



**Wang'ombe v Jomo Kenyatta Foundation (Cause E737 of 2022)
[2025] KEELRC 1188 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1188 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E737 OF 2022**

J RIKA, J

APRIL 28, 2025

BETWEEN

MONICA WAMORO WANG'OMBE CLAIMANT

AND

THE JOMO KENYATTA FOUNDATION RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim, dated 13th October 2022.
2. She avers that she was first employed by the Respondent, in 2004 as an intern. She rose through the ranks, and held the position of sales executive in charge of Central Rift Region, by the time her contract was terminated by the Respondent, on 22nd December 2021.
3. She was issued a letter to show cause dated 1st September 2021. She was alleged to have failed to comply with instructions; she maintained poor working standards or wilfully neglected to perform her job carefully and properly; she was grossly disrespectful to a colleague; she was absent from work without permission or lawful cause; and declined to obey a lawful and proper command.
4. She was heard by the disciplinary committee on 16th December 2021.
5. The disciplinary committee recommended to the Board, that the Claimant's contract is terminated. The Board resolved to terminate her contract with effect from 22nd December 2021.
6. She had been transferred in 2016 from Nairobi Region to Central Region. She was assessed to have performed her duties diligently, warranting her steady rise through the ranks.
7. She had received a warning letter dated 12th March 2018 from the Respondent, alleging that she did not account for Respondent's books, worth Kshs. 240,918. The letter also directed Finance to surcharge the Claimant Kshs. 20,000 monthly, until the full amount was recovered.



8. She explained that she had unreconciled invoices worth Kshs. 200,000. The Respondent did not give her adequate opportunity to account.
9. She was transferred from Central Region to Central Rift Region, on 1st August 2018. She was issued another warning letter for poor performance, notwithstanding that she was only 3 months at the new station, and that her predecessor at the Region had zero sales, for the period July to October 2017.
10. The Claimant had achieved sales worth Kshs. 1,699,386 over the same period, at Central Region.
11. The Central Rift Region was prior to the Claimant's transfer, part of South Rift Region. The latter was split into 2, but the targets expected from the 2 Regions were not split. This was meant to frustrate the Claimant.
12. She continued to serve customers from Central Region, owing to the goodwill she had cultivated with them, while she was stationed there.
13. Her supervisor, one Ogillo, wrote her a letter dated 5th September 2019, complaining that he visited her station in Nakuru and Naivasha, on 31st October 2019 and 1st November 2019 respectively, and found her absent.
14. She explained that she was working from home and had been to the field. Her office did not entail a physical office. Ogillo alleged further, that customers had complained they had not received their bulk orders, and had not seen the Claimant for days. He wondered if she was running her own business on the side. She had evidence of delivery by courier, of the orders.
15. She then received a letter dated 23rd January 2021, which was issued to all 8 Regional sales executives, on poor performance. They were placed on PIP for 6 months. She had outperformed some of her colleagues, having scored 38%, while they obtained 15%. PIP was effective from 18th May 2021. There was no appraisal. The Claimant was targeted again for humiliation.
16. Schools were limited in their operations due to Covid-19. There was reduced demand and sales of books. Fuel allocated to sales executives was limited to Kshs. 5,000 a month. Official cars were withdrawn by the Respondent altogether, in light of reduced demand for books, and only reinstated, in June 2021.
17. Ogillo made another visit to Nakuru on 18th August 2021. She was at Nyahururu. He demanded she meet him, at Nakuru. She was not able to make it, in time. She called the following day, apologized and learnt that he had visited some bookshops at Nyahururu. She proposed to meet Ogillo at Nyahururu, but he did not respond.
18. He called her a day later, advising her to meet him at a hotel called Grazia, in Naivasha. She appraised him on her progress, but he was not satisfied.
19. Ogillo publicly quarrelled her, telling her to advise him how he should save her job, because he had been protecting her. He left abruptly.
20. She received another letter to show cause on 1st September 2021, on poor performance, and failure to meet targets. She still had superior performance to that of her colleagues, but only she, was targeted. She was invited to attend hearing scheduled for 8th September 2021.
21. She was not supplied with the minutes of the disciplinary meeting.
22. At the time she was accused of absenteeism, she was busy serving the Respondent.
23. Her Statement of Claim is lengthy, and at times disparaging of her former supervisor Ogillo, mockingly referring to him as the "great Ogillo." Litigants coming before the Court should state their positions



concisely and respectfully, with civility, and avoid language such as has been employed by the Claimant, in pursuing her grievance.

