



**Ogal v Cosco Shipping Line (K) Limited (Cause E053 of 2022)
[2025] KEELRC 375 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 375 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E053 OF 2022
M MBARŪ, J
FEBRUARY 13, 2025**

BETWEEN

JOYCE OGAL CLAIMANT

AND

COSCO SHIPPING LINE (K) LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant through a contract dated 1 April 2021 as a documentation assistant. In March 2022, the respondent's client, Fayuz Trading Limited, enquired from the claimant about reputable clearing agents who could clear its consignment. The consultation was done through Johnson Maasai, an agent of Fayuz Traders Limited. The claimant referred several agents to Fayuz, including M/S Iris Port Conveyors (K) Limited.
2. On 20 May 2022, the claimant was served with a show cause notice stating that the respondent had received an incident report that on 19 March 2022, she went against company policy of treating client information with the utmost confidentiality. In a meeting held on 20 May 2022, M/s Iris Port Conveyors (K) Limited alleged that the claimant shared matters revolving around deposit information with third parties without their consent. The information was misused to issue a delivery order for a third-party C&F agent, M.s Buchere Enterprises, without payment of the required container deposit. The matter was reported to DCI, Urban Police Station, Mombasa.
3. The claimant was informed that her actions violated her employment contract. The matter was brought to her attention on 7 May 2022 by M/s IRIS, but she never reported it to her immediate team leader or management.
4. The claimant was directed to submit a written explanation before 20 May 2022, and refusal would be taken as a waiver of her right to be heard.



5. The claim is that the show cause notice was served to the claimant just before the close of office at 5 pm by the human resource team leader, Godfrey Mulanda. The claimant requested to be allowed until later but was directed to his office, where he dictated a response and took it away. She complied as directed by her senior, fearing being accused of insubordination.
6. On 24 May 2022, the claimant was summoned to attend a disciplinary hearing, and she responded to the show cause notice without being under the duress of Mulanda. On 27 May 2022, the claimant was served with a notice of summary dismissal because she had given an inconsistent statement, both in her reply to the show cause notice and during the disciplinary hearing. This was an issue during the disciplinary hearing. In the claimant's case, she was not allowed to explain the alleged inconsistencies.
7. The claimant wrote a letter dated 30 May 2022 to the respondent explaining her position, but there was no response.
8. The claim is that there was an unfair termination of employment. The reasons given to the claimant were not valid and went contrary to the law. The advice she gave to Fayuz Traders Limited was based on information she had received from being in the shipping industry. If M/s IRIS had employed competent persons to handle their clearance work, such an incident could not have happened. The fact that the claimant referred a customer to them cannot be used as an excuse for the neglect act of their employees.
9. The claimant is seeking the following;
 - a. A declaration that employment was terminated unfairly;
 - b. 12 months compensation ksh.912,870;
 - c. 20 accrued leave days Ksh.50,715;
 - d. Gratuity for 1 year 2 months ksh.44,376.89;
 - e. Notice pay Ksh.76,072.50;
 - f. Unpaid bonuses Ksh.152,148;
 - g. Costs of the suit.
10. The claimant testified in support of her case. She testified that she worked in the shipping and logistics sector for 8 years before being employed by the respondent. Her contract started on 1 April 2021, and she worked until 27 May 2022 as a documentation assistant. Clause 11 of the contract requires confidentiality. In March 2022, a client of the respondent reached out to her seeking information. The claimant called an agent, Johnson Maasai, a broker in the industry. Maasai wanted to clear Fayuz's cargo, and he gave her the Bill of Lading for Cosco, the respondent. Maasai had no letter to indicate that he was acting for Fayuz, which was sent by email after sharing the information.
11. The claimant testified that she had no written information that Johnson Maasai had been appointed by Fayuz as an agent, even though she had previously worked with him in a different company.
12. The claimant testified that she was invited to a disciplinary hearing, and IRIS representatives were present. The claimant stated that Maasai had called her, and she had given him information about clearing agents. She gave him a list of agents with revolving deposit facilities with the respondent.
13. The claimant testified that she was informed that the matter had been reported to the police because they could not trace the clearing agent, Maasai, and the container was missing, which incurred demurrage. She was not aware of a subsequent consignment that was cleared. Fayuz container had a



pending demurrage bill that IRIS was supposed to pay because they had cleared that cargo on behalf of Fayuz. Maasai did not clear it, and he did not pay the demurrage bill.

