



**Kawira v Yetu Sacco Society Limited (Cause E084 of 2024)
[2025] KEELRC 1012 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1012 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E084 OF 2024
SC RUTTO, J
MARCH 28, 2025**

BETWEEN

DOREEN KAWIRA CLAIMANT

AND

YETU SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. It is common cause that the Claimant was employed by the Respondent and served in various capacities and different departments of the Respondent in Nkubu and Nairobi. The Claimant has averred that on 2nd June 2013, she was posted as a teller to the Respondent’s Nkubu offices until September of that year when she was posted to Nairobi. She has further averred that she was deployed to start a microfinance department in the Respondent’s Nairobi branch and a new teller was posted to replace her.
2. According to the Claimant, the microfinance department performed exemplarily well and as a result, she was moved to the credit department to help improve it. The Claimant avers that she performed her duties exceptionally and the Respondent acknowledged this by awarding her “staff of the year” in 2019.
3. Seemingly, things took a turn in the employment relationship when the Claimant was issued with a Notice to Show Cause dated 17th August 2023. She was subsequently suspended from duty vide a letter dated 28th August 2023 and invited to a disciplinary hearing which was scheduled for 12th September 2023.
4. The Claimant avers that she suffered depression and anxiety after what she termed a sham hearing hence she wrote a resignation letter on 13th September 2023 in protest. The Respondent declined to receive her letter of resignation and on 21st November 2023, she was served with a letter of summary dismissal.



5. It is the Claimant's case that her dismissal from employment was unfair, unlawful, and without just cause as she was not accorded a fair hearing and an appeal option in blatant disregard of Sections 41,43 and 45 of the *Employment Act*.
6. It is against this background that the Claimant has sought the following reliefs against the Respondent:
 - a. A declaration that the termination of the Claimant's employment was unlawful, unfair and wrongful in the circumstances.
 - b. A mandatory directive to the Respondent to issue the Claimant with a Certificate of Service.
 - c. Orders for the payment of the following sums which are due and owing:
 - i. One month's salary in lieu of notice- Ksh 133,876.00/=
 - ii. Leave earned and not taken Ksh.267.752.001/=
 - iii. Service pay for 11 years (133,876,000x 11) = Ksh. 1,472,636/=
 - iv. 12 months' salary as compensation for unfair termination (Ksh.133,876x12)- Ksh.1,606,512/=
 - v. Sacco savings and dividends
 - d. General Damages for unfair termination.
 - e. Exemplary damages for breach of the Claimant's Constitutional rights to fair labour practice.
 - f. Costs of this suit and interest thereon at court rates.
 - g. Such other or further relief as this Honorable court may deem just to grant.
7. Opposing the Memorandum of Claim, the Respondent has averred that the Claimant's conduct was intolerable and unbecoming of its staff. That the Claimant was issued with a warning letter upon discovery on 23rd March 2020 that she had withdrawn Kshs 900,000/=from account number 1003819 belonging to Elias Mwirigi M'Mugambi without his consent, contrary to the Respondent's Standards and Procedures.
8. It is the Respondent's case that the Claimant engaged several of its customers in borrowing money and as of 17th August 2023, the amount borrowed was Kshs 1,483,000/=. The Respondent contends that this led to numerous complaints and a bad reputation.
9. The Respondent has further contended that the letter of termination dated 21st November 2023 had no effect as the Claimant had voluntarily resigned from her employment and elected to cease being an employee. In the Respondent's view, the Claimant is not entitled to the reliefs sought. To this end, the Respondent has asked the Court to dismiss the Claim with costs.
10. The matter proceeded for hearing on 28th October 2024 and 4th December 2024, during which both parties called oral evidence.

Claimant's Case

11. The Claimant testified in support of her case and at the outset, sought to adopt her witness statement as well as the list and bundle of documents filed alongside the Statement of Claim to constitute her evidence in chief.