24. She prays for: -
- a. Declaration that termination was unfair and unlawful.
 - b. Declaration that the Claimant was discriminated against and harassed by the Respondent and its official/ agents.
 - c. Reinstatement without loss of benefits.
 - d. The Respondent is directed to facilitate the Claimant's clearance, release of her terminal dues, and access to pension benefits.
 - e. Alternatively, the Respondent to pay to the Claimant Kshs. 12,349,748 consisting-
 - I. 30 days' annual leave, at Kshs. 157,558.
 - II. 12 months' salary in compensation for unfair termination at Kshs. 1,890,696.
 - III. Damages for discrimination at Kshs. 10 million.
 - IV. Unlawful salary surcharge at Kshs. 264,394.
 - V. Unreimbursed dues at Kshs. 37,100.
 - VI. 1-month salary in lieu of notice at Kshs. 157,558.
 - f. Costs.
 - g. Any other suitable relief.
25. The Respondent filed its Statement of Response and Counterclaim, which appears to be undated. The verifying affidavit of Elsie Oyoo, Deputy Company Secretary, was sworn on 14th November 2022. The witness statement of Cecil Wanyama, Senior Administration Manager, bears the same date.
26. It is conceded that the Claimant was employed by the Respondent, as and when pleaded to have been employed, in the Statement of Claim.
27. She would receive books from the Respondent for sale. The books would be invoiced to her account. Her contract allowed the Respondent to deduct from her salary, if the account remained unsettled. She failed to settle her account and the Respondent issued her demand for the sum of Kshs. 165,273. Failure to settle was a disciplinary issue, and the Respondent was justified, in issuing the Claimant a warning letter.
28. She could be transferred from one Region to another, at the discretion of the Respondent. She was regularly transferred from Nairobi to Central Region, and to Central Rift Region.
29. She performed poorly in the last 2 Regions. She was issued a first warning, on 28th November 2018. She did not improve and was issued a letter to show cause, dated 23rd March 2021. She was subjected to a disciplinary hearing on 5th May 2021.
30. The hearing culminated in a final warning and a PIP. There was no discrimination against her. She was given a hearing before any decision was taken against her.
31. She was scheduled to meet her supervisor on 18th August 2021 at Nakuru. She failed to do and had switched off her phone, when the supervisor attempted to reach her.



