



Musyoka & 14 others v Kenya Seed Company Limited (Cause E005 of 2022) [2025] KEELRC 1017 (KLR) (28 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 1017 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
CAUSE E005 OF 2022
MA ONYANGO, J
MARCH 28, 2025**

BETWEEN

- FREDRICK MUSYOKA 1ST CLAIMANT**
- PATRICK MULATI 2ND CLAIMANT**
- HENTRICK MULATI 3RD CLAIMANT**
- ESTHER MALONZA 4TH CLAIMANT**
- ROBERT MUSYOKI 5TH CLAIMANT**
- ALEX TUMBA 6TH CLAIMANT**
- ALPHONCE MUTHAMA 7TH CLAIMANT**
- DAVID WANJALA 8TH CLAIMANT**
- ANTHONY LUMBASI 9TH CLAIMANT**
- BENARD MBITHUKA 10TH CLAIMANT**
- ELIJAH LUMASAI 11TH CLAIMANT**
- GRACE WERE 12TH CLAIMANT**
- MERCY CHEPKIRUI 13TH CLAIMANT**
- ENOCH WANYONYI 14TH CLAIMANT**
- RODGER AMOKOBE 15TH CLAIMANT**

AND

KENYA SEED COMPANY LIMITED RESPONDENT



JUDGMENT

1. The Claimants instituted this suit vide the Memorandum of Claim dated 15th December 2022 which was amended vide the Amended Memorandum of Claim dated 4th May 2023.
2. It is the Claimants case that at all material times they were employees of the Respondent in the department of Research and Development before their contracts of service were unfairly terminated on 15th June 2022.
3. The Claimants aver that on 6th July 2021, the Respondent served them with letters dated 1st July 2021 suspending them to pave way for investigations on allegations of misappropriation of company funds.
4. The Claimants state that after the alleged investigations were conducted, they were issued with notice to show cause letters dated 3rd December 2021 in which they were required to show cause why disciplinary action should not be taken against them for having engaged in gross misconduct.
5. They were thereafter served with letters dated 31st January 2022 inviting them to appear before the staff disciplinary committee where they appeared and explained themselves accordingly but were subsequently served with termination notices dated 3rd June 2022.
6. According to the Claimants, their dismissal from employment was unlawful and unfair as they were never served with any warning letters and the allegations levelled against them were not proved in accordance with the *Employment Act*. They further contended that they have not been paid monies owed to them in salaries, allowances and statutory benefits.
7. The Claimants stated that they reported the matter to the labour office where both parties appeared for a conciliatory meeting. That after considering the evidence from both sides the conciliator concluded that the Claimants were unfairly terminated from employment. The Claimants averred that the Conciliator made a calculation of the terminal dues owed by the Respondent to the Claimants amounting to a total of Kshs. 22,120,367 being salary arrears from the date of suspension, payment in lieu of notice, unpaid leave, service gratuity as per the CBA and compensation for unlawful termination.
8. The Claimants therefore prayed for the following reliefs against the Respondent:
 - a. A declaration be made to the effect that the Claimants termination was unfair as the same was not within the ambit of the *Employment Act* and other employment laws
 - b. Monetary reliefs
 - i. Salaries arrears for the months they were on suspensions and interdictions
 - ii. Payment in lieu of notice as per the CBA
 - iii. Unpaid leave days
 - iv. Service gratuity in line with the CBA
 - v. 12 months' salary compensation for each of the Claimants for unlawful and unfair loss of employment
 - vi. Any other order the court may deem fit to grant to compensate for unlawful loss of employment



