



**Magiri v Red Pulse Limited (Cause 1390 of 2017)
[2025] KEELRC 1142 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1142 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1390 OF 2017
K OCHARO, J
MARCH 6, 2025**

BETWEEN

IRA SHALI MAGIRI CLAIMANT

AND

RED PULSE LIMITED DEFENDANT

JUDGMENT

1. Ira Shali Magiri (the Claimant) was employed by Red Pulse Limited (the Defendant) from 2nd February 2017 as a sales and operations manager until 15th March 2017, when she was summarily dismissed. Contending that the dismissal was unlawful/unfair, the Claimant initiated the suit herein, seeking the following;
 - a. The sum of Kshs. 70,000 in lieu of one month's notice
 - b. General damages for wrongful dismissal and discrimination
 - c. Costs of this suit
 - d. Interest on (a) (b) and (c) at court rate.
2. The Defendant resisted the Claimant's claim by filing a Statement of Defence. They denied the Claimant's cause of action and stated that her employment was on justifiable grounds. During the interview process, she misrepresented her marketing experience, a fact that the Defendant later discovered.
3. Although they had filed the Statement of Defence, at the hearing, the Respondent didn't present any witness to testify in support of their Defence. The import of this will come out shortly hereafter.



The Claimant's case

4. The Claimant stated that she was first employed by the Defendant on 2nd February 2017 as a sales and operations manager with a monthly salary of Kshs. 70,000 and an additional gross bonus of Kshs. 50,000 for every product sold.
5. She was, however, dismissed by the Defendant on 15th March 2017. The termination letter given to her did not disclose any reasons for the dismissal and only gave a 7-day notice period.
6. The Defendant claimed that her position had become redundant, but approximately a week later, the Defendant, by an advertisement, invited applications for the position.
7. She learned later that the dismissal had nothing to do with a redundancy situation but everything to do with the Respondent's realization that she was pregnant. The action by the Respondent was in bad faith and discriminatory.
8. The termination of her employment was therefore unlawful, wrongful, unreasonable, and unjustifiable. She has since been unable to secure another job.

Defendant's case

9. As indicated hereinabove, though the Defendant had filed a Statement of Defence against the Claimant's claim, denying her cause of action and entitlement to the reliefs sought, they didn't present a witness to testify in support of the defence and against the claim.

Claimant's submissions

10. The Claimant filed her written submissions pursuant to the directions of this Court. In the submissions, she identified three key issues for determination thus whether the Claimant was an employee of the Respondent; whether the Claimant's employment was unfairly terminated by the Respondent; and whether the Claimant is entitled to the reliefs sought.
11. I have carefully considered the submissions and appreciated the points raised therein.

Analysis and Determination.

12. It bears repeating that where a Defendant/ Respondent enters appearance and files a defence/ Response to a Claimant's suit/ claim, but fails to present evidence at the hearing in support of the defence/Response against the claim, the statement of defence/Response remains such a statement without any evidential value. However, it is important to point out that such a failure on the part of the Defendant/ Respondent doesn't pass any automatic success to the Claimant in their case. Where the law requires them to discharge some legal burden for them to be successful, they must discharge, otherwise, their claim shall fail, the failure on the part of the Defendant/Respondent notwithstanding.
13. I shall consider the Claimant's case herein, with the above principle in mind.
14. I have carefully considered the pleadings filed herein by the parties, the Claimant's evidence and submissions, and distil the following issues for determination; whether the termination of the claimant's employment was unfair; whether the Claimant was discriminated against on account of pregnancy; and whether the Claimant is entitled to the reliefs sought.



Whether the Claimant's employment was unfairly terminated.

15. The *Employment Act*, 2007, places various legal burdens on the part of the employer in a dispute regarding termination of an employee's employment, which the employer must discharge if the termination has to be considered fair. Elaborating on this, the Court of Appeal, in the case of Pius Isindu Machafu vs Lavington Security Guards Limited [2017] eKLR, stated:

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligation on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/ dismissal [section 43]; prove the reasons are valid and fair [section 45]; prove that the grounds are justified [section 47[5], amongst other provisions. A mandatory and elaborate process is then set up under section 41, requiring notification and a hearing before termination. The Act also provides for most of the procedures to be followed, thus obviating reliance on the *Evidence Act* and *Civil Procedure Act*/ Rules. Finally, the remedies for breach set out under section 49 are fairly onerous and generous to the employee. But all that accords with the main object of the Act as appears in the Preamble;

“.....to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees.”