32. She failed to surrender her school visit forms and work tickets when required to do so. She absconded from 1st August 2021 to 11th August 2021. She took unauthorized leave. She had been engaged in similar absconding in the past, and was issued a warning on 5th November 2019 over the subject matter.
33. She responded to the letter to show cause, on 1st September 2021. She was invited for disciplinary hearing before the staff advisory disciplinary committee on 22nd September 2022.
34. She was heard and the committee recommended to the Board, that her contract is terminated. The Board resolved to terminate her contract. She was issued a letter of termination, dated 16th December 2021, effective 22nd December 2021.
35. She requested for a hearing on appeal before the Board. She was advised to state her grounds in writing, which she did not do. Termination was procedurally and substantively fair.
36. The Respondent counterclaims that the Claimant failed to settle her account with the Respondent. The outstanding sum is Kshs. 165,273. The Respondent counterclaims this amount.
37. The Respondent proposes that the Claim is dismissed, the Counterclaim allowed, with costs to the Respondent.
38. The Claimant filed a Reply to the Statement of Response, and Response to the Counterclaim, dated 13th December 2022. She states that the Respondent never gave her details of the account subject matter of the Counterclaim. Performance appraisals carried out by the Respondent were malicious. Her performance was better than that of her 6 colleagues. The disciplinary process was a sham. Even after termination, she consistently sought the status of her account. There were customers who continued to make payments to her account, after she had left employment. The Respondent did not allow parties to reconcile the account subject matter of the Counterclaim. She prays the Court to reject the Response and the Counterclaim.
39. The Respondent filed a Reply to the Response to the Counterclaim. The copy in the physical file is neither dated, nor signed, and the Court shall ignore this pleading, for failing to meet a basic procedural standard – that, pleadings shall be dated and signed.
40. Parties in general seem to have over-pleaded, including statements that are unnecessary, or even irrelevant to the dispute, blurring the issues in dispute, perhaps even slowing down the resolution of the dispute. The record indicates that the Respondent sought typed and certified proceedings, even as the hearing was ongoing, which would only have compounded the slow pace of the proceedings. Is it necessary for a party to seek typed and certified proceedings, in an ongoing hearing, where there is no change of the Trial Judge, or intended appeal on any interlocutory issue? Should the file be in Judge's chambers, or at the typing pool, while hearing is going on?
41. The Claimant gave evidence and closed her case, on 1st November 2023. The Respondent's former Senior Administration Manager, Cecil Daniel Weyama, gave evidence for the Respondent on 19th March 2024, closing the hearing.
42. The Claim was last mentioned before Hon. Judge C. Baari on 11th December 2024, and later forwarded to the Trial Judge, on transfer, at Nakuru for preparation of the Judgment.
43. The Claimant restated the contents of her Statements of Claim and Witness, in her evidence in chief. She exhibited her documents on record. She underscored that she outperformed her colleagues. She was transferred to Central Rift Region, and was alleged to have performed poorly, after only serving for 3 months there. She was issued a final warning, while still new at the station.



44. Cross-examined, she told the Court that she served on attachment at the start of her employment, for 6 months. She was confirmed in 2017. She met her targets in 2017.
45. She achieved 26% of her sales revenue target in 2017-2018, and 23% in 2018-2019. She did not attain her targets in 2017-2020.
46. On unit sales, she had 17% in 2017-2018, 23% in 2018-2019, and 29% in 2019-2020. She did not achieve the target set by the Respondent.
47. Customer visit, was part of her performance targets. In 2017-2018 she attained 85% of this target, 44% in 2018-2019 and 68% in 2019-2020. She did not meet the targets set by the Respondent.
48. Appraisal report over the relevant periods, showed she underperformed, on all parameters. This was before Covid-19 pandemic broke out.
49. She received a warning letter. She was informed that her performance had continued to dwindle. She was issued a letter to show cause, after the warning. She replied to the letter to show cause.
50. There was a staff disciplinary advisory committee meeting. She was placed on PIP after the meeting.
51. The Claimant explained further on cross-examination, that she referred to her General Manager, Sales and Marketing, as the “great feared Ogillo,” because she found him to be intimidating. At the same time, she stated that she called him “great,” through a typographical error.
52. She told the Court that she proceeded on leave, without the approval of the Respondent. She did not raise the issue about sexual harassment, with her supervisor. She did so through her Advocate’s demand letter. She may have raised the issue with the Respondent, using different terminology.
53. She received the letter to show cause and replied. She asked for a personal disciplinary hearing. She complained about sexual harassment at the disciplinary hearing.
54. Redirected, the Claimant told the Court that she was not the poorest performer. She did not know what action was taken against others alleged to have been poor performers. She was placed on PIP in April 2021, but without fresh targets. Ogillo’s conduct was intimidating. He visited Naivasha abruptly. It was customary to go on leave without approval. She had taken leave in the past, without a problem. She does not owe the Respondent any money as counterclaimed.
55. Cecil similarly adopted the contents of the Statement of Response and Counterclaim, as well as his Witness Statement and documents filed by the Respondent, in his evidence in chief. He was the secretary to the disciplinary committee which was convened to hear the Claimant.
56. Cross-examined, he confirmed that the Claimant was transferred to the various Regions, as told to the Court in her evidence. He did not have a document to show that her performance at Central Region was poor. She was issued warning both on her performance and conduct. While rated at 23%, she was not the poorest performer. There were others below her. Cecil did not know what action was taken against those below her. She was placed on PIP. About 6 others were similarly placed. Independent action was taken against all poor performers. She appealed against the decision to dismiss her. She did not raise any new grounds to warrant setting aside of the decision. Cecil was not her supervisor, and did not know the status of her account. The Respondent however, disclosed records of her credits and debits, at page 99-100 of its bundle of documents. The Counterclaim is for the value of books not accounted for by the Claimant. If schools had closed without returning the books, she was supposed to make a report to the Respondent. The Respondent paid terminal dues to the Claimant, without



