



**Kassim v ACK Diocese of Kitale (Cause 18 of 2022)
[2025] KEELRC 1016 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1016 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE 18 OF 2022
MA ONYANGO, J
MARCH 28, 2025**

BETWEEN

ANNETTE HASSINAH SHIDAH KASSIM CLAIMANT

AND

ACK DIOCESE OF KITALE RESPONDENT

JUDGMENT

1. The Claimant herein, Annette Hassinah Shidah Kassimis deceased. She was substituted with her daughter Sheila Alice Anyona the legal representative of her estate vide an application dated 18th September, 2023.
2. In the Memorandum of Claim dated 17th July, 2019 and filed on 30th July 2019, as amended on 25th September, 2023, the Claimant (now deceased) avers that she was employed by the Respondent as the manager of Bishop Muge Guest House and Conference Centre vide letter dated 2nd September, 2012. That she was confirmed vide letter dated 6th July 2016 on permanent and pensionable terms which position she held until termination of her employment.
3. It is averred that the monthly salary of the deceased was Kshs. 38,340 with responsibility allowance of Kshs. 6000, medical allowance of Kshs. 40,00 per year, hospitality allowance of Kshs. 3,500, travel allowance of Kshs. 4,792, house allowance of Kshs. 23,004, water and electricity allowance of Kshs. 5,751 and provident fund contribution of Kshs. 3,834.
4. It is averred that the employment of the deceased was terminated by letter dated 1st March, 2019 by resolution of an irregularly constituted board.
5. Prior to the termination of her employment the deceased was subjected to disciplinary proceedings by the same board on 21st February, 2019.



6. It is averred that the charges against the deceased were not proved and the termination was therefore unfair.
7. The terminal dues sought by the deceased are set out at paragraph 9 of the Memorandum of Claim as follows:
 - a. The sum of Ksh.5,089,903/= being arrears of salary and allowances payable from 2014 January to February 2019.
 - b. Damages for wrongful dismissal and unfair termination.
 - c. Interest on a) above at court rates from the date of filing of this claim until payment in full.
 - d. Costs of the suit.
 - e. Such other or further relief as this Honourable court may deem just to grant.
8. The Claimant thus prays for relief as follows:
 - a. The sum of Kshs. 5,089,903 being arrears of salary and allowances.
 - b. Damages for wrongful dismissal and unfair termination.
 - c. Interest on (a) above at court rates from date of filing of this claim until payment in full.
 - d. Costs of the suit.
 - e. Such other or further relief as this court may deem just to grant.
9. The Respondent filed an Amended Response dated 2nd February, 2024 in which it denies that it employed the deceased and confirmed her employment as pleaded in the Amended Memorandum of Claim.
10. The Respondent further denies that the deceased was paid salary and allowances or that it terminated the services of the deceased as pleaded in the Memorandum of Claim.
11. The Respondent pleads in the alternative that the deceased was employed as a manager of Bishop Muge Guest House and Conference Centre and that since she took over the managerial functions of the facility it became financially crippled to the point that it incurred losses and accumulated salary arrears for employees. That the deceased was informed of the financial situation and promised to improve but there were no changes.
12. The Respondent avers that in conformity with best human resource practices and the provisions of the *Employment Act* it invited the deceased for disciplinary hearing by letter dated 13th February, 2019.
13. That during the hearing the deceased was accorded the right to be accompanied to the disciplinary hearing by a person of her choice and she attended the hearing in the company of her advocate. That at the hearing the deceased failed to show cause why her services should not be terminated to the satisfaction of the Respondent. That the deceased did not defend herself nor disprove the accusations against her. That when she was asked for a way forward her response was that it was up to the employer to decide.
14. That the Respondent's Board was convened on 28th February, 2019 as per the structures and constitution of the Respondent to discuss the way forward and the board noted that the deceased failed to give clear explanation of her underperformance.



15. That the Board deemed it fair to terminate the services of the deceased which termination was fair and complied with due process.
16. The Respondent denies that it owed the deceased any arrears of salary at the time of termination of her services and avers that the estate of the deceased is not entitled to the prayers sought. It prays that the suit be dismissed with costs.

