



**Nyaga v County Sacco Society Limited (Cause E006 of 2024)
[2025] KEELRC 1328 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1328 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E006 OF 2024**

ON MAKAU, J

MAY 9, 2025

BETWEEN

JANE NJOKI NYAGA CLAIMANT

AND

COUNTY SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. This case is about unfair and unlawful termination of the claimant's employment by the respondent on 17th December 2022 and failure to pay the claimant terminal dues. It seeks the following orders: -
 - a. The termination of the claimant from employment was substantively and procedurally unfair, unlawful and therefore invalid.
 - b. That the claimant be reinstated or re-engaged without loss of benefits and/or break in terms of years of service.
 - c. That in the alternative to (ii) above, the claimant be paid twelve (12) months gross salary compensation amounting to Kshs.909,420/- _74,785 x 12) for suffering unfair and unlawful summary dismissal.
 - d. The claimant be paid notice pay of three (3) months amounting to Kshs.227,355/-
 - e. The claimant be paid service gratuity amounting to Kshs.1,428,752/=
 - f. The claimant be paid relocation/transfer/disturbance allowance amounting to Kshs.65,942.40
 - g. The claimant be paid unremitted provident fund amounting to Kshs.30,223.60/=
 - h. The claimant be paid commuter allowance amounting to Kshs.6,600/=



- i. The claimant be paid key allowance amounting to Kshs.11,000/=
 - j. The claimant be paid subsistence allowance amounting to Kshs.10,000/-
 - k. The claimant be paid responsibility allowance amounting to Kshs.120,894.40/=
 - l. The claimant be paid basic salary and housing allowance arrears amounting to Kshs.75,699
 - m. Interest at court's rate from the time of filing the claim.
 - n. Costs of the claim.
2. The respondent denied the alleged unfair and unlawful termination and averred that the termination was fair and lawful because the claimant violated the law by absenting herself from her place of work without leave or lawful cause. It further averred that a fair procedure was followed before terminating the claimant's employment. Consequently, it averred that the prayers sought are unmerited and the suit ought to be dismissed with costs.

Facts of the case.

- 3. The claimant was employed by the respondent as an officer messenger on 28th July 1997 and thereafter rose through the ranks to become Branch Manager due to her diligent and committed service. As Branch Manager, she was required to open the branch premises at 7.45am through deactivating the alarm system to the main door, which could not be delegated without authority from the Respondent's Operations Manager.
- 4. On 11th January 2022, the claimant caused the respondents' Karurumo branch to be opened at 9.21am contrary to her contractual obligation to open at 8.30am thereby causing an outcry and complaints from the Sacco members. The claimant's conduct violated section 19 (1) of the *Sacco Societies Act* and Section 4.8.10 (ii) and 10.7 (e) of the Respondent's HR Policy Manual.
- 5. As a result of the foregoing matters, the claimant was served with a show cause letter dated 14th January 2022 and she responded by her letter dated 15th January 2022. Subsequently, she was served with a letter dated 3rd February 2022 inviting her to a disciplinary hearing on 14th February 2022 but on 8th February 2022 she filed a suit which culminated in a judgment by Marete J on 31st October 2022. The suspension was lifted by the said judgment and the respondent was directed to pay the claimant all the salary withheld from her during the period of suspension.
- 6. The respondent complied with the said judgment but went on to invite the claimant to a disciplinary hearing on the same misconduct of 11th January 2022. The claimant declined to attend the disciplinary hearing and she was dismissed from employment on 17th December 2022.
- 7. During the hearing, the claimant testified as CW1 and called no witnesses while the respondent called its CEO Nicoleta Mumbi Patrick as its witness. Both witnesses adopted their respective written statements as evidence in chief and fortified the same by documentary exhibits. The evidence by the two witnesses echoed the facts of the case summarized above.

Submissions.

- 8. Both parties filed written submission. In brief it was submitted for the claimant that she clearly explained in her response to the show cause letter that she went to the Head Office on official duty with the knowledge of the CEO. Therefore, the delay in opening the branch was not intentional but was occasioned by the management not addressing her loan application despite qualifying for the same.



9. It was argued that the fact that she reported to the Head office at 7.18am the respondent cannot accuse her of negligence and absent from duty. Besides she was only late from her work 51 minutes and not 7 consecutive days as required under the CBA. Consequently, it was argued that the punishment of summary dismissal was too harsh in the circumstances of the case. For emphasis reliance was placed on *Moses Stanley Okoth v Hyper Market Ltd (2021) eKLR*.
10. It was further submitted that the failure by the claimant to attend disciplinary hearing on 5th December 2022 was because her letter dated 26th November 2022 about an application pending in court, was not responded to by the employer. Consequently, it was submitted that the summary dismissal did not meet the procedural fairness envisaged under section 41 of the *Employment Act*. In view of the foregoing matters, it was submitted that the claimant is entitled to the reliefs sought in the statement of claim.
11. On the other hand, it was submitted for the respondent that the claimant was lawfully and fairly dismissed from employment. It was submitted that the claimant absented herself from work without lawful authority, to attend to personal business contrary to section 4.8.10 (ii) of the HR Policy Manual which provides working hours as from 8.am to 4pm. It was further argued that the claimant did not adduce any evidence to prove that she had permission to absent herself from her work station to attend to her personal needs as alleged.
12. Accordingly, it was submitted that absence from work without permission amounted to a valid reason for dismissal. For emphasis reliance was placed on *Karani v Judicial Service Commission (2024) KEELRC 1175 (KLR)* where the Court upheld the dismissal because there was evidence of absence from work without leave or lawful authority.
13. It was further submitted that the dismissal was procedurally fair as the claimant was afforded an opportunity to defend herself but chose not to attend the disciplinary hearing. For emphasis reliance was placed on *Paul Wanyangah v Market Development Trust t/a Kenya Markets Trust (2017) KEELRC 378 (KLR)* where it was held that an employee who squanders the opportunity afforded to defend himself cannot blame the employer for acting unfairly.
14. Finally, it was submitted that the reliefs sought are not merited and therefore the suit ought to be dismissed with costs.