Those provisions are a mirror image of their constitutional underpinning in Article 41 which governs rights and fairness in labour relations.”

16. Undoubtedly, where the employer fails to discharge any of the legal burdens, the termination will be deemed unfair. From the decision mentioned above, it is clear that the burdens that the employer must discharge relate both to procedural and substantive fairness.
17. There is no dispute that at all material times, the Claimant was an employee of the Respondent and that the employee-employer relationship lasted for only a month. The Claimant contended that the termination of her employment was not procedurally fair. She was neither given reasons for, nor heard before, the dismissal.
18. Section 41 of the *Employment Act*, 2007, provides a mandatory procedure that an employer contemplating terminating an employee's employment must adhere to. The procedure contemplated under the provision embodies three components: the employer must inform the employee affected of their intention and the reason[s] the basis thereof, the employer, then, must accord the employee an adequate opportunity to make a representation on the ground[s]. The employee is entitled to be accompanied during the time of making the representation, by a fellow employee of his own choice or a trade union representative if she or he is a member of a trade union, and before taking a final decision on the matter, the employer must consider the representations made by the employee.
19. The Respondent didn't present any evidence to show that it conformed with the procedural dictates under the above-stated provision of the law. As such, I find that it didn't discharge the legal burden contemplated under section 45[2] of the *Employment Act*, 2007. Further, the Claimant's evidence was not discounted.
20. Section 43 of the Act, dictates that in a dispute regarding the termination of an employee's employment, the employer shall prove the reason[s] for the termination. In the defaulting, the termination will be deemed unfair by operation of the law, section 41 of the *Employment Act*.



21. Where a legal burden is placed on a party to prove a fact[s] or a matter[s], the burden can only be considered discharged if that party places forth sufficient evidence to, not unless, the fact[s] or matter[s] has been admitted by the other party, or the Court takes judicial notice thereof. In the absence of evidence by the Respondent to prove the reason[s] for the termination, I hesitate not to conclude that the Respondent didn't discharge the legal burden under section 43 of the *Employment Act*. Further, the legal burden under section 45[2] to prove that the reason[s] was valid and fair was not discharged.
22. The Claimant asserted that she later came to learn that the termination of her employment was on account of her pregnancy. And that being so, the Respondent acted discriminatorily. Under section 46 of the *Employment Act*, any termination of an employee's employment at the initiation of the employer on account of the employee's pregnancy will be on prohibited grounds and, therefore, automatically unfair. However, it cannot be sufficient for the employee, as the Claimant did, to just assert the account without proving that at the material time she was pregnant. Had the Claimant demonstrated to this Court that she was pregnant at the material time and that the termination of her employment was attracted by the fact, I'd have awarded her damages.
23. Section 49[1][c] of the *Employment Act* bestows upon this Court the power to award a compensatory relief to an employee who has successfully, through litigation, challenged her or his employer's decision to terminate her or his employment. However, it is pertinent to point out that the power is exercised discretionarily, depending on the circumstances of each case.
24. I have carefully considered, the fact that the Claimant didn't in any proven manner, contribute to the termination of her employment, the failure on the part of the Respondent to comply with the statutory dictates of procedural and substantive fairness, and the length of time [one month] that the Claimant was in the service of the Respondent, and conclude that she is entitled to a grant of the remedy. I award her two months' gross salary.
25. There was no material placed before me by the Respondent to demonstrate that the Claimant was to serve a probationary period before being confirmed into employment. In the absence of this, I hold that her employment was terminable by a twenty-eight days' notice under section 35 of the *Employment Act*. Her evidence that this kind of notice was not issued to her was not discounted. Resultantly, I hold that she is entitled to notice pay, one month's salary in lieu of notice under section 36 of the Act.
26. By reason of the foregoing premises, Judgment is hereby entered for the Claimant in the following terms:
 - I. A declaration that the termination of the Claimant's employment was unfair.
 - II. Compensation pursuant to the provisions of section 49[1][c] of the *Employment Act*, KShs. 140,000.
 - III. One month's salary in lieu of notice, KShs. 70,000.
 - IV. Interest on the awarded sum in [a] and [b] above, at court rates from the date of this judgment till full payment.
 - V. Costs of this suit.

READ SIGNED AND DELIVERED THIS 6TH DAY OF MARCH 2025.

OCHARO KEBIRA

JUDGE