- deducting the amount which is counterclaimed. She was paid Kshs. 1.5 million. It was her retirement benefits. She did not have any terminal dues. She was facilitated, in accessing her retirement benefits.
57. Redirected, Cecil told the Court that poor performance was noted at the initial hearing. There was action taken against other poor performers. She absconded in June 2021. She was issued a letter to show cause on absconding. Poor performance was not the only issue. She attended disciplinary hearing and was reminded of her right to be accompanied.
58. The issues are whether the Claimant's contract was terminated unfairly by the Respondent, under Sections 41, 43 and 45 of the *Employment Act*; whether she merits an order of reinstatement or the alternative prayers; whether the Respondent has established its Counterclaim; and who should bear the costs of the Claim and the Counterclaim?

The Court Finds: -

59. The Claimant's employment history, and her terms and conditions of service, are not disputed.
60. Procedure. The letter of termination is dated 16th December 2021.
61. Preceding it was a letter to show cause issued upon the Claimant, detailing matters she was required to respond to. The letter is dated 1st September 2021.
62. She responded on 3rd September 2021, and was invited for disciplinary hearing, through a letter dated 8th September 2021.
63. She appeared before the disciplinary committee on 22nd September 2021. She was heard. She was advised of her right to be accompanied.
64. The disciplinary committee found her culpable and recommended that she is dismissed.
65. The matter was later referred to the staff committee of the board, and to the full board, which upheld the recommendation to dismiss the Claimant. She was informed of the decision. Dismissal was effective 22nd December 2021.
66. The Court has not found any procedural flaws, leading to the Claimant's dismissal.
67. The Claimant was charged with clearly defined employment offences under her terms and conditions of service. She was warned; issued letters to show cause; responded to all the letters; was placed on PIP with no improvement; she was invited for disciplinary hearing; she was heard and dismissed; and was eventually advised on her right of appeal, which she exercised unsuccessfully.
68. The Respondent followed the procedure contemplated under Sections 41 and 45 of the *Employment Act*.
69. Validity of reason, under Sections 43 and 45 of the *Employment Act*. The letter of termination justifies termination on account of the Claimant's absconding from duty. This was stated to be an offence, under the Respondent's terms of service, clause 9.5.7.1. Other offences she was found guilty of, include insubordination and neglect of duty.
70. On cross-examination, the Claimant made very significant admissions to matters put to her by the Respondent's Advocate. She stated: -I did not achieve my targets for 2017 to 2020. I did not achieve targets on unit sales. I did not achieve targets on customer visits. Report shows I was underperforming on all parameters, before the Covid-19 outbreak. I was placed on PIP. I was issued warnings. I proceeded on leave, without approval. I was issued letters to show cause.



