



**Nyoike v Urithi Housing Cooperative Society Limited (Cause  
777 of 2018) [2024] KEELRC 94 (KLR) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 94 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 777 OF 2018  
J RIKA, J  
JANUARY 31, 2024**

**BETWEEN**

**MARY NYAMBURA NYOIKE ..... CLAIMANT**

**AND**

**URITHI HOUSING COOPERATIVE SOCIETY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed her statement of claim on May 23, 2018.
2. She states that she was employed by the respondent as an Accountant Grade UHCSL 4, on or about March 1, 2016. She was entitled to a gross monthly salary of Kshs. 60,484.
3. She took maternity leave on June 19, 2017. She was blessed with twins, on June 29, 2017.
4. She was a beneficiary under the respondent's employee medical insurance scheme. The respondent and the Insurance company conspired and refused to pay the claimant's medical bill, amounting to Kshs. 559,935.
5. She wrote to the respondent on November 14, 2017, seeking the intercession of the respondent on reimbursement. There was no assistance from the respondent.
6. Unexpectedly, she was invited for an Executive Board Committee meeting through a letter dated January 10, 2018. The agenda was not communicated. She attended and was told on the floor of the meeting, that she should apologize for being rude. She refused to apologize, responding that the accusation had only been raised at the meeting, and her accuser was not known.
7. She was denied her salary and commission for the month of January 2018. She enquired about the default from the respondent, with no response. She instructed her Advocates to enquire, which was done, through a letter to the respondent dated February 20, 2018.



8. The respondent immediately, through a letter dated February 21, 2018, terminated the claimant's contract. No reason was given to justify termination. She was not given an opportunity to defend any accusation. Termination was against the Employment Act and Rules of Natural Justice. She was denied her January 2018 salary. She was denied commission from September 2017 to February 2018, amounting to Kshs. 660,000.
9. She prays for:
  - a. Declaration that termination was unfair and unlawful.
  - b. Reinstatement.
  - c. 1-month salary in lieu of notice at Kshs. 120,970.
  - d. Kshs. 660,000 commission from September 2017 to February 2018.
  - e. 30 days' annual leave at Kshs. 60,485.
  - f. 12 months' salary in compensation for unfair termination at Kshs. 725,820.
  - g. Kshs. 559,935 in reimbursement of medical expenses.
  - h. Costs and interest.
10. The respondent filed its statement of response on August 15, 2018. It is conceded that the claimant was employed by the respondent as an Accountant. Her employment was marred by cases of indiscipline, ranging from insubordination, being rude to the respondent and its clients, as well and Co-employees. She was issued several warnings which she ignored.
11. The respondent concedes it had a medical insurance cover for its employees. Its duty under the cover, was to pay premiums. It did not have the power to determine if a claim should be paid. The respondent nonetheless followed up with the Insurance, and was told that the claim by the claimant was not payable. This was communicated to the claimant. The respondent did not act maliciously.
12. The claimant was invited to the meeting of the Board to show cause why she should not be dismissed, through a letter dated January 10, 2018. She attended the meeting, but instead of clarifying the issues that were raised, became extremely rude to the Board Chairman, compelling the Board to recommend that she is dismissed. She was dismissed on February 21, 2018. She was paid her terminal benefits. She was accorded an opportunity to be heard, but made it impossible to be heard. Termination was carried out fairly, and was based on valid reason. The respondent prays the court to dismiss the claim with costs.
13. The claimant filed a reply to the statement of response, on August 31, 2018. She reiterates that the letter of termination did not disclose the reason justifying termination.
14. The claimant gave her evidence, and rested her case, on June 8, 2022. The respondent did not call witnesses, and closed its case on March 1, 2023. Parties confirmed to have filed and exchanged their Closing Submissions on September 27, 2023.
15. The claimant adopted her witness statement and 12 Documents – [1-12] in her evidence-in-chief. She restated the contents of her Pleadings as summarized above. She denied that she was rude to the Board Chairman. She reiterated that she was dismissed unfairly, and was denied her salary and commission.
16. Cross-examined, she told the court that her salary included basic, transport, house and medical allowance. She executed her duties diligently. She did not receive warning letters. She did not have evidence of conspiracy between the respondent and the Insurance Company, to deny her medical



benefit. She was not advised if the cover catered for premature birth. The respondent and the Insurance Company are different, independent entities. She was asked to apologize at the meeting. Nothing else transpired. She was entitled to commission on debt collection. It was not part of her contract of employment. She did not have a document supporting commission. It was not in her pay slip. She computed the commission based on her own average figure. She was still in employment at the time her Advocates made demand for salary.

17. She was paid salary for January, February 2018 and 2 months' salary in lieu of notice. The meeting was not a show cause meeting.
18. Redirected, she told the Court that her contract provided for medical benefit, and she expected the respondent to intercede with the Insurance. The meeting of the Board did not set out any accusations against the claimant. The letter of termination gave no reason.
19. The issues are whether termination was based on valid reason; whether it was fairly executed; and whether the claimant merits the prayers sought.