Evidence

17. At the hearing of the suit both parties presented a witness who testified and was cross examined. The parties thereafter filed and exchanged written submissions.
18. The Claimant called Sheila Alice Anyona who testified as CW1. She stated that she is the first born of the deceased and the administrator of the estate of the deceased. She adopted her witness statement dated 13th March, 2024 and the statement of the deceased dated 17th July, 2019 as her evidence in chief. She further adopted documents filed with the Memorandum of Claim, the Amended Memorandum of Claim and further list of documents filed on behalf of the Claimant.
19. Under cross examination CW1 stated that the deceased was invited for a disciplinary hearing. She stated that the averment that the board that terminated the employment of the deceased was not properly constituted is not substantiated by the Claimant. She stated that the breakdown of the decretal sum has not been given in the Claim.
20. The Respondent called Yonah Mondoh Adalla who testified as RW1. He stated that he was the Honorary Treasurer of the ACK Diocese of Kitale and a member of the Board of the Respondent. He adopted his witness statement and the documents filed by the Respondent in support of its case.
21. Upon cross examination RW1 stated that the deceased did not perform her duties well for the entire duration of her employment by the Respondent.
22. He testified that apart from the show cause letter there is no letter written by the Respondent to the deceased with regard to her performance.
23. He stated that he did not know how much capital was injected into the guest house by the Respondent as working capital. He also stated that he was not aware that the deceased complained that the guest house was starved of working capital, that the board is supposed to inject capital into the facility or that if no capital is injected there would be no profit.
24. RW1 stated that the Respondent denied the Claim of Kshs. 5,089,903 claimed in the Memorandum of Claim as it does not have the breakdown. That the records were kept by the deceased who had custody of documents of the Respondent as the manager of the institution.
25. He admitted that the deceased was owed arrears of salary. He further admitted that the report of the taskforce produced on behalf of the deceased Claimant indicated that the facility did not have sufficient funds to run it.
26. RW1 stated that the deceased did not hand over the documents that could confirm the amount claimed in court.
27. He denied that the deceased lost her job because Bishop Chemengich decided to reorganize the institution when he took over as Bishop.



Analysis and Determination

28. Have considered the pleadings, evidence and submissions, the issues arising for determination are whether the termination of the deceased Claimant's employment was fair and if the estate is entitled to the remedies sought.
29. Section 45 of the [Employment Act](#) provides that a termination of employment will be considered unfair if the employer fails to prove —
- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason—
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
30. It is not in dispute that the Claimant was issued with a show cause letter dated 13th February, 2019 and invited for a disciplinary hearing on 21st February 2019. The letter is reproduced below:

Diocese Of Kitale

The Anglican Church Of Kenya(A.C.K)

Friday, 1st March, 2019

AnnetterHassinah Kassim

Manger, Bishop Muge Guest House and

Conference Centre,

Box 41176-30200

Kitale

Dear Annette Kassim

Re: show cause letter – why your employment should not be terminated over persistent under-performance of Bishop Muge Guest House and conference centre.

Receive greetings in Jesus's name!

The above subject refers:

I write to inform you that after consultation with the Bishop and Executive Members of the Board of BMGHCC and upon critical review of the financial status and general performance of BMGHCC over a long period of time, it has become apparent that your performance as the manager of the BMGHCC Is dismally below par and your ability to return the BMGHCC into a viable and profitable business enterprise is doubtful.

However, in line with the labour laws and best human resource practices, you are invited to a meeting on Thursday, the 21st day of February, 2019 at 2:00pm at the Diocesan Boardroom to give detailed reasons why your employment as the manager of BMGHCC should not be terminated for reason of underperformance and your failure to deliver resulting into huge financial losses of the Centre.

You are at liberty to bring along a member of staff of BMGHCC, or any person of your choice to be a witness to the proceedings at the meeting.



Be assured of our prayers as we await of the deliberations at the meeting and final decision of the diocese regarding your engagement or otherwise at the Centre.

