



**Mumbua v Pioneer Holdings (Africa) Limited (Cause 29 of 2018)  
[2024] KEELRC 446 (KLR) (21 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 446 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 29 OF 2018  
DKN MARETE, J  
FEBRUARY 21, 2024**

**BETWEEN**

**LITHER MUMBUA ..... CLAIMANT**

**AND**

**PIONEER HOLDINGS (AFRICA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter came around under a statement of claim dated 16th January, 2018. It does not disclose an issue in dispute on its face.
2. The Respondent in a memorandum of Response dated 26th July, 2018 denies the claim and prays that it be dismissed with costs.
3. The claimant's case is that he was employed by the Respondent as Assistant Filing Clerk/Office Assistant vide a letter dated 5th December, 2005 on a with a starting salary of Kshs 10,000/=. He was also received on annual bonus equivalent to his monthly remuneration and also a shopping voucher of Kshs 5,000/= which was subsequently increased to Kshs 20,000.00 by year 2012.
4. The claimant further case is that he was also entitled to salary increment of 10% and this raised his pay to Kshs 16,500.00 vide a letter dated 26th January, 2009.
5. The claimant's other case is that on 14th January, 2013, he received a letter setting out his performance targets for 2013 wherein a list of performance based targets and objectives and been outlined on a schedule therein attached.
6. The Claimant's penultimate case on 25th February, 2015 the Claimant received a letter of Termination of Employment without any prior notice or warning and the letter did not give any reason for termination and the Claimant is aggrieved for the unfair termination of employment. This was without being effected on opportunity to be heard.



7. The Claimant further submits as follows;

1. The Claimant has had a distinguished career and service for a period of over ten (10) years in the employment of the Respondent and has never received any warning letter or had any disciplinary case for the entire period.
2. The Respondent in the letter of termination dated 25<sup>th</sup> February, 2015 has not advanced any reason for the termination of the Claimant's employment and the Claimant's rights as an employee as per the Constitution of Kenya 2010 and the Employment Act 2007 have been grossly violated.
3. The claimant was not issued with notice nor give a chance to be heard and in essence the Respondent acted contrary to the Rules of Natural Justice.
4. The Claimant's termination of employment by the Respondent is out rightly wrongful, illegal, unlawful and unfair and the Claimant is deserving of payment of terminal benefits in full and compensation for unfair termination.

She prays thus;

1. Payment of Terminal Benefits by the Respondent as computed hereunder:-
    - (i) Gratuity (service) payment for 10 years of service (one month remuneration pay of each year served) Kshs 24,832.50 x 10  
=Kshs 248,325/=.
    - (ii) Payment in Lieu of Notice (one month salary) = Kshs 24,832.50/=.
  2. Compensation for the wrongful and unfair termination  
(12 months remuneration)  
=Kshs 248,824 x12  
=Kshs 297.990/=  
Total =Kshs 571,147.50/=
8. The Respondent's case is that the claimant was duly discharged from an employment and that the claim is brought out in good faith and with a view to extracting money from the Respondent.
  9. The Respondent's case is one of denial to the claim. It is her case that salary increment was at all times discretionally and awarded by the Respondent board of director per clause 3(c) of letter of appointment and was never fix to a specific percentage.
  10. The Respondent again denies the contents of paragraph 13 of the claim and avers that the claimant was even several prior verbal warnings in respect of her disobedient and slackness at work but did not heed or take steps to improve on her behaviour or performance. She was lawfully terminated from employment in accordance with her contract of such employment.
  11. The Claimant is not entitled to any terminal benefit as her lawful dues were paid in full and acknowledge with a rider and the claimant was not entitled to any other lawful claims against the Respondent. She also in toto denies the claimant submissions and prays that the suit be dismissed with costs.



12. In a reply to the Respondent's Memorandum of Response dated 4th April, 2019 denies the response the claimant and reiterates her claim as set-out.

The issues for determination therefore are;

1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  2. Whether the plaintiff is entitled to the relief sought
  3. Who bears the costs of this cause.
13. The 1st issue for determination whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in her written submission dated 27th June, 2023 submits a case of unlawful termination of employment. It is her submission that her aforesaid termination was wrongful and unfair as no reason was advanced for the termination of employment. In her letter for her termination, the Respondent never issued the Claimant with any notice of termination or pending disciplinary case. He was also not taken through a disciplinary process as envisaged under Section 41 of The *Employment Act*, 2007.
14. Further, the Respondent's Witness Statement by Shiraz Jeraj dated 26th July, 2018 and filed on 7th August, 2018 the Respondent has alleged at Paragraph 3 and 4 of the Statement that the Claimant worked well at the beginning but later on became disobedient and started slacking at her work and was given a number of verbal warnings about her behaviour and innumerable chances to defend herself and the Respondent decided to Summarily Dismiss the Claimant from its employment. No. Evidence has been produced by the Respondent to support or fortify these allegations or rebut the Claimant's evidence on record and it therefore, just remain allegations without any evidential value.
15. The Respondent opposed the Claim vide a Memorandum of Response dated 26th July 2018. In such opposition she sought to rely on Section 44(4) (c) goes ahead to lay out the different instances that may amount to gross misconduct so as to justify the summary dismissal of any employee for lawful cause which includes among other things where;
- “an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.
16. Again, the Respondent sought to emphasize paragraphs 3 and 4 witness statement sworn by Shiraz Jeraj where he attests to the Claimant's non-performance of her responsibilities as expected.
- “The Respondent worked well at the beginning but later on became disobedient and started slacking at her work. The Respondent gave the Claimant quite a number of verbal warnings about her behaviour and innumerable chances to defend herself and change her behaviour but the Claimant did not heed to the warnings... the Respondent decided to summarily dismiss the Claimant from its employment.”
17. Looking at the respective cases and submissions of the parties, one sides with the claimant. The Claimant has adduced evidence of a unlawful termination of her employment in that due process was never pursued in such termination. She was never issued with any notice or reason for termination of employment and neither was she awarded an opportunity to explain any shortcoming that the Respondent may have complained of.



18. The Claimant's termination of employment therefore fell out of the requirement of Sections 41, 43 and 45 of the Employment Act, 2007 in that no disciplinary process or hearing was employed in the termination of employment. The Claimant was not awarded an opportunity to be heard or even given reasons for termination of his employment. All this culminated in a violation for Section 45 of Employment Act, 2007. I therefore find a case of unlawful termination of employment and hold as such.
20. The 2<sup>nd</sup> issue for determination is whether the Claimant was entitled to the relief sought. She is. Having succeeded on a case of unlawful termination of employment, she becomes entitled to the relief sought.
21. I therefore inclined to allow the claim and order relief as follows;
- i. One (1) month salary in lieu of notice .....Kshs 24,832.50.
  - ii. Eight (8) month salary as compensation for unlawful termination of employment.....Kshs 198,660.00.  
Total of claim.....Kshs 223,49250.
  - iii. Each party shall bear their costs of the claim.

**DELIVERED, DATED AND SIGNED THIS 21<sup>ST</sup> DAY OF FEBRUARY 2024.**

**D.K. Njagi Marete**

**JUDGE**

Appearances

1. Mr. Ashiruma instructed by Ashiruma & Company Advocate for the Claimant.
2. Mss. Mutu instructed by Desai, Sarvia & Pallan, Advocates for the Respondent.

