



**Jemutai v Molo River Roses Limited (Cause E044 of 2024)
[2025] KEELRC 1628 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1628 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E044 OF 2024**

**J RIKA, J
MAY 30, 2025**

BETWEEN

CAROLINE JEMUTAI CLAIMANT

AND

MOLO RIVER ROSES LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim on 23rd August 2024.
2. She states that she was employed by the Respondent as a Human Resource Officer on 1st March 2017.
3. She was summarily dismissed on 27th March 2024.
4. Her last gross monthly salary, was Kshs. 84,978.
5. She was issued a letter to show cause dated 13th March 2023. She responded. She was invited for disciplinary hearing, on 18th March 2024.
6. She states that she was denied a fair hearing. The letter to show cause issued on 13th March 2023, and summary dismissal took place a year later, on 27th March 2024. The disciplinary process was a sham.
7. She prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. 1-month salary in lieu of notice at Kshs. 84,978.
 - c. Salary arrears for March 2024 at Kshs. 84,978.
 - d. 30% basic monthly salary as bonus for December 2023 at Kshs. 15,082.
 - e. 70% basic monthly salary as bonus for February 2024 at Kshs. 35,193.



- f. 12 months' salary in compensation for unfair termination at Kshs. 1,019,736.
Total ... Kshs. 1,239,967.
 - g. Certificate of Service to issue.
 - h. Costs.
 - i. Any other suitable relief.
8. The Respondent filed its Statement of Response dated 16th September 2024. Its position is that the Claimant was dismissed on account of her acts of gross misconduct. The acts were committed on diverse dates.
 9. She went on unauthorized leave. She was in charge of human resources. She allocated herself leave without authorisation. She falsified leave records which were in her custody, and received double payments, to the detriment of the Respondent. She was not performing her work as required.
 10. It was in the Respondent's policy that before any Employee took leave, there had to be an approval from the immediate supervisor. Leave days had to be documented, and taken when due, not later.
 11. The Claimant would absent herself severally indicating on the record, that she was away on permission [p], off-duty [o] and time-off [to]. She did not have leave of the Farm Manager.
 12. At the time of termination, she owed the Respondent 31 days of irregularly taken annual leave days.
 13. Termination was fair and lawful. She was issued a letter to show cause, which she responded to. She was invited for disciplinary hearing. She was allowed to be accompanied to the hearing by a colleague of her choice.
 14. She confirmed to the Respondent that she had no witness. She attended the hearing and was accorded a fair hearing. She failed to defend herself satisfactorily. She was summarily dismissed on 27th March 2024.
 15. She filed an Appeal dated 28th March 2024. She was heard, and confessed that she took unauthorised 36 leave days. The Appeal was declined and decision communicated to the Claimant, through a letter dated 14th May 2024. Summary dismissal was however, commuted to regular termination, and the Claimant was paid her terminal benefits.
 16. She was paid her salary for March 2024. She was not entitled to bonuses. Her Claim has no merit. The Respondent urges the Court to dismiss the Claim with costs.
 17. The Claimant, and the Respondent's Group Human Resource Manager Irene Chepng'eno, gave evidence for the respective Parties, and rested the hearing on 30th January 2025. The Claim was last mentioned on 27th March 2024, when the Parties confirmed filing and exchange of their closing submissions.
 18. The Claimant relied on her witness statement on record, and exhibited her documents [1-6].
 19. Cross-examined, she conceded that she received the letter to show cause. She replied. She was invited for disciplinary hearing. She attended. She was informed of the charge against her- that she went on unauthorized leave. She was heard and a decision made to dismiss her. She appealed and was given a hearing. She received an e-mail, asking her to collect the appellate decision and her certificate of service. She was paid salary for March 2024. She was paid notice of 3 months. Provision for bonus was not in her letter of employment. It was in policy. She did not have the relevant policy.



20. Redirected, she denied that she paid herself for unauthorised leave. She did not receive the outcome on appeal. Bonus was payable, as captured in her pay slip.
21. Irene relied on her witness statement and exhibited documents filed by the Respondent [1-25]. Bonus was discretionary and based on performance. The Claimant was paid all her dues.
22. Cross-examined, Irene told the Court that bonus payment was discretionary. The Claimant had received bonus in the previous years. The Respondent did not have her performance report, for the period she claims bonus. She worked for 7 years.
23. She allocated herself leave days without authorisation. She was entitled to 22 days annually. She took several days between 2022 and 2023, without filling the leave forms. Off-days were not leave days. She was entitled to rest day, on Sundays. She took unauthorised leave of 31 days. She was not willing to pay the Respondent the unauthorised leave days. She is trained in human resource management, and conceded that she had taken more leave days than she was entitled, and without authorisation. She had not been given a freehand by the Respondent, on regulation of her leave entitlement. Redirected, Irene told the Court that the Claimant exceeded her annual leave entitlement.
24. The issues are whether termination was procedurally fair under Sections 41 and 45 of the Employment Act; whether it was substantively fair under Sections 43 and 45 of the Employment Act; and whether the Claimant merits the prayers sought.

