



**Ochieng v DHL Supply Chain Kenya (Cause 270 of 2020)  
[2025] KEELRC 1312 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1312 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 270 OF 2020**

**B ONGAYA, J  
MAY 9, 2025**

**BETWEEN**

**PHELISTER AMOLLO OCHIENG ..... CLAIMANT**

**AND**

**DHL SUPPLY CHAIN KENYA ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the Amended Memorandum of Claim dated 30.11.2020 through Okatch & Partners Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the claimant had been wrongly classified in a lesser job group (M) by the respondent.
  - b. A declaration that the claimant ought to have been graded as job group (L) by the respondent.
  - c. A declaration that the claimant has been wrongly subjected to a lower pay grade and remuneration.
  - d. A declaration that the respondent's actions in prayers (a), (b) and (c) above amount to unfair labour practices.
  - e. A declaration do issue that the claimant is entitled to all the benefits and salaries commensurate of a higher job grade (M) sought in prayer (b) above.
  - f. A declaration that the respondent's termination of the claimant's employment was illegal, malicious, unfair and inhumane and discriminatory.
  - g. A declaration that the respondent's actions of unfair job grading and under remuneration amount to discrimination.



- h. The payment of the claimant's outstanding arrears amounting to Kshs 15,084,233.56/= on account of all the unremunerated duties performed by the claimant on an acting capacity.
  - i. The payment of the claimant's 12 months gross salary in respect thereof being Kshs 2,280,000/= (Kshs 190,000/=).
  - j. Compensation for loss of future expected income
  - k. General damages for loss of future expected income
  - l. General damages for discrimination
  - m. Interest on (d), (e), (f) & (g), (h), (i), (j), (k) & (l) above
  - n. Costs of this claim and interest thereto from the date of filing of the claim
  - o. Any other award that the court may deem fit.
2. The Memorandum of Defence dated 23.07.2020 was filed through Kaplan & Stratton Advocates. The respondent prayed that the suit be dismissed with costs.
  3. The claimant's case was that she was employed by the respondent as a Human Resource Administrative Assistant based in Nairobi county, and the employer- employee relationship between the parties commenced on 22.09.2012 by way of a letter of appointment.
  4. On 01.11.2015 the claimant's terms of engagement changed from fixed term employment to full term permanent employment.
  5. The claimant states that the term of engagement changed but there was no change in remuneration or title, contrary to the company norm.
  6. In February, 2017 the HR officer in charge of transport contract resigned and the claimant was verbally instructed by the then HR director to step in and take over the human resource officer responsibilities of the transport department in acting capacity.
  7. The claimant states that this new role was a grade higher (Grade L) than the grade (Grade M) that she was in and despite combining the two roles, there was no change in title or salary nor did she receive any acting allowance as stipulated in the management terms and conditions clause 8.
  8. In May, 2018, following a meeting with the HR Business partner, the claimant states she was awarded a 10% salary increment as per the respondent's staff record alteration.
  9. The claimant maintains that despite the staff record alteration indicating her role had changed from HR Assistant to HR Officer, she was never issued with a new role profile as was the norm in the company and her title continued to read as HR Administrative Assistant until termination of her contract on 13.05.2020, even though the letter of termination referred to her as HR Officer.
  10. The claimant states that on 01.06.2019 the respondent terminated the workshop contract it had with DT Dobie and as a result, the management of the workshop reverted to DHL. The claimant indicates that she shouldered these responsibilities without any official communication as to the new role and additional responsibilities, and that her title was verbally changed to "HRO Beverages, Transport, Distribution, Functions and Workshop" and not through a letter of appointment or letter of additional responsibilities.
  11. The claimant states that her work ethic was impeccable and it is for this reason, she was assigned additional responsibilities whenever they arose.