Determination.

15. Having carefully considered the pleadings, evidence and submissions, the following issues fall for determination: -
 - a. Whether the dismissal of the claimant was unfair and unlawful.
 - b. Whether the reliefs sought are merited.

Unfair and unlawful termination

16. The principles of unfair termination are now well settled. There must be evidence that the termination was not grounded on valid reason and/or that the termination was not done in accordance with a fair procedure. The said twin threshold are basically about fair administrative action which is now codified under Article 47 of *the Constitution* and section 45 of the *Employment Act*.
17. Section 45 (1) & (2) a-c of the *Employment Act* provides that: -

“ 45. . Unfair termination



- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer 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 employment was terminated in accordance with fair procedure.”

18. Further section 41 of the *Employment Act* provides that: -

- “(1) 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.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

19. In the instant case, the claimant admitted the offence of causing a delay in opening respondent’s Karurumo Branch from 8.30am to 9.21am while pursuing her loan application at the Sacco Head Office. She admitted the offence in her response to the show cause letter, in paragraph 9 of the statement of claim, paragraph 6-13 of witness statement and 10-15 of the written submissions.
20. As regards procedural fairness, there is admission by the claimant that she was invited to a disciplinary hearing but she did not attend and instead filed an application in court for interpretation of the judgment that lifted her suspension. She never obtained any order to stop the disciplinary hearing nor did she receive any letter from the employer postponing the disciplinary hearing.
21. Consequently, I find and hold that the claimant was afforded an opportunity to defend herself during the scheduled disciplinary hearing but she squandered the same. She cannot therefore rightfully accuse the employer of unfair termination. I gather support from the cases cited by the respondent above to reach the obvious conclusion that the claimant has not proved on a balance of probability that she was a victim of unfair and unlawful dismissal by the respondent.
22. On the contrary, I am satisfied that the employer has demonstrated a valid reason for dismissing the claimant, and further that it followed a fair procedure as required under section 43 and 45 (2) of the *Employment Act*.

Reliefs sought.

23. In view of the foregoing conclusion, I find that the claimant is not entitled to an order that her dismissal was substantively and procedurally unfair and unlawful. She is also not entitled to the prayer for



reinstatement or re-engagement or even compensation for unfair termination or salary in lieu of notice under section 49 of the *Employment Act*, 2007.

24. The claimant further prayed for gratuity of Kshs.1,428,752 but did not plead how the figure was calculated. The respondent pleaded that the claim lacked particulars and put the claimant to strict proof of the same. The claimant stated in his written statement that clause 9 (i) and 10(1) & (iii) of the CBA entitled her to service gratuity at the rate of 30 days for every year worked. She then calculated the gratuity payable for her 26 years of service at Kshs.1,428,752.
25. I have carefully perused CBA and confirmed that under section 9 (v), an employee whose services are terminated, he/she is entitled to payment of service gratuity at the rate of 30 days for every year worked. The claimant worked for 26 years and his salary was Kshs.49,843 equaling to Kshs.1,295,918.
26. The claimant further alleged that her provident fund dues amounting to Kshs.30,223.60 were not remitted during his suspension between February and December 2022. The allegation is not backed by evidence, e.g, a statement from the Fund Manager. Consequently, I find that the alleged failure to remit the pension contribution is not substantiated. However, this finding does not absolve the respondent from the obligation to remit any outstanding remittances for the said period since it is a legal requirement.
27. The claim for commuter allowance, key allowance and responsibility allowances are not merited because the claimant was serving his suspension from February to December 2022. If the same was contained in a consent in Case ELRC No. E693 of 2020, then the claimant should pursue it under that suit not herein.
28. The claimant prayed for arrears of basic and house allowance on the basis of an automatic annual increment at the rate of 5% of the basic pay but she did not plead and prove whether the claim was founded on the appointment letter or the CBA. Consequently, I decline to award the same.
29. Finally, the claim for disturbance allowance of Kshs.65,942.40 lacks particulars and supporting evidence and it is also declined.

Conclusion.

30. I have found that the dismissal of the claimant from employment was substantively and procedurally fair and within the four corners of section 45 of the *Employment Act*. I have further found that the claimant is not entitled to the reliefs anchored on section 49 of the Act. Finally, I have found that she is entitled to payment of service gratuity under section 9(v) of the CBA. Consequently, I enter judgment for the claimant against the respondent for payment of: -
 - i. Service gratuity.....Kshs.1,295,918.00
 - ii. Costs and interest at court rates from the date of filing the suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 9TH DAY OF MAY, 2025.

ONESMUS N MAKAU

JUDGE