12. It was the Claimant's evidence that she has several friends with whom she exchanges financial favors, including borrowing money from each other.
13. That around the end of July 2023, one of her friends by the name of Rose Kinya went to her place of work to request her to pay back a sum of Kshs 27,000/= she had lent her (Claimant).
14. One of the managers of the Respondent overheard the conversation and immediately called Rose Kinya to his office. He (the manager) later took Kshs 27,000/= and handed it over to Rose, after which he asked her (Rose) to write a note stating that she had authorized him to pay the Kshs. 27,000/=.
15. The Claimant further averred that one week after the incident, another manager of the Respondent by the name of Amos Mutugi summoned her to his office and enquired what had transpired. The Claimant explained that she owed some money to several of her friends, which she had borrowed to help another friend. Mr. Mutugi asked how the Respondent could assist her and she requested for a loan facility to settle her debts.
16. Mr. Mutugi informed her that the Respondent would look into the matter and get back to her. He asked the Claimant to write a list of all the people she owed money. She did as much.
17. The Claimant averred that she was later called to the manager's office and informed that the Respondent had declined to extend any loan facility to her. She was then asked to proceed on leave since she had accumulated a good number of unused leave days.
18. While on leave, she was served with a Notice to Show Cause and a warning not to borrow money from any of her friends who were customers of the Respondent.
19. Upon receiving the Notice to Show Cause, she went back to the office to try and find out what was happening. She was then served with a compulsory leave letter and asked to proceed on leave.
20. That while on leave, she was served with a letter inviting her to a disciplinary hearing set for 12th September 2023.
21. The Claimant contended that she attended what was alleged to be a disciplinary hearing on 12th September 2023, where she was denied an opportunity to defend herself. According to the Claimant, she was made to sit down and take verbal assault from the five people present at the meeting.
22. The Claimant added that she was not allowed to bring a fellow employee or a union representative to the hearing.
23. That after the said disciplinary hearing, she found out that some of her friends who she owed money had been coerced to write complaints against her upon being promised that the Respondent would pay them any money she (Claimant) owed them.
24. The Claimant averred that she suffered depression and anxiety after the sham hearing, hence she wrote a resignation letter on 13th September 2023, in protest against being humiliated and condemned without a proper opportunity to defend herself.
25. On 12th October 2023, she received a letter from the Respondent, declining to accept her resignation and on 21st November 2023, she was served with a letter of summary dismissal from the Respondent.
26. The Claimant averred that she had explained on various instances that she borrowed money from her friends in her personal capacity and the same was not related to her employment but her explanation fell on deaf ears as the Respondent seems to have pre-determined to dismiss her summarily.



27. It was the Claimant's view that her dismissal from employment was unfair, unlawful and without just cause as she was neither accorded a fair hearing nor an appeal option. She further stated that the grounds for her dismissal were not evidenced or proven.

Respondent's Case

28. The Respondent called oral evidence through Ms. Jacqueline Wambui who testified as RW1. She identified herself as the Respondent's Human Resource Manager and proceeded to adopt her witness statement to constitute her evidence in chief. She further produced the initial list and bundle of documents and the further list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
29. RW1 testified that the Claimant was required to adhere to the Human Resource Policy Manual 2023 and was to act diligently, hold her office with honour and dignity, and act conscientiously.
30. RW1 further averred that the Claimant was expected to conduct her personal financial matters to the highest level of integrity and probity. That she was not expected to engage in activities like persistent indebtedness, indebtedness beyond the allowed staff credit ratio, and borrowing from unauthorized lenders.
31. RW1 further averred that the Claimant was not allowed to exhibit pecuniary embarrassment and/or to be in constant debt.
32. It was the evidence of RW1 that on 23rd March 2020, it was observed that on 18th September 2017 and 21st September 2017, the Claimant had made withdrawals of Kshs.900,000 in the account belonging to Elias Mwirigi M'Mugambi.
33. RW1 averred that the said customer confirmed the withdrawals were done without his consent and were paid to the wrong person in which event the Sacco was liable for the loss. Thus, the Claimant was issued with the first warning.
34. That it was later discovered that the Claimant owed the Respondent's customers Kshs.1,4838,000/= which had been borrowed over different durations. This had led to numerous complaints, bad reputation, embarrassment and violation of Clauses 8.13 and 8.17 of the Respondent's Human Resource Policy hence the Claimant was issued with a show cause letter dated 17th August 2023.
35. The Claimant was later issued with a hearing notice in which she was informed to attend accompanied by a witness (if she wished) to the disciplinary hearing scheduled for 12th September 2023 at the Head Office Boardroom in Nkubu, Meru.
36. RW1 further averred that the Claimant vide an undated letter received by the Respondent on 13th September 2023, tendered her resignation from her position as a Relationship Officer with immediate effect.
37. On 11th October 2023, the Respondent declined the Claimant's resignation letter owing to her previous dealings but mostly because she was supposed to give a one month notice and or pay the Respondent a prorated proportion of her basic salary in lieu of notice.
38. That when the Claimant's resignation was declined, she protested vide her undated letter where she reaffirmed her resignation as of 13th September 2023, severing the employment relation between the parties herein.