- c. Damages for unlawful termination of employment
 - d. Certificate of service
 - e. Costs of this suit and interests at court rate
9. The Respondent filed a Response to the Amended Memorandum of Claim on 21st June 2023. In its defence, the Respondent asserted that the Claimants were terminated procedurally and in accordance with the law.
 10. According to the Respondent, the Claimants were issued with show cause letters in compliance with the relevant laws and procedure in relation to misappropriation of funds after conclusion of a forensic audit by the Company's Auditors which established that the Claimants were filling imprests based on false information in order to obtain financial gain against the Company's Human Resource Policy and Procedures.
 11. It was the Respondent's case that the decision to suspend/interdict the Claimants was made in order to pave way for investigations after massive sums of money was misappropriated as per the findings of an audit that was conducted by the Respondent's auditors.
 12. The Respondent maintained that the services of Claimants were lawfully and fairly terminated on grounds of gross misconduct, negligence and misappropriation of funds. It was further the averment of the Respondent that due process was followed in the termination of the Claimants from employment.
 13. In response to the averment made by the Claimants that the Conciliator made a finding that the Claimants had been terminated unfairly and tabulated the amount owed to them, the Respondents stated that the Conciliator did not have any locus, mandate and authority to issue directions in a matter that had already been finalized by the Respondent.
 14. The Respondent maintained that the Claimants have no cause of action against it and the suit ought to be struck-out with costs to the Respondent with an order that the Claimants be held responsible for the refund or be surcharged individually for the respective amounts misappropriated and/or embezzled from the Respondent as set out below:
 - a. Fredrick Musyoka.....Kshs 1,573,503.00
 - b. Enock Wanyonyi.....Kshs 293,585
 - c. Antony Juma Lumbasi.....Kshs 1,378,074
 - d. Alex Jumba.....Kshs 382,200
 - e. Henrick Mulati.....Kshs 1,078,900
 - f. Rodgers Amakobe.....Kshs 890,000
 - g. Benard Mbithuka.....Kshs 677,692
 - h. Grace Were.....Kshs 402,000
 - i. Esther Malonza.....Kshs 417,068
 - j. Mercy Chepkirui.....Kshs 402,000
 - k. Alphonse Muthama.....Kshs 36,000
 - l. Rober Kioli Musyoki.....Kshs 977,394



- m. Patrick Mulati.....Kshs 1,667,823
 - n. David Wanjala.....Kshs 843,594
 - o. Elijah Lumasai.....Kshs 2,713,131
15. The claim was heard on various dates. The Claimants called one witness, Fredrick Musyoka, the 1st Claimant who testified on behalf of all the Claimants on 29th May 2024. The Respondent called its audit manager, Leonard Kibet, who testified on 25th June 2024 and on 23rd September 2024 in furtherance of the Respondent’s case.

The Claimants’ Case

16. Fredrick Musyoka the 1st Claimant testified as CW1. He adopted his witness statement filed in court as his evidence in chief. CW1 reiterated that together with the other Claimants, they were employed by the Respondent in the department of Research and Development to do trials research and grow crops for research in small plots.
17. He explained that they would be sent out in the fields after the committee decided what was to be planted and the site. The 1st Claimant stated that they were facilitated by the Respondent to go to the sites and once the work was done, the employees in the field prepared a report and retired the imprest which was submitted through the Head of Department to accounts and upon approval, the money was sent to accounts department for processing. After processing, the money was sent to the Applicant’s Mpesa account.
18. CW1 denied the allegation made by the Respondent that the Claimants misappropriated its funds. He maintained that they performed the work they were assigned in the fields which position was confirmed by the supervisors before the funds were disbursed.
19. It was the 1st Claimant’s testimony that upon receiving the show cause letter, he responded elaborately and attended the disciplinary hearing where he defended himself. He testified that the disciplinary process was unfair as the Head of Department who approved the disbursement of the funds alleged to have been misappropriated was not present. He also stated that he was not presented with the audit report.
20. The 1st Claimant thus urged the court to grant the Claimants the reliefs they sought in their Amended Memorandum of Claim arguing that they were dismissed unprocedurally.
21. It was also CW1’s evidence that after the termination of their services, they went to report to the labour office and a conciliation meeting was held. He stated that at the said meeting the Respondent did not present any documents to prove the allegations of misappropriation of its funds by the Claimants.
22. On being cross examined by Counsel Songole, the 1st Claimant stated that he was issued with a suspension letter dated 1st July 2021 which stated the reasons for the suspension; that he was issued with a notice to show cause letter dated 6th December 2021 which gave reasons for him to show cause and that he was invited to a disciplinary hearing which he attended on 3rd February 2022. CW1 admitted that he had not produced evidence to show that he requested the attendance of the Head of Department to the disciplinary hearing. He also stated that the notice for invitation to the disciplinary hearing informed him of his right to be accompanied to the hearing. CW1 confirmed that after the disciplinary hearing, he was issued with a termination letter which stated the reasons for the termination of his employment.