Yours Sincerely,

Signed

Ven Ben Barasa

Diocesan administrative secretary

Cc: Rt Rev Dr Emmanuel Chemengich– Bishop

Lay Canon Yona Adala -Chairman, BMGHCC Board

Berrin Ng'aritai -Diocesan Accountant

31. It is common ground that the deceased Claimant attended the disciplinary hearing accompanied by her advocate on 21st February, 2019.
32. After the disciplinary hearing a decision was made to terminate the employment of the deceased Claimant which was effected by letter dated 1st March, 2019. The letter is reproduced below:

Diocese Of Kitale

The Angilican Church Of Kenya(A.C.K)

Friday, 1st March, 2019

Ack Diocese Of Kitlae.

Box 4176-30200

Box 4176 – 30200

Kitale

Dear Annette,

Re: Termination of Employment As Manager of Bishop Muge Guest House And Conference Centre With Effect From 1st March, 2019

Greetings in Jesus Name.

You attended a disciplinary hearing on 21st February, 2019 before the Executive Board of Bishop Muge Guest House & Conference Centre (hereinafter referred to as “the Board”) to show cause why disciplinary action should not be taken against you for poor performance of your duties.

You were given a hearing. However, your explanation was not satisfactory.

Consequently, the Board resolved under Min.02/BMGH&CC/28/2019 to terminate your services as the Manager of Bishop Muge Guest House & Conference Centre with effect from 1st March, 2019.

The board will compute your terminal dues and pay the same as soon as funds are available.

Kindly hand over to Mr. Philemon Keter, the Acting Manager, all property of Bishop Muge Guest house & Conference Centre which is in your possession, including all financial records, list of debtors and all keys under my supervision, forthwith.

Please keep the Board informed of your contact information to enable the Board contact you in future if need arises.

The Board wishes you well in your future endeavours.



Please let us know if we can assist you during your transition.

With much regards,

Signed

Ven Ben Barasa Wanyonyi

Diocesan Administrative Secretary

Cc: Diocesan Bishop, Diocesan Chancellor, Board Chairman, - BMGH&CC, Diocesan Account

33. It was the deceased Claimant's averment that the termination was unfair because the Bishop chaired the disciplinary hearing. No evidence was adduced to show that the Bishop was not qualified to chair a disciplinary hearing or that the Claimant objected to the composition of the disciplinary panel. The minutes of the meeting of the Board held on 28th February, 2019 at which the decision to terminate the employment of the Claimant was made was not chaired by the Bishop. I find that the disciplinary hearing and the subsequent board meeting which adopted the minutes of the disciplinary hearing and decided that the Claimant's employment be terminated were properly constituted.
34. I do not find any merit in the argument that the disciplinary hearing panel was not properly constituted making the termination unfair.
35. Apart from the constitution of the disciplinary panel the Claimant did not raise any issue about the termination process.
36. From the foregoing it is my finding that the termination process complied with section 41 of the Employment Act and was fair.
37. On the grounds for termination, the Respondent stated in both the show cause letter and termination letter that the performance of the Claimant as manager of the Guest House and Conference Centre was wanting.
38. In the Task Force Team Report at page 1a of the Respondent's bundle of Documents, it is stated that the management of the facility was in dire straits. This was summarized in the Board meeting of 28th February as follows:

"The member noted that the Centre has accumulated salary arrears that's unable to sustain. It was also noted that the Centre cannot be restored to its financial ability under the management of the current Manager. Even after being given a hearing on 21st February 2019, the current Manager could not explain satisfactorily the underperformance and huge financial losses experienced by the Centre. The centre has accumulated the CCK loan to Ksh. 40,000,000/= without signs of monthly loan payment of Ksh. 75,000/=.