39. RW1 further averred that at the time the Respondent reached its verdict on 21st November 2023, the Claimant had already severed her relationship with the Sacco as of 13th September 2023. That the said resignation letter was never rescinded, revoked, or withdrawn.
40. RW1 further stated that the Claimant was to be paid her outstanding dues after clearance.

Submissions

41. It was submitted by the Claimant that her summary dismissal was procedurally unfair as she was not allowed to bring a witness since her colleagues were intimidated to appear alongside her.
42. Placing reliance on the case of *Kenneth Gichuru v Board of Governors St. Teresa Girls Secondary School Nairobi ELRC Cause No. 1329 of 2011*, it was submitted that the Claimant's dismissal was substantially unfair as it is not for any one of the reasons listed in Section 44(4) of the *Employment Act*.
43. It was the Claimant's further position that there were other more appropriate ways to discipline her, considering that the Respondent conceded that she had been performing her duties at all times.
44. In closing, the Court was urged to find that the Claimant's summary dismissal was unfair both procedurally and substantially.
45. On its part, the Respondent submitted that the Claimant's resignation took effect immediately and did not require the Respondent's acceptance to be valid as consistently upheld by the courts. In support of this argument, the Respondent invited the Court to consider the cases of *Odera v Cooperative Bank of Kenya Limited (Cause 62 of 2019) [2023] KEELRC 380 (KLR) (10 February 2023) (Judgment)* and *Ongoro v Kenya Red Cross Society & another (Cause 1467 of 2018) [2024] KEELRC 2547 (KLR) (18 October 2024) (Judgment)*.
46. The Respondent further submitted that with the Claimant's resignation having taken effect on 13th September 2023, the employment relationship was completely severed and ceased to exist. That there was nothing to terminate and the letter of summary dismissal was of no legal consequence.

Analysis and Determination

47. Having considered the pleadings by both parties, the evidentiary material on record, as well as the rival submissions, it is evident that the following issues stand out for determination: -
 - a. Was there any legal consequence to the termination of the Claimant's employment by the Respondent on 21st November 2023?
 - b. Depending on the answer in (a), whether the Claimant's termination was unfair and unlawful;
 - c. Whether the Claimant is entitled to the reliefs sought.

Legal consequence of the Claimant's termination

48. The record bears that vide an undated letter which was received at the Respondent's offices on 13th September 2023, the Claimant notified the Respondent of her resignation from her position as a Relationship Officer with immediate effect.
49. In response to the Claimant's letter of resignation, the Respondent vide a letter dated 11th October 2023, informed the Claimant that it had not accepted her resignation. In this regard, the Respondent cited numerous complaints from its members whom it alleged the Claimant had borrowed a huge chunk of money from.



50. It was further alleged by the Respondent that the Claimant was involved in recommending and disbursing loans to the said members.
51. The Claimant was further notified that as per the Respondent's Human Resource Policy and her employment contract, she was required to give one month's notice or pay in lieu of notice upon resigning.
52. As a parting shot, the Respondent informed the Claimant that her resignation had been declined until the issues were conclusively dealt with.
53. Subsequently, the Claimant responded to the Respondent's letter vide hers dated 24th October 2023, in which she stated that her letter of resignation still stands as of 13th September 2023.
54. The Claimant further informed the Respondent that she had borrowed the money in question in her personal capacity and not as "Yetu Sacco" and that she had spoken to the persons she had borrowed money from and asked for time to repay the same. She asked the Respondent to give her six months to sort out the debts.
55. What followed was a letter of summary dismissal dated 21st November 2023, in which the Respondent notified the Claimant of its decision to summarily dismiss her with immediate effect.
56. In light of the foregoing sequence of events, the logical question to ask is whether the letter of summary dismissal was of any legal consequence.
57. The Black's Law Dictionary (10th Edition) defines the term resignation to mean: -