12. In November, 2018 the Human resource business partner Kenya, undertook the exercise of ensuring that every employee of the respondent had a role profile detailing their roles or jobs, but, the claimant was not issued with a role profile.
13. In March, 2020 the claimant was assigned new responsibilities and her new title would be HR Officer: Beverages, Transport, Distribution, Functions, Workshop, Nampak, Oxford University Press and Unilever Kenya. However, she was not given a role profile to that effect.
14. The claimant's further case is that in September of 2019 she was assigned regional assignments in Uganda, occasionally being instructed to travel there for purposes of facilitating trainings.
15. The claimant expressed that she was disturbed by the failure on the part of the respondent to issue her with a role profile, and that her remuneration was far less than that of her colleagues, yet, she was assigned regional assignments.
16. On 14.04.2020 the claimant was issued a notice to show cause to answer to allegations of conflict of interest, to which she responded by a letter dated 17.04.2020. The respondent found the said response unsatisfactory and as a result invited the claimant to a disciplinary hearing on 27.05.2020.
17. The disciplinary committee conducted the hearing and found that the claimant had violated the DSC HR Recruitment Policies, DHL Conflict of Interest Policies and the DHL Code of Conduct.
18. The claimant appealed the decision but the respondent upheld the decision of the disciplinary committee.
19. The claimant pleaded that the notice to show cause indicated the reason for her indictment as being breach of DHL Conflict of interest policies but the notice of termination indicated that pursuant to the hearing, she had been found to be in serious violation of both the DSC HR Recruitment Policies, DHL Conflict of interest policies and the DHL Code of conduct. The claimant contends that the respondent denied her a fair hearing for failing to accord her the opportunity to defend herself as regards the allegations touching on the DSC HR Recruitment policies and DHL code of conduct.
20. The claimant pleaded that the respondent's punitive action should have been the last resort since the code of conduct indicates that in the case of non-compliance, the company would take action to allocate adequate resources to properly address any issues. First and foremost the company would try and fix the issue by explaining the importance of the code of conduct to the employee concerned, thereby motivating them to change their behaviour.
21. The claimant states that two of her colleagues who were indicted on similar grounds of conflict of interest were not subjected to disciplinary action. She states that this violates the provisions of equality and fairness.
22. The claimant maintains that the allegation upon which her employment was terminated, did not amount to conflict of interest in relation to the respondents' regulations and that it was a predetermined discriminatory move based on her gender. That her remuneration was not commensurate to the roles and responsibilities that the respondent expected her to fulfil, and said pay was even less than what her colleagues of equal job description received.
23. The claimant pleaded that the disciplinary process was manifestly skewed and unfair in that:
  - i. The disciplinary committee denied her the opportunity to peruse and examine the evidence it was relying on in the disciplinary proceedings including the investigation report that informed the decision to subject her to disciplinary proceedings.



- ii. The disciplinary committee did not allow her to properly articulate her issues as she was subjected to intimidation, including badgering.
  - iii. Shortly prior to the disciplinary hearing, the claimant was informed by one of the senior managers that the decision on who would be laid off had already been made and that the hearing was just a formality.
  - iv. The respondent's actions cumulatively denied the claimant opportunity to a fair hearing and in turn access to justice.
24. On the part of the respondent, it is stated that the claimant was employed by the respondent on 01.11.2015 as a HR Administration assistant.
25. The respondent states that the claimant was expected to and agreed to be bound by the respondent's guidelines as well as the terms of her contract. In particular:
  - i. Clause 24.1- You must not act in any manner, either during your normal hours of work or otherwise, which is contrary to the interest of on in competition with the company;
  - ii. Clause 24.2 – This policy extends specifically to the situation where you may make business decisions, which involve close friends or relatives (either personally, or where the friend or relative is involved with a company doing business with the company or acting in competition with the company.
  - iii. Clause 24.3 – If you are in a position where you need to make a business decision on behalf of the company which creates or may create such an actual or apparent conflict of interests, you must advise your line manager immediately (and in any event, before any such decision is made).
26. In 2016 one Irene Ochieng was hired in the respondent's OUP business unit. She was later interviewed and hired as the Logistics Administrator in the respondent's P&G contract.
27. On 11.10.2019 the respondent notified all its employees that they were to fill out a conflict of interest questionnaire by 25.10.2019, which was later extended to 30.11.2019.
28. On 16.08.2017 the claimant had filled in her conflict of interest questionnaire where she stated that she had no conflict or potential conflict.
29. The respondent states that the claimant submitted a false questionnaire as Irene Ochieng is related to her as her cousin.
30. The respondent states that the claimant participated in Irene Ochieng's hiring without disclosing her conflict, as follows:
  - a. As the human resource administrative assistant, the claimant prepared the role profile and role advertisement for the role Irene was hired in.
  - b. The claimant participated in 5 of the 6 interviews that selected the role. The claimant only stepped out when Irene was being interviewed, but failed to disclose the reason to her fellow interviewer nor her relationship with the interviewee.
31. The respondent states that following the flawed interview, the claimant's cousin was hired as logistics administrator for the respondent's P&G contract despite not being qualified for the role, and only discovered the conflict after an anonymous concern was raised through its "Speak Up" system, which led to an investigation being carried out in December, 2019.