71. These concessions confirm the presence of acts of gross misconduct. She in particular, conceded to have absconded. She absconded duty from 1st to 11th August 2021. She worked for only 11 days in the whole of June 2021. Her repeated concessions, that she did not meet her targets, even prior to Covid-19 which she attributed her poor performance to, in her evidence, would support the position of the Respondent, that she was a poor performer, who neglected her work. Poor performance was compounded by her absconding.
72. Her claims that others performed poorer than her, did not justify her own poor performance and absconding. It was in the discretion of the Respondent to try its Employees separately, and determine their level of culpability, looking into among other things, the disciplinary history of the concerned Employees. There was no discrimination shown, in the treatment of the Claimant. She did not establish that Employees of the Respondent, were allowed to go on leave, without approval. If she had done so in the past and no action was taken against her, it would not justify her repeat of an act of gross of misconduct.
73. Section 28 of the *Employment Act*, while entitling Employees to annual leave, does not allow them to just walk out and back into their workplaces; leave must be taken with the authorisation of the Employer. The rules laid down under Section 28, must be honoured by both Employers and Employees. It is an act of gross misconduct under Section 44 [4] [a] of the *Employment Act*, where an Employee absents herself without leave or other lawful cause, from the place appointed for the performance of her work.
74. The allegation by the Claimant about sexual harassment was not substantiated. It never rose above the level of her muckraking of General Manager Ogillo, who was her supervisor. The allegation is in line with the Claimant's traducement of Ogillo, as "the great Ogillo."
75. What was done, or said, by Ogillo to the Claimant, that would remotely suggest she was sexually harassed? Is in the meeting called by Ogillo at a hotel in Naivasha? What was said and done, that would result in sexual harassment? These questions needed to be given support in the Claimant's evidence.
76. Prayers. Termination was not procedurally or substantively unfair. Prayer [a] of the Claim is declined.
77. There was no discrimination or sexual harassment against the Claimant. Prayer [b] is declined.
78. An order of reinstatement is wholly unmerited, termination having been procedurally and substantively fair.
79. Prayer [d] on clearance, payment of terminal dues and facilitation in payment of pension, is not well-founded. The Claimant did not tell the Court what is it that the Respondent did, to prevent her from clearing. On pension the evidence on record is that she received Kshs. 1.5 million in pension. What more facilitation does she require from the Respondent, on pension? She also did not inform the Court what terminal benefits are sought, from the Respondent. This prayer is declined.
80. The alternative prayers under paragraph [e] similarly were not established. The Claimant cannot possibly be entitled to 30 days of annual leave, having absconded for the better part of June 2021.
81. She is not entitled to equivalent of 12 months' salary in compensation, termination having been fair.
82. There was no discrimination to warrant damages, exaggeratedly pleaded at Kshs. 10 million.
83. Nothing was produced by the Claimant, to support her prayer for refund of unlawful surcharges and unreimbursed dues. Termination was based on an act of gross misconduct, warranting summary dismissal, and the prayer for notice pay, is without merit.



84. Counterclaim. Cecil's evidence on the Counterclaim was unpersuasive. He told the Court he did not entrust any books to the Claimant. He was not her supervisor. He did not know how the books were issued to the Claimant. He did not know what her arrears in Central Region and Central Rift Region, were. Schools would retain books for a period. The Counterclaim is for a specific sum of Kshs. 165, 273. It required specific proof. There is not an iota of evidence given by Cecil, specifically establishing the claim for Kshs. 165,273.
85. The Claimant's evidence on the Counterclaim was reasonable. The Respondent gave out books for marketing purposes. They were invoiced to the Claimant and other Regional Sales and Marketing Managers. The consumers would retain the books indefinitely, to consider their suitability. The amount claimed by the Respondent would arise due to lack of proper reconciliation. There is no evidence that the Claimant was granted adequate time to reconcile her account. She testified persuasively that even after she left employment, some of the books entrusted to her, were returned by consumers. It was not shown that the Claimant is liable to the Respondent by way of Counterclaim.

IN Sum, It Is Ordered: -

- a. The Claim is declined.
- b. The Counterclaim is declined.
- c. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS
28TH DAY OF APRIL 2025.**

JAMES RIKA

JUDGE