14. The claimant denied that during the meeting held on 20 May 2022, she admitted that she had breached confidentiality.
15. She asked why she did not escalate the matter to management after learning from Benson that the matter had been reported to the police, and the claimant testified that the matter did not concern the respondent. Under her contract, she was not supposed to release any information that came to her knowledge under her employment.
16. The show cause notice was issued on the same day and related to allegations that she had shared information on revolving deposits and failed to report the matter to her team leader. She responded to the notice and admitted having recommended IRIS to Maasai upon his request for a company with a revolving deposit facility. She did not report to management because the manager of IRIS had called and told her he had arrested one of the criminals who had agreed to pay the incurred demurrage, but the respondent was not involved.
17. The claimant admitted in her response that she regretted any inconvenience caused by sharing client information with third parties of the respondent. She wrote the response while with human resources. She was later invited to the disciplinary hearing and was issued a notice of summary dismissal alleging that she had given a contradicting statement. Her last day at work was 27 May 2022, and her salary paid for days worked at ksh.59, 537.40 through the bank account.
18. The claimant testified that she was later paid Ksh.132, 958.10. The dues paid included;
 - a. Ksh.50,715 for 20 accrued leave days;
 - b. One year and two months gratuity pay Ksh.44,376.89;
 - c. Notice pay Ksh.76,072.50;Total Ksh.171, 164.39
The dues paid were subject to statutory deductions.
19. From the claims, there were bonuses of ksh.152, 145. This was due based on overall company performance.
20. In response, the respondent's case was that on 19 May 2022, IRIS raised a complaint concerning a consignment unprocedurally released to a consignee named FAYUZ. IRIS implicated the claimant in the release.
21. On 20 May 2022, IRIS held a joint meeting between the respondent and the claimant. It was revealed there was a conversation between IRIS, a port releasing clerk, Joseph Kawei, and the claimant where they entered into an agreement and collaboration and assisted a third-party agent in processing the clearing of a container for FAYUZ. The agent did not have a revolving deposit facility with the respondent, the shipping line agent.
22. IRIS only became aware of the incident after they requested the respondent for a delivery order on a subsequent consignment. This request was rejected because they had a pending demurrage bill for the release of a consignment to FAYUZ. They claimed not to know about the consignee and reported the matter to the police. They then reached out to the claimant on the matter.
23. Joseph Kawei admitted that he colluded with the claimant to process the release of the container in that he received the money in cash from the claimant. The claimant denied these matters and stated that



- she was contacted by Maasai, whom she knew while working in the sector. Maasai had a consignment but could not clear it since he did not have a revolving deposit with the respondent. He requested the claimant to give information about a company with a revolving facility to the respondent.
24. The claimant admitted having shared with Maasai a list of 3 companies revolving deposit facilities with the respondent and their contact details. IRIS was such a company, and the claimant knew the information shared was confidential and that it was wrong to disclose the information.
 25. The claimant admitted that although she knew Maasai, she did not know what he did for a living or whether he was working for the consignee, FAYUZ.
 26. The response is that they issued the claimant with a show-cause notice. She responded with her hand and admitted that;
 - ... She recommended Iris Port Conveyors (K) Limited to a guy named Johnson Maasai, who had called and requested a company with a revolving deposit facility with Cosco.
 27. The claims made are without merit and an afterthought since the claimant was taken through the disciplinary process. She changed her statement during the hearing. She only disclosed several C&F companies to Maasai but did not share any information on whether these companies had a revolving deposit facility with the respondents. She had been coached by her representative, Evans Ochieng, who the respondent later found was an advocate of the High Court of Kenya.
 28. Employment was procedurally terminated for breach of confidentiality. The claims made are not justified. There was fair procedure, and notice and compensation were not due.
 29. On 2 June 2022, the respondent paid the claimant accrued leave days and notice pay less statutory deductions. The claimant was not entitled to a bonus, which was solely at the respondent's discretion.
 30. In evidence, the respondent called Godfrey Mugodo Mulanda, the human resources and administration team leader. He testified that the respondent is a shipping and logistics company involved in the international transportation of goods, majorly through the sea.
 31. The claimant's employment was terminated because she breached the confidentiality clause in her contract. The information released by the claimant is related to the container's revolving deposit. This is the sum of money a client pays the respondent to act as a security safeguard for the container used to deliver. Not all clearing agents have a revolving facility with the respondent.
 32. Those clearing and forwarding agents who do not have a revolving facility must pay the respondent a deposit for each container they are using. The claimant shared information on the container revolving facility with third parties.
 33. Mulanda testified that the claimant admitted to sharing this information during a joint meeting with the respondent and IRIS representatives on 20 May 2022. She admitted to sharing information with one of the directors, Maasai, but this is an unknown person to the respondent.
 34. Terminating employment was a breach of the confidentiality clause of the employment contract. The letter noted that the claimant would be paid her terminal dues;
 - a. 20 Accrued leave days;
 - b. Gratuity for 1 year and 2 months;
 - c. Notice pay.



35. The total was paid through the bank account on 2 June 2022 for Ksh.132, 968.10; on 22 May 2022, there was the payment of Ksh.59, 537.40 for salary due in May 2022. These payments were separated because, by 27 May 2022, the claimant had been paid her salary on 23 May 2022.
36. At the close of the hearing, the parties agreed to file written submissions, which are analyzed in the determination.