The Court Finds: -

25. The Claimant was employed by the Respondent as its Human Resource Officer on 1st March 2017. She worked until 27th March 2024, when the Respondent terminated her contract.
26. Her last gross monthly salary was Kshs. 84,978.
27. Her letter of summary dismissal indicated that she admitted during the disciplinary hearing, that she had allocated herself unauthorized annual leave days, with a promise that she would offset the days against her future annual leave entitlement. The letter states that the Claimant manipulated leave records, and received payments which were not due to her, through manipulation. She abused her position as the Human Resource Officer, and custodian of employment records.
28. Procedure: It is common evidence that the Respondent alleged that the Claimant, in her role as Human Resource Officer, assigned to herself unauthorised annual leave days.
29. The Claimant was issued a letter to show cause dated 13th March 2024. It is not correct that she was issued the letter to show cause on 13th March 2023, and invited for disciplinary hearing a year later.
30. She replied on 14th March 2024.
31. She was invited for disciplinary hearing through a letter dated 15th March 2024. She was advised on her right to be accompanied by witnesses and to bring evidence of her own.
32. Hearing was scheduled for 18th March 2024.
33. There are minutes on record, showing that the Claimant was heard by the disciplinary committee, on 18th March 2024. She responded to each allegation.
34. The disciplinary committee found that the Claimant had taken as many as 35 days of annual leave, without approval. She was advised that the committee would communicate its decision to her, by 27th March 2024.



35. She was informed through the letter dated 27th March 2024, that a decision had been made, to dismiss her. She was also told that the Respondent had decided to commute her summary dismissal to regular termination.
36. She lodged and appeal which was heard by a committee chaired by the Respondent's Managing Director, on 11th April 2024. The decision made at the initial hearing was sustained.
37. There is nothing from the record, to fault the procedure adopted by the Respondent, leading to termination of the Claimant's contract. Procedure was in accordance with Sections 41 and 45 of the [Employment Act](#).
38. Substantiation: At the disciplinary hearing, the Claimant admitted that she took 7 days' leave in February 2022, without filling the leave application form. She intended to offset the days against her future leave entitlement.
39. She also conceded that she had taken 4 off-days in September 2022, which she planned to repay at a future date.
40. Between 13th December 2023 and 10th January 2024, she took 18 days of unauthorised leave. She claimed that she had worked on certain Saturdays and Sundays, and was offsetting against her rest day entitlement.
41. At the appeal hearing, the Claimant confirmed that an Employee was required to have the approval of the Respondent, before taking annual leave or off-duty days. She told the committee chaired by her Managing Director, that on some occasions, she did not follow the existing procedure on leave.
42. Annual leave under Section 28 of the [Employment Act](#), is an entitlement to the Employee, but is taken with the consent of the Employer. It is regulated, and is to be viewed against Section 44 [4] [a] of the [Employment Act](#), which makes it an employment offence, for an Employee to be absent from the place appointed for performance of his work, without leave or other lawful cause. If Employees, whether they are Human Resource Officers or other officers, were free to take annual leave without the concurrence of their Employers, production at the workplace would be disrupted. Workplaces would be disorderly. An Employee cannot simply stay at home, or walk away from the workplace when supposed to be working, on the understanding that she has anticipatory leave days, from which she can compensate her Employer. The Claimant, as a human resource professional, overlooked basic rules governing annual leave.
43. She took the liberty to regulate her own annual leave entitlement, taking full advantage of her docket as the Human Resource Officer. She liberally went on leave unauthorised by her supervisor explaining when called to account, that she intended to compensate the Respondent from her future annual leave entitlement. She ought to have sought the approval of the Respondent.
44. In the end she was away on various dates, as shown at the disciplinary hearing, and the appellate hearing, without the leave of her Employer, and without other lawful cause. She committed acts of gross misconduct under Section 44[4][a] of the [Employment Act](#).
45. There was valid reason, to justify termination, in accordance with Sections 43, 44 and 45 of the [Employment Act](#). The Claim has no merit.

It is ordered: -

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



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAKURU, THIS
30TH DAY OF MAY 2025.**

JAMES RIKA

JUDGE