32. Based on the findings of the investigations the claimant was issued with the notice to show cause dated 14.04.2020, to which the claimant failed to satisfactorily address.
33. By a letter dated 20.04.2020 the respondent invited the claimant to attend a disciplinary hearing on 27.04.2020. The claimant attended the disciplinary hearing, accompanied by two employee representatives.
34. The respondent states that at the hearing the claimant failed to provide any satisfactory reasons to answer the allegations against her. The claimant confirmed that:
  - a. She did not disclose her relationship with Irene to her fellow interviewer.
  - b. She filled in a misleading conflict of interest questionnaire as she did not disclose that her cousin was in the business.
  - c. Her cousin was hired in the new position as a logistics clerk despite not having a diploma in logistics, which was the required qualification for the role.
  - d. The recruitment exercise was not conducted properly.
35. Upon considering the claimant's responses, the respondent concluded that there was reasonable grounds to conclude that the claimant had violated its conflict of interest policies as well as its HR Recruitment policies. The respondent found that as a result of the breaches the claimant's cousin had an unfair advantage in the recruitment.
36. By letter dated 06.05.2020 the respondent terminated the claimant's contract and gave her one month's notice as provided in her letter of engagement. Additionally, the respondent notified the claimant that she had a right to appeal her termination within 5 days.
37. The claimant appealed the decision to terminate her employment. During the hearing of her appeal, the panel noted that the claimant showed no remorse and accepted no responsibility for her actions in failing to declare a conflict of interest. By its decision of 05.06.2020 the appeals tribunal dismissed the claimant's appeal and upheld her termination.
38. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows:
  - a. There is no dispute that parties were in a contract of employment and which was terminated on account of the alleged claimant's conflict of interest. The Court finds accordingly with respect to the 1st issue on employment relationship and on the 2nd issue that termination took place.
  - b. To answer the 3rd issue the Court returns that the termination of the contract of employment was not unfair. The documents and evidence show that the claimant received the notice to show cause and which set out particulars of the allegations levelled; she responded; she attended disciplinary hearing; she received the decision to terminate her employment; and, she appealed but the termination was upheld by the respondent. The Court finds that the respondent complied with section 41 of the *Employment Act*, 2007 on a notice and hearing of the employee prior to imposing a punishment of termination. as relates to the alleged conflict of interest per letter to show cause and subsequently as a ground for termination the claimant testified thus, "On 14.04.2020 I received show cause letter. I was to show cause upon alleged conflict of interest. It says I participated in interview for Irene Ochieng. She was my cousin back home. She is my relative back home. The conflict of interest relates to business of the respondent. The allegations are stated. I deny conflict of interest because it was not per clause 24.2 of contract."



By that testimony, the claimant confirmed that she knew the allegations levelled, the fact of participating in recruitment of her cousin was established, but the issue was whether such recruitment amounted to respondent's business thus, trapped as conflict of interest.

- c. The claimant testified that she should have disclosed or informed the management about the conflict of interest or her cousin being a candidate but she had forgotten to disclose and therefore she apologised. She testified thus, "I admitted non-disclosure as was expected. I understood duty to disclose but failed to do so per my reply. I admit that was my response." By that testimony, the Court finds that the claimant knew that the recruitment process was one such business of the respondent subject to disclosure and the conflict of interest policy. Accordingly, the Court finds that the reason for termination existed as genuine as at termination per section 43 of the *Employment Act*, 2007 and the reason was fair per section 45 of the Act as it related to the claimant's conduct and the respondent's operational system or requirements. As pleaded and submitted for the respondent, clause 24 of letter of appointment on conflict of interest was breached. The claimant urged that the letter of termination went beyond the allegations but the Court returns that the allegation on conflict of interest was established and it was the substantial reason for termination of the contract per the letter of termination exhibited. The evidence was that the claimant participated in all steps of recruitment of her cousin Irene and participated in interviews for 5 other candidates and stepped out only when Irene was being interviewed. In her testimony before Court she confirmed that she had apologised for her mistake. It appears that her apology was considered when she was paid final dues instead of imposition of a summary dismissal. The submission that she was terminated upon reasons for which she had not been given a chance to exculpate is found unjustified.
- d. Accordingly, the Court finds that the claimant is undeserving of the declaration that the termination was unfair and the prayer for compensation in that regard will collapse or infinitely remote.
- e. To answer the 4th issue, the Court has considered the prayers for declarations that the claimant was unfairly graded so that she should be paid for the discrepancy in grading and returns that the claims and prayers in that respect have not been established at all. The claimant provided no exhibit to show her grading was changed and she testified that at all material times she performed roles within her agreed or contractual job description duly provided to her. As submitted for the respondent, it was unjustified for the claimant to urge a case for higher pay or grading while at all material times she strictly performed duties stipulated in the letter of appointment. Oral instructions the claimant invoked to show she was given duties beyond her agreed role cannot be relied upon to defeat the express written contract. The claimant also confirmed she enjoyed a salary increment of 10% on 01.05.2018 upon her redesignation from Human Resource Administrative Officer to Human Resource Officer. The redesignation has not been shown to have changed the claimant's job description per letter of appointment. Discrimination on account of unfair pay or failure to recognise alleged higher roles is found not established at all. It appears that the claimant bargained and agreed to the pay and to the commensurate work to be done in that respects and the Court finds allegations of underpayment based on wrong grading not established. Similarly alleged discrimination based on imposed termination on account of conflict of interest whereas others culpable of conflict of interest were warned is not established. The alleged discrimination in that respect lacks a correlating comparator because the evidence of the true particulars, circumstances, and fact of existence of the other alleged cases as being similar to the case the claimant confronted was not provided.



- f. To answer the 5th issue the Court returns that the claims and prayers made for the claimant will collapse as unjustified. The suit is liable to dismissal. While costs follow the event, the Court has considered all circumstances of the case and there will be no orders on costs. In particular, while the respondent has substantially complied with due process leading to termination, there were delays in some steps and on that account, no order on costs will be made. While making that finding, the Court has considered that in any event, the claimant had fully contributed to her termination and had confirmed as much by apologizing.

In conclusion judgment is hereby entered for the respondent for dismissal of the suit with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 9TH MAY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