Determination

37. Parties admitted that on 23 May 2022, the claimant was paid ksh.50, 537.40 for days worked.
38. It was also admitted that on 6 June 2022, the claimant was paid Ksh.132, 958.10 in terminal dues through the bank account. This comprised the following;
 - a. 20 accrued leave days Ksh.50,715;
 - b. 1 year and 2 months gratuity Ksh.44,376.89;
 - c. Notice pay Ksh.76,072.50These dues were paid less statutory deductions.
39. The pending issues are whether there was an unfair termination of employment and whether bonus payments were made as claimed.
40. Through the notice dated 27 May 2022, the respondent terminated the claimant's employment through summary dismissal. The reasons given were that during a meeting held on 20 May 2022, the claimant admitted giving her former colleague Maasai information relating to agents with revolving deposits with their contacts. The claimant admitted she was wrong in sharing that IRIS had a revolving deposit with a third party, Maasai.
41. The termination notice also noted that the claimant was invited to a disciplinary hearing through a notice dated 23 May 2022, and she attended on 24 May 2022 accompanied by her representative, Evans Ochieng. The claimant admitted that she had shared with Maasai that IRIS had a revolving deposit with the respondent but denied that she was unaware of Maasai's subsequent actions until later when she learned that IRIS had reported to the police. She did not escalate the matter to the respondent because she did not find it necessary.
42. The claimant was bound under her employment contract with the respondent.
43. Under clause 11, of the employment contract, the claimant was bound under confidentiality;
 - (a) You will treat as confidential any information including and not restricted to client information that comes to your knowledge as a result of this contract except where disclosure is necessary for you to fulfil obligations under this contract or as required by law.
 - (b) ...
44. Under Section 44(3) of the *Employment Act*, an employer can terminate employment through summary dismissal where the employee breaches the employment contract. The protection of the employee is under Section 41(2) of the *Employment Act*, which requires notice and a hearing in the presence of the employee's representative of choice.
45. In this case, the claimant was issued a notice to show cause on 20 May 2022.



46. She replied on the same day and admitted that she shared insider information with Maasai, a person known to her through her previous engagements in the shipping sector. The claimant noted in her response that;

... I acknowledge that I recommended M/s IRIS Conveyors (K) Ltd to a guy named Johnson Maasai, who called and requested a company with a revolving deposit facility with Cosco Shipping Lines (K) Ltd.

I didn't involve my team leader or management because ... of the managers of IRIS Conveyors called and said he had already arrested one of the criminals who agreed to pay the incurred demurrage. I felt Cosco Shipping was not involved in any way.

I regret any inconvenience that I might have caused the company by sharing client information with a third party.

47. The claimant's admission of sharing client information with a third party was a direct breach of her employment contract. The sanction of summary dismissal upon her admission was justified.

48. The claimant contested the letter of response. This was done under Mulanda's supervision, who dictated its contents, which she wrote in her hand on the same day the notice to show cause was served, 20 May 2022.

49. However, the disciplinary hearing was not held until 24 May 2022.

50. The claimant felt that the human resource team leader made her write her response on 20 May 2022 under duress or coercion. She did nothing. She allowed her response to be.

51. In the case of *Ochwang'u v Leafde Limited* [2023] KEELRC 1728 (KLR), the court held that an employee who is in breach of the employment contract and is offered a chance to explain but fails to do so cannot turn around and blame the employer. A sanction of summary dismissal is justified. In *Anthony Mwai Munyi v Computer Revolution Africa Ltd* [2017] KEELRC 440 (KLR), the court held that;

Section 44(3) and (4) of the *Employment Act*, 2007 allow an employer to terminate an employee's employment for breach of contract and gross misconduct. The list of matters which warrant summary dismissal under subsection 44(4) is not exhaustive and is subject to addition by the employer through the contract of employment or the human resource manual that the employee is issued with at the time of employment, or once this is compiled. Where there is a separate document setting out human resource matters, the employee must be issued a copy, which he must sign to be bound.

52. In this case, the claimant was bound by her employment contract not to disclose client information to third parties without permission of the respondent. She went ahead and disclosed client information to the detriment of the respondent. Her conduct is not justified. See *Barrack Musumba v Nyanza Sugar & Produce* [2017] KECA 658 (KLR).

53. The compensation claim is not justified.

54. The paid notice pay was not due. The payment was a generous settlement by the respondent.

55. On the claim for bonus pay of Ksh.152, 145, the claimant based this claim on the respondent's overall performance. Under clause 16(a) of the employment contract, the benefit of a bonus was to be paid according to the company's overall performance.



56. The claimant does not specify the formula applied in claiming Ksh.152, 145. The basis of this claim is not established.
57. The court considers the terminal dues paid to the claimant immediately upon termination of employment. Under Section 45(5) of the *Employment Act*, the court must consider such adherence to the law in considering the remedies sought. In this case, the respondent's standing with the court is good. Paying notice pay that was not due in the case of summary dismissal places the respondent in good standing.
58. Accordingly, the claims made are without merit and are hereby dismissed. Costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 13 DAY OF FEBRUARY 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

