment.

Compensation

42. The Court has concluded that the Respondents did not prove the validity and fairness of the reasons leading to the termination of the Claimant's employment.
43. The Claimant served the Respondents for about 25 years.
44. The Respondents requested the Claimant to clear in order to be paid final dues including pension and provident funds.
45. The Respondents placed before the Court bank transaction details showing the Claimant was paid Kshs 6, 370,476/- provident fund dues in 2019.
46. Considering the above factors, the Court is of the view that the equivalent of 2-months' salary as compensation would be fair.



Pay in lieu of notice

47. The Claimant's contract provided for termination of employment by giving 3-months' notice or salary in lieu of notice (the Claimant's monthly salary was Kshs 190,000/-).
48. The Court will award this head of the claim.

Breach of contract

Service pay

49. The Claimant made a plea of Kshs 3,166,666/- on account of service pay.
50. The Claimant did not lay an evidential foundation for this head of the claim. If the foundation was statutory, then by virtue of section 35(6) of the *Employment Act*, 2007, the Claimant would not be entitled to service pay since she was a member of a pension/provident fund.

Overtime/public holidays

51. The Claimant did not provide an evidential basis for this head of the claim and relief is declined.

Conclusion and Orders

52. The Court finds and declares that the Respondents did not prove that the termination of the Claimant's employment was for valid and fair reasons.
53. The Claimant is awarded:
- i. Compensation Kshs 380,000/-
 - ii. Pay in lieu of notice Kshs 570,000/-
- Total Kshs 950,000/-
54. The award to attract interest at court rates from date of the judgment.
55. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 27TH DAY OF FEBRUARY 2025.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Njoroge Ng'ang'a & Co. Advocates

For Respondent Naragwi & Co. Advocates

Court Assistant Wangu