The Respondent's case

23. Mr. Leonard Kibet, the Respondent's Audit Manager testified as RW1 and adopted his witness statement recorded on 20th June 2023 as his evidence in chief. It was his testimony that the Claimants misappropriated the Respondent's funds as revealed by the audit report. He explained the standard procedure that was followed in applying for imprest through imprest application forms and imprest accounting forms which have to be approved by the head of department for purposes of disbursing the imprest for a specific official task; that the employee then signs to confirm receipt of the money and afterwards money is dispatched to the employee via Mpesa.
24. RW1 stated that the audit report disclosed that the Claimants were paid monies to visit the research sites to ensure the research objectives were met but the said functions were never carried out. He stated that the Claimants admitted during the disciplinary hearings that they did not carry out the functions they alleged to have done to warrant the disbursement of funds that was made to their Mpesa accounts. RW1 testified that the Claimants were made aware of the findings regarding the misappropriation of the Respondent's funds. That they were invited to disciplinary hearings following which they were found culpable and were dismissed from employment.
25. On cross examination, RW1 maintained that during the disciplinary hearing, the Claimants were presented with the audit reports and that they were given an opportunity to respond to the report.
26. At the close of the Respondent's case, parties were directed to file written submissions. The Claimants submissions are dated 5th November 2024 while the Respondent's submissions are dated 10th December 2024.
27. In their submissions, the Claimants state that the Respondent had failed to prove reasons for the termination of their employment. It is submitted that the amounts alleged to have been misappropriated by every Claimant was not proved as no audit report was presented to the Claimants or filed to prove the loss incurred by the company as alleged in the show cause letters. The Claimants submitted that no investigation report was produced to prove that they applied for imprests but never visited the sites as they were expected to visit and also, that no single site was mentioned as having not been attended to.
28. The Claimants further submitted that they were not accorded a fair hearing since no auditor's report or investigations report was presented to the Claimants or the committee members at the disciplinary hearing. That neither were the Claimants afforded an opportunity to cross examine the makers of the report that was relied upon by the Respondents in considering the termination of the employment of the Claimants.
29. On its part, the Respondent submitted that the Claimants failed to tender any documentary evidence in court showing that indeed they were unfairly or unlawfully terminated from work. It was maintained that the audit report established that the Claimants had misappropriated the Respondents funds and that they were taken through due process before their employment was terminated as confirmed by CW1.

Analysis and Determination

30. From the pleadings of the parties herein, the evidence adduced and the submissions filed by the parties, the issues that present themselves for determination are:
 - i. Whether the termination of the Claimants from employment was fair both substantively and procedurally;



- ii. Whether the Claimants are entitled to the reliefs sought;
- iii. Whether the Respondent has made out a proper counterclaim against the Claimants.

Whether the termination of the Claimants from employment was fair both substantively and procedurally

31. Under the *Employment Act*, a termination will be deemed unfair if an employer fails to prove that there was substantive justification and that it took the employee through fair procedure prior to termination. This court is called upon to examine the circumstances under which the employment of the Claimants were terminated and determine whether there was justification to terminate their employment and whether they were subjected to fair process.
32. Substantive justification is provided for under sections 43(1) and 45(2) of the *Employment Act*. Section 43(1) of the *Employment Act* requires an employer to prove reasons for termination. If the employer fails to do so, such termination is deemed to be unfair. Section 45(2) provides that a termination of employment is 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. based on the operational requirements of the employer; and
 - c. that the employee was terminated in accordance with fair procedure.
33. In order to establish whether the Claimants were terminated from employment on valid reasons, it is important that the court analyses the evidence presented by the Respondent in support of its defence that it was justified to terminate the employment of the Claimants.
34. In its evidence, the Respondent through its witness stated that the Claimants took imprest to undertake official work in the field but did not go to the field. The Claimants admitted during the disciplinary hearings that they took the imprest and failed to perform the work in collusion with their respective supervisors.
35. These admissions can be seen from the minutes of the disciplinary hearings attached to the Respondent's documents. The Claimants in their responses during the disciplinary hearing stated that they were ordered by their heads of department to obtain the imprest, a portion of which they transferred to the said heads of department.
36. The court of Appeal in the case of *Judicial Service Commission v Gladys Boss Shollei & another* [2014] eKLR, cited with approval, the Canadian case of *Mc KINLEY –VS- B.C. TEL* [2001] 2 S.C.R. 161 in which it was held as follows:

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship,



or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.”