### **The Court Finds**

20. The claimant was appointed by the respondent as its Accountant, Grade UHCSL 4, with effect from March 1, 2016. Her gross monthly salary, comprising basic, house allowance, medical allowance and transport allowance, was Kshs. 60,484.
21. Her contract was terminated through a letter dated February 21, 2018. The letter did not disclose the reason or reasons justifying termination, in accordance with Section 43 of the *Employment Act*. It simply advised the claimant that her services were no longer required.
22. The reason stated in the pleadings filed by the respondent, that the claimant was rude to the Board Chairman, was not supported by any evidence, documentary or oral. The words or actions amounting to rudeness on the part of the claimant, were not disclosed. The chairman did not give evidence before the court or any disciplinary platform, to establish the charge of rudeness.
23. Other reasons advanced in the statement of response, relating to cases of indiscipline, insubordination, rudeness to clients, and rudeness to Co-employees, were similarly unsupported in evidence. There were no clients or colleagues of the claimant who recorded evidence, attesting to her rudeness to them.
24. Beyond the rudeness alleged to have been directed at the Board Chairman at the meeting of the Board leading to termination, whose details were not given, there were no accusations of indiscipline, insubordination, rudeness to clients and colleagues, communicated to the claimant.
25. She went for the meeting without an agenda, only to be confronted with a hastily tailored agenda about rudeness, which formed the basis of termination of her contract.
26. Termination was not founded on valid reason.
27. There was no letter issued to the claimant with specific charges or allegations, before she was invited to the Board meeting on January 15, 2018. She was not asked to show cause why she should not be disciplined, for any specified allegation. The letter inviting her to the Board meeting did not indicate that she was being invited to show cause, or to defend herself at a disciplinary hearing. The claimant was not advised that she was to attend any disciplinary meeting, in the company of a colleague of her choice, or a trade union representative, in accordance with Section 41 of the *Employment Act*.
28. Termination was not executed fairly.



29. It is declared that termination was unfair for want of valid reason, and lack of fair procedure, as required under Sections 41, 43 and 45 of the [Employment Act](#), 2007.
  30. The prayer for reinstatement is time-barred under section 12 [3] [viii] of the [Employment and Labour Relations Court Act](#). The remedy is confined to within 3 years of dismissal. The claimant left employment in 2018, about 6 years ago.
  31. The claimant told the court on cross-examination that, “ I was paid salary for January, February 2018, and 2 months’ salary in lieu of notice.”
  32. The prayer for notice pay at Kshs. 120,970 is declined.
  33. The commissions claimed from September 2017 to February 2018, at Kshs. 660,000 are based on the claimant’s own average. They are not a benefit spelt out in her contract, or any policy exhibited before the court. They are not captured in any pay slip. The prayer is declined.
  34. She told the court that she never went on annual leave. The respondent said nothing on the prayer for annual leave in its statement of response, and offered no evidence on the claimant’s annual leave. Section 74 [1] [f] of the [Employment Act](#) requires an Employer to keep a written record of an Employee’s annual leave entitlement, days taken and days due, as specified in section 28. Nothing would have been easier than for the respondent to exhibit annual leave records, to discount the prayer for 30 days of pending leave, pursuant to clause 7 of the claimant’s contract, at Kshs. 60,484. The prayer for annual leave is allowed.
  35. The claimant did not establish why the respondent should reimburse her costs of maternity. The respondent did not have the power to direct the Insurance Company, to pay the claimant’s maternity claim. The claimant’s cause of action for non-payment would be against the Insurance Company. The respondent assisted the claimant by enquiring why the Insurance Company did not meet the costs, and communicated the explanation to the claimant. The Court has not seen any provision in the medical scheme, which bound the respondent to stand in place of the Insurance Company, in event a medical claim was unpaid. The claimant was entitled to a medical cover for inpatient and outpatient services for herself and up to 4 of her dependants, up to the age of 21 years, under her contract of employment. The respondent procured the medical cover, but did not assume insurance liability under the cover. The prayer for refund of medical expenses at Kshs. 559,935 is declined.
  36. Termination was unfair for lack of valid reason, and for want of fair procedure. If it was not for the statutory time-bar on the remedy of reinstatement, there would be no good reason not to have the claimant reinstated, and to continue earning an income, until retired. The claimant worked for 2 years between March 2016 and February 2018. She is not shown to have caused, or contributed to the circumstances leading to termination of her contract. She had completed probation, and was permanent and pensionable, under clause 5 of her contract. She expected to continue serving, until retired. She was paid salary for days worked and notice of 2 months. She is granted equivalent of 7 months’ salary in compensation for unfair termination at Kshs. 423,388.
  37. Costs to the claimant.
  38. Interest allowed at court rate, from the date of Judgment till payment is completed.
- It is ordered
- a. It is declared that termination was unfair.
  - b. The claimant is allowed the prayers for annual leave at Kshs. 60,484 and compensation for unfair termination at Kshs. 423,388 - total Kshs. 483,872.



c. Costs to the claimant.

d. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**JAMES RIKA**

**JUDGE**