"The act or an instance of surrendering or relinquishing an office, right or claim. A formal notification of relinquishing an office or position; an official announcement that one has decided to leave one's job or organisation, often in the form of a written statement."
58. Applying the definition of the term resignation to the case herein, it becomes apparent that by penning down the letter of resignation and handing it over to the Respondent, the Claimant had declared her intention to cease being an employee of the Respondent with immediate effect.
59. On this issue, the Court adopts the position taken in the case of Edwin Beiti Kipchumba vs National Bank of Kenya Limited [2018] eKLR, that resignation by an Employee from employment, is termination of employment at the instance of the Employee and is a unilateral act and the [Employment Act](#) does not require the Employer to accept a notice of termination issued by the employee, for that notice to take effect.
60. As such, in the present case, it is the Court's finding that it did not matter that the Respondent had declined to accept the Claimant's resignation from employment on 11th October 2023. The Respondent's position did not change the fact that the Claimant was no longer desirous of being bound by the employment relationship and had opted out. This is more so noting that the Claimant reiterated her resignation vide her letter dated 24th October 2023.
61. If I may say, the Respondent's contention that the Claimant was required to give one month's notice or pay one month's salary in lieu of notice upon resigning was not a valid ground to decline her resignation.
62. In any event, according to the Respondent, the letter of summary dismissal was effective on 21st November 2023. This was more than one month after the Claimant had tendered her resignation notice. As such, it was way outside her notice period.



63. In the South African case of *Lottering vs Stellenbosch Municipality*, (2010) 31 ILJ 2923 (LC), the Court held as follows:
- “That the resignation is a final unilateral termination of the employment contract and once the applicant had submitted the first resignation that was the end of the contract. This means that there was no longer a contract of employment once she resigned.”
64. And further in the case of *Kennedy Obala Oaga vs Kenya Ports Authority* [2018] eKLR, the Court cited the South African case of *Mtati vs KPMG (Pty) Ltd* (2017) BLL 315 (LC) in which it was found that where an employee tenders a resignation with immediate effect, there and then, the employer is deprived of jurisdiction to continue with the disciplinary process as resignation takes effect immediately.
65. Similarly, in light of the circumstances of this case, the Court finds and holds that the Claimant’s resignation took effect immediately after she tendered the same and the employment relationship ceased to exist as of 13th September 2023. Accordingly, the Respondent lost jurisdiction to exercise any disciplinary action against the Claimant.
66. Therefore, as of 21st November 2023, when the Respondent purported to terminate the Claimant’s employment, there was no contract of service to terminate.
67. Consequently, the termination of the Claimant’s employment communicated through the letter of summary dismissal dated 21st November 2023 was an act in futility and had no legal consequence. This was akin to closing the stable door after the horse had bolted.
68. In the premises, the Court returns that the purported termination of the Claimant’s employment by the Respondent was inconsequential and of no effect hence is a nullity in law.
69. Having found the termination by the Respondent to be null and void, it follows that the second issue identified for determination falls by the wayside. This is on the basis that there can be no consequence arising from such a nullity.
70. Having found as such, I now turn to consider whether the Claimant is entitled to the reliefs sought.

Reliefs?

71. The Court having found that the employment relationship ceased to exist upon the Claimant tendering her resignation hence rendering the purported termination of employment by the Respondent a nullity, the claim for notice pay and compensatory damages for unfair termination cannot be sustained.
72. With respect to service pay, the record bears that the Claimant was a registered member of the National Social Security Fund (NSSF) and was making contributions as appropriate. This, therefore places her within the ambit of the exclusions set out under Section 35(6) of the *Employment Act*. As such, this relief cannot be awarded.
73. It is notable that the Respondent had tabulated the Claimant’s terminal benefits, constituting her unpaid leave days and gratuity. In the Court’s view, no plausible reason has been proffered by the Respondent as to why the said terminal dues remain unpaid to date. Accordingly, the Respondent is ordered to release the same to the Claimant.



Final Orders

74. In the final analysis, the Court finds that the purported termination of the Claimant's contract of employment on 21st November 2023 was null and void.
75. The Respondent is hereby ordered to release to the Claimant her terminal dues and Certificate of Service within 30 days from the date of this Judgment.
76. The Claimant shall be entitled to the costs of the suit, as it is the Respondent's conduct of purporting to terminate her after she had tendered his resignation that triggered the instant suit. The Respondent should therefore bear the consequences arising therefrom.

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

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Ms. Kiunga instructed by Mr. Muriuki

For the Respondent Ms. Maina instructed by Mr. Kimaita

Court Assistant Millicent

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