37. Flowing from the facts presented in the instant case, I find that the Respondent was justified in terminating the employment of Claimants for misappropriation of funds, this being a valid reason for termination of employment.
38. The second limb in determining the fairness of a termination is in regard to notification and hearing. Section 41(1) the *Employment Act* makes specific requirements in regard to the process to be complied with by an employer. It provides:-
- “Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”
39. Although the Claimants alleged in the claim that they were not taken through the due process before being terminated from employment, the 1st Claimant in cross examination admitted that the interdiction letter issued to him explained the reasons for his suspension, that the show cause letter issued to him gave the reasons as to why he was being considered for disciplinary action and also, that he was invited to a disciplinary hearing and the invite informed him of his right to appear before the disciplinary committee with a representative. I have looked at the minutes of the staff disciplinary committee meeting held on 8th February 2022 at Mbegu Plaza Boardroom and it is quite clear that there was procedural fairness.
40. It is therefore evident that the Claimants were subjected to a fair disciplinary process and I make a finding that the dismissal of the Claimants was fair and just in the circumstances.

Whether the Claimants are entitled to the reliefs sought

41. In the Amended Memorandum of Claim, the Claimants prayed for several reliefs which I will address in separate heads.
- i. A declaration be made to the effect that the Claimants termination was unfair as the same was not within the ambit of the *Employment Act* and other employment laws
- This declaration cannot issue as the termination of the Claimants from employment was fair and lawful.
- ii. Salary arrears for the months the Claimants were on suspensions and interdictions
- The Claimants are not entitled to the salaries withheld from the date of suspension or interdiction to the date of termination. Clause K9 of the Respondent's Human Resource Policies & Procedure Manual provides that the salary withheld during interdiction is restored to an employee only where the employee is cleared of the charges against him or her and the interdiction is lifted. In the instant case the Claimants were not cleared of the charges against them and they are therefore not entitled to the restoration of the salary withheld during suspension or interdiction.
- iii. Payment in lieu of notice as per the CBA



The Claimants were dismissed from employment for gross misconduct. In accordance with Section 44(4)(c) of the Employment Act, employees dismissed for gross misconduct are not entitled to payment in lieu of notice.

iv. Unpaid leave days

The Claimants adduced no evidence as to when the days claimed accrued. I decline to award this relief

v. Service gratuity in line with the CBA

Under CBA annexed to the Claimants documents, the Claimants are not entitled to gratuity as per Clause 20(c) which provides that an employee who loses his job due to gross misconduct will not be entitled to benefit from the scheme

vi. 12 months' salary compensation for each of the Claimants for unlawful and unfair loss of employment

Having found that the termination of the Claimants from employment was lawful and fair, they are not entitled to compensation which is only payable to an employee who has been unfairly terminated.

vii. Any other order the court may deem fit to grant to compensate for unlawful loss of employment

This prayer is declined as the Claimants were lawfully terminated from employment.

viii. Damages for unlawful termination of employment

The termination of the Claimants from employment was lawful. This prayer is declined.

ix. Certificate of service

A certificate of service is a statutory requirement under Section 51 of the Employment Act. The Respondent is thus directed to issue the Claimants with a certificate of service.

Whether the Respondent has made out a proper counterclaim against the Claimants

42. The Respondent in its Response to the Amended Memorandum of Claim sought for an order that the Claimants be held responsible for the refund or be surcharged individually for the respective amounts misappropriated. However, the Respondent did not particularize or lead any evidence of the amount misappropriated by the Claimants. I therefore find that Respondent's counterclaim was not proved and is hereby dismissed.

43. Parties shall bear their own costs of the suit.

44. Orders accordingly.

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

M. ONYANGO

JUDGE

