



**Kenya Pipeline Company Limited v Mwita (Cause E559 of 2021)
[2025] KEELRC 542 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 542 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E559 OF 2021
L NDOLO, J
FEBRUARY 27, 2025**

BETWEEN
KENYA PIPELINE COMPANY LIMITED CLAIMANT
AND
ANDREW MWITA RESPONDENT

JUDGMENT

Introduction

1. In November 2020, the parties subjected themselves to conciliation. The Conciliator submitted his report dated 9th April 2021, recommending that the Respondent be reinstated with payment of salary arrears from the date of termination to the date of reinstatement, including any salary increments effected during the period he was out of employment.
2. The Conciliator went on to state that in case the foregoing recommendation was not acceptable to the parties, either party could refer the dispute to the Employment and Labour Relations Court.
3. By its Statement of Claim dated 9th July 2021, the Claimant seeks the following remedies:
 - a. A declaration that the recommendations by the Conciliator vide Certificate of Unresolved Trade Dispute dated 9th April 2020 was unlawful and unfair and therefore null and void;
 - b. A declaration that the Claimant adhered to all applicable rules and regulations while terminating the Respondent's employment;
 - c. A declaration that the termination of the Respondent's employment was lawful and fair;
 - d. Costs plus interest.
4. Despite due notice, the Respondent did not file a Response. The matter therefore proceeded ex parte.



The Claimant's Case

5. The Claimant claims to have employed the Respondent as an Accounts Clerk from 15th March 2004, until his dismissal on 10th September 2019, on account of gross misconduct.
6. According to the Claimant, the Respondent had a history of absenteeism from duty without permission.
7. It is alleged that on 13th February 2019, the Respondent reported to work while intoxicated, causing disturbance at his workstation.
8. The Respondent was issued with a show cause letter dated 28th February 2019, which further required him to justify why he had absented himself from duty on diverse dates in the months of January and February 2019.
9. The Respondent responded to the show cause letter on 5th March 2019 and on 30th July 2019, he was invited to appear before the Staff Disciplinary Committee.
10. The Claimant avers that at the disciplinary hearing, the Respondent admitted 5 of out the 6 offences raised against him.
11. The Respondent was subsequently dismissed from service vide a letter dated 10th September 2019. He lodged an appeal with the Claimant's Appeals Committee via a WhatsApp message on 4th February 2020.
12. The Claimant states that hearing of the Respondent's appeal was delayed by restrictions occasioned by the COVID-19 pandemic. Meanwhile, the Respondent reported a trade dispute to the Ministry of Labour, through the Kenya Petroleum and Oil Workers Union.
13. The Ministry of Labour appointed a Conciliator. The Claimant claims to have written to the Conciliator on 17th September 2020, asking him to specify the issues constituting the basis of the trade dispute, to enable it submit its proposals. According to the Claimant, the Conciliator did not respond to its request.
14. The Conciliator is said to have encouraged the parties to pursue internal dispute resolution mechanisms at their disposal, upon which the Respondent was invited to an appeal hearing before the Staff Appeals Committee on 6th November 2020.
15. The appeal hearing took place on 24th November 2020, the outcome being that the decision of the Disciplinary Committee was upheld.
16. The Conciliator invited the parties to a subsequent meeting on 26th February 2021. The Claimant states that it made a request that the meeting be rescheduled to 4th March 2021 but there was no response by the Conciliator.
17. Thereafter, the Claimant received a Certificate of Unresolved Dispute dated 9th April 2021, which gave recommendations to the effect that the Claimant should reinstate the Respondent and pay salary arrears from the date of termination to the date of reinstatement.
18. The Claimant terms the Conciliator's recommendations unlawful and unfair for the following reasons:



- a. The findings of the Conciliator are ambiguous as it is not clear whether the dispute was unresolved in accordance with Section 68(2)(a) of the *Labour Relations Act* or whether the trade dispute was resolved in accordance with Section 68(1) of the Act;
- b. The Conciliator's recommendation was time barred as the 30-day time limit for the Conciliator to resolve a dispute under Section 67(1) had lapsed and there was no agreement for extension of time;
- c. The Conciliator was functus officio after recommending that parties explore the internal mechanisms in resolving the dispute;
- d. The conciliation proceedings were not carried out in accordance with the provisions of the *Labour Relations Act*;
- e. The Conciliator's recommendations did not take into consideration the facts in issue regarding the dispute;
- f. The Conciliator's recommendations failed to consider the Claimant's internal disciplinary and dispute resolution mechanisms;
- g. The Conciliator acted beyond his mandate under the *Labour Relations Act*.

Findings and Determination

19. A careful examination of the Claimant's claim reveals that what the Claimant seeks, under the guise of setting aside recommendations by the Conciliator, are declaratory orders passing off the termination of the Respondent's employment as lawful and fair.
20. In my view, this is an abuse of the conciliation process set out in the *Labour Relations Act*. Just like recommendations by a Conciliator are not binding on this Court, conciliation proceedings cannot be used as a basis for determining the lawfulness of a termination of employment.
21. Were the Court to grant the Claimant's plea, the Respondent would be locked out of pursuing any claim for unlawful termination against the Claimant. Such a move would deny the Respondent his inalienable right to be heard.
22. For this reason, the Claimant's claim fails and is dismissed with no order for costs.
23. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025

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JUDGE

Appearance:

Mr. Odongo for the Claimant

No appearance for the Respondent

