



REPUBLIC OF KENYA



KENYA LAW
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**Ochako v Delmonte Kenya Limited (Cause 858 of 2022)
[2025] KEELRC 475 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 858 OF 2022
B ONGAYA, J
FEBRUARY 21, 2025**

BETWEEN

CATHERINE BOSIBORI OCHAKO CLAIMANT

AND

DELMONTE KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the amended memorandum of claim dated 08.11.2022 through Ongegu & Associates Advocates seeking the following:
 - a. Full benefits amounting to Kenya Shillings Two Million Ninety-Seven Thousand Two Hundred and Seventy (Kshs. 2,097,270).
 - b. General damages for unlawful and wrongful termination.
 - c. Certificate of service.
 - d. Interest on (a) & (b) above from the date of filing of this amended claim.
 - e. Costs of this suit.
 - f. Any other relief that the court may deem fit and just.
2. The claimant's case was that the respondent employed her on or about 01.12.2016 as a Payroll Accountant on probation. She was later confirmed as a permanent employee on 19.07.2017 with a salary of Kshs. 116,515/= . However, on or around 07.12.2020, she was accused of gaining unauthorized access to the staff payroll and attempting to adjust her salary among other unsubstantiated grounds. She gave her response in a letter dated 07.12.2020 explaining the alleged alterations were not meant to defraud the respondent but was an exercise she undertook each month to check whether tax was correctly deducting in the live environment before releasing pay. That the



same was verifiable from the Information Technology Department Audit Trail Report, which only the respondent had access to. Nevertheless, the respondent issued a dismissal letter dated 14.12.2020 with the finding that she intentionally changed her salary thereby summarily dismissing her. She averred that the respondent had also failed and or refused to pay her outstanding dues and unpaid salary that included the following:

- a. 12 months' pay for unfair termination (Kshs. 116,515x12).....Kshs. 1,398,180.00
- b. One month's pay in lieu of notice.....Kshs. 116,515.00
- c. Salary up to 14.12.2020 (14/30days x Kshs. 116,515).....Kshs. 54,373.67
- d. Leave days due (16/30days x Kshs. 116,515)..Kshs. 62,141.33
- e. Gratuity pay (4 years worked x Kshs. 116,515)..Kshs. 466,060
- Total.....Kshs. 2,097,270.00

3. It was the claimant's averment that on or around 11.11.2020, the material day, she was supposed to be on sick leave. She pleaded that her boss had called her on 10.11.2020 to enquire how she was fairing and whether she could manage to be at the office the following day, as the office risked being empty. She informed her boss that she would confirm her presence depending on how she would be feeling. Following her feeling better the next day, she let her boss know that she would be at the office at around 2pm for half a day's work. She therefore reported to the office and conducted several tasks including checking the working of the payroll system and assisting her colleagues in dealing with clock-in reports. In essence, she was the only payroll accountant of the respondent that dealt with basically everything at work on the said 11.11.2020 as her boss, a senior financial accountant, was also absent.
4. The claimant further averred that her colleague, one Francis, had been tasked with dealing with the management category of payroll for that particular month of November 2020 but was away on official planned leave. Even though she was therefore to handle the other categories, the same did not in any way bar her from accessing other categories of payroll since both Francis and the claimant accessed every category of the payrolls at any time. This meant that Francis could also access her payroll category when present and when in need. She explained that one was only required to inform the other colleague that they had gained access to their category. That this is how she was able to access all other payrolls on 11.11.2020 as she processed and shared the reports for payroll clerks.
5. The claimant's further case was that on the said 11.11.2020, a fellow employee from the respondent's Quality Department walked in while she was in the office and requested for his payslip. Since the said employee falls under the management payroll category, Francis would ordinarily have been the one to deal with him but he was away. She therefore served the said employee as she was the only one that could assist him in the circumstances. Upon printing the employee's payslip, she decided to check whether the payroll system was properly working as it always had system errors that needed to be constantly checked. She did the quick check using her payslip as a dummy to easily point out where the problems were, if any, as she knows her earnings to the last coin. She did the system check and returned it to its normal position within a period that never lasted more than five (5) minutes. She averred that she repeated the quick system check the following day on 12.11.2020 and returned it to normal, and since Francis had reported back, she informed him of the checks she had done. In the end, she never received any of the alleged amounts tampered with as she did not leave the alterations in the system for her to claim the benefits when the time was ripe.