It is for these reason that the Board resolves to terminate Annette Hassinah Kassim as the Manager BMGH&CC with effect from 1st March 2019. The board agreed to compute her termination dues and pay as funds are available from BMGH&CC. The Board directed the Diocesan Administrative Secretary to communicate the same to Annette with immediate effect and Appoint Philemon Keter as acting Manager."
39. The deceased Claimant did not contest this state of affairs at the facility.
40. Section 43 of the Employment Act provides that in any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the



employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

41. Section 41 provides that an employer may terminate the employment of an employee on grounds of misconduct, poor performance or physical incapacity.
42. Section 44(4)(c) provides that an employer may summarily dismiss an employee who wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.
43. From the foregoing it is my finding that there was valid reason for termination of the Claimant's employment.
44. Having found the termination of the Claimant's employment both substantively and procedurally fair is her estate entitled to the remedies sought in the Claim?
45. In her Amended Memorandum of Claim the Claimant seeks Kshs. 5,089,903 being arrears of salary from January, 2014 to February, 2019. No breakdown has been given for this amount. A multiplication of the Claimant's salary with the number of months she is alleged to have not been paid from January, 2014 to February, 2019 does not add up to the amount claimed.
46. It is further inconceivable that the Claimant was not paid or rather, did not pay herself, any salary at all from January, 2014 to February, 2019.
47. According to the report at page 1a of the Respondent's bundle, the Task Force Team notes that there were no records to show the number of employees and the amount of salaries outstanding to each of them as there was no Master roll/Payroll. The same reads in part:

Task Force Team, (BMGH&CC)

After looking at the documents provided to us, we have the following to submit.

In the Audit report given by Wicam Consultants, there are observations mentioned which ought to be looked into with a view of improving on the same.

In the report, it is mentioned, "However, during our audit we became aware of certain matters that are opportunities for strengthening internal controls and operating efficiency."

It was very difficult for us to find and go through the records for the years, 2014 and 2015, as planned earlier. Together with our Diocesan Accountant and her assistant, we tried to look at payments made in respect of salaries and other payments, but we could not go far. There were no records in place e.g Master/payrolls to show the number of employees and the amount of salaries outstanding to them.

Some payments were made in the name of individual without indicating the month being paid for.

From the available audit report of 2016, the risk level category given is of a high level which needs prompt action. This can only be verified in the 2017 audit report which is yet to be submitted. This is if the management acted as per the recommendations given.

Apart from the observations and recommendations given in the audit report of 2016, we have gone through the records available to us for the year 2018 and these are our observations and suggestions:

Observation

We came across the analysis of expenditure from Trans-national Bank amounting to Sh. 119,800/=(one hundred and nineteen thousand eight hundred only),



As listed below: Shs.10,000/= to P.J. Dhodhia

Shs.78,800/= for canteen construction.

Shs.10,000/=to Patrick Tenoï as salary.

Shs.20,000/=to Church Commissioners for Kenya for loan repayment.

The information we got is that the relevant documents are with the External Auditor who is working on the 2017 records of accounts for Bishop Muge Guest House and Conference Centre.

We came across invoices indicating money owed to the centre by individuals but there was no list/record/register too show the debtors and the amount the centre is owed in total.

We also saw figures of loans without supporting documentations required.

48. The figure as prayed for by the Claimant is in the nature of special damages which is subject to strict proof. The Claimant was the custodian of records of the Respondent. In the letter of termination and in the letters dated 30th April, 2019, 13th June, 2019 and 5th July, 2019 the Claimant was requested to hand over to the Respondent documents in her possession including the list of debtor and creditors which apparently, she did not do.
49. From the evidence on record it is clear that there were arrears of salary for staff. The Claimant however did not prove that she was owed the sum of Kshs. 5,089,903 as claimed by her.
50. In the absence of proof of the figure claimed and in recognition of the fact that the Respondent admitted that there were salaries that were owed to the staff, the court in its discretion awards the Claimant's estate 2 years' salary at Kshs. 81,387x24=1,953,288 made up of basic salary Kshs. 38,340, responsibility allowance of Kshs. 6000, hospitality allowance of Kshs. 3,500, travel allowance of Kshs. 4,792, house allowance of Kshs. 23,004, water and electricity allowance of Kshs. 5,751.
51. Having found that the Claimant was not wrongfully terminated the Claimant's estate is not entitled to the prayer for damages for wrongful dismissal. The same is declined.
52. Interest shall accrue at court rates on the sum awarded from date of judgment.
53. Each party shall bear its own costs.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 28TH DAY OF MARCH, 2025.

M. ONYANGO

JUDGE