6. The claimant argued that the tests can either be done on the test environment or the live environment. That the test environment is where the software is tested before being approved and verified to be moved to the live environment. That a test can further be done on a live environment because the system sometimes experiences hitches while in the live environment even after being dealt with at the test environment. That conducting a test on the live environment is therefore not a strange exercise.
7. The claimant further argued that the disciplinary committee hurriedly decided on her matter without following the laid down procedure. For instance, she was not informed of her right to appear before the committee for hearing of her case with a witness.
8. The respondent's statement of response is dated 17.01.2022 and filed through Daly & Inamdar Advocates LLP. The respondent's case was as follows:
 - a. The respondent employed the claimant on 03.01.2017 as a Payroll Accountant on probation for six (6) months. She was thereafter confirmed in employment with a monthly salary of Kshs. 85,000/= and employee benefits of: a housing allowance of Kshs. 16,000/= and a transport allowance of Kshs. 7,500/=. The claimant was provided a Contract of Employment and other documents, that is: Employment Manual; Code of Conduct and Business Ethics Policy; Security Policy; and IT Operations Management Guide.
 - b. Part of the claimant's duties included ensuring accurate and prompt processing of the respondent's employee using the respondent's INSPIRE computer program. Employees of the respondent were divided into five (5) categories within the INSPIRE Payroll System and each payroll accountant, including the claimant, was assigned a number of categories every three (3) months. For September, October and November 2020, the claimant was assigned to 'Factory' and 'Contractors' and restricted from accessing any of the other categories without prior authorization from a supervisor. Furthermore, as a security feature, the respondent's INSPIRE system assigns each employee a unique code and records all activity and accordingly, the claimant's employee code was 380.
 - c. During a routine monthly payroll review on or about 26.11.2020, the claimant's supervisor, the Senior Financial Accountant, discovered an unauthorised change to the claimant's salary and employee benefits. The unauthorised activity indicated that on 11th and 12th November 2020, the claimant accessed a category not assigned to her and changed her basic salary and allowances. On 11.11.2020, the claimant changed her basic salary from Kshs. 91,015/- to 250,000/-; and from Kshs. 250,000/- to 170,000/-. On 12.11.2020, she again without any authorisation changed her basic salary from Kshs. 170,000/- to 200,000/-. During the same period, the claimant also changed her housing allowance from Kshs. 19,000/- to 35,000/- and her transport allowance from Kshs. 7,500/- to 28,000/-.
 - d. Considering that the claimant had been granted sick leave and was recorded as not present in the office on 11.11.2020, the respondent sought a formal explanation from her on 30.11.2020 on the unauthorised activity in its payroll. She was required to provide the explanation on the same 30.11.2020, on which date she was also placed on paid suspension to allow for formal investigations on the incident.
 - e. The findings of the investigation determined that a serious breach of the respondent's Code of Conduct and Business Ethics Policy had occurred. A notice to show cause dated 07.12.2020 was thus issued to the claimant informing her of the results of the investigation and requiring her response to the charges levelled against her, and reasons why a disciplinary hearing should not be convened.



- f. The respondent found the claimant's explanation unsatisfactory given the gravity of the breach and determined that a disciplinary hearing be convened. A notice of the disciplinary hearing dated 10.12.2020 was thus issued to the claimant also informing her of her right to a witness. The disciplinary hearing was then conducted fairly with the claimant and panel presenting their evidence and all parties present signing the recorded minutes to confirm their accuracy upon conclusion. Thereafter, the respondent deliberated for three (3) days and determined that the claimant be summarily dismissed as her explanation for the breach of the Code of Conduct and Business Ethics Policy was inadequate.
- g. The claimant was subsequently paid all her terminal dues owed as at the time of the dismissal and was also issued with a certificate of service dated 16.12.2020.
9. Parties tendered their evidence before Court and filed their respective submissions. The Court has considered the material on record and returns as follows:
- a. There is no dispute that parties were in a contract of service and which ended on account of dismissal upon the reason that the claimant altered particulars of her payslip in the payroll system.
- b. The claimant testified and confirmed that she accessed the payroll system and amended the salary on her payslip by providing herself benefits which were a preserve of the management staff. She testified that she changed her salary from Kshs.91, 015.00 to Kshs.250, 000.00 by reason that she was testing the payroll system. The claimant further testified that she changed her housing allowance from Kshs. 19,000.00 to Kshs.35,000.00, and, transport allowance of Kshs.7,500.00 she converted it to vehicle allowance of Kshs.28,000.00. The claimant testified confirming that whatever she called a test run was done on a live environment instead of test environment as was expected. In a contradictory testimony she stated that she had tested on both live and test environments. The claimant testified that she had undergone the disciplinary process. The Court upholds the respondent's case that the dismissal was fair in procedure and substance. The reason for termination is shown to have been valid and existing as at dismissal per section 43 of the *Employment Act*, 2007 and the reason was fair as relating to the claimant's misconduct per section 45 of the Act. Section 41 of the Act on notice and hearing the claimant was complied with.
- c. The changes the claimant made on her payslip were discovered before payments were made and the respondent did not make any actual monetary loss per the evidence by the respondent's witness. That the misconduct as alleged was established is not in doubt. As to whether another employer would not have dismissed is immaterial. The dismissal was not unfair.
- d. The claimant testified confirming that she was paid all salaries until the date of dismissal and was paid all leave days for 2020 and she received the certificate of service.

In conclusion the suit is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 21ST FEBRUARY, 2025.

BYRAM ONGAYA

PRINCIPAL JUDGE

