



Wanjiku v Karen Hospital Limited (Employment and Labour Relations Cause E644 of 2020) [2024] KEELRC 250 (KLR) (15 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 250 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E644 OF 2020**

**BOM MANANI, J
FEBRUARY 15, 2024**

BETWEEN

ANNASTACIAH WANJIKU CLAIMANT

AND

KAREN HOSPITAL LIMITED RESPONDENT

JUDGMENT

Background

1. The instant action challenges the Respondent's decision to terminate the Claimant's contract of service. The Claimant, who was serving the Respondent in the capacity of Human Resource Officer (HR Officer), was relieved of her duties on 22nd May 2020 following accusations of negligence in the performance of her functions.
2. Sometime in December 2019, the Respondent asked the Claimant to prepare a list of staff for purposes of procuring gift vouchers for the Christmas season that year. The evidence on record shows that the Respondent anticipated to spend approximately Ksh. 1,473,000.00 on the project.
3. As the HR Officer, the Claimant was required to generate the list of staff from the records in her custody. It would appear and both parties agree that the list that the Claimant came up with contained errors. As a result, it (the list) led to placement of an order for gift vouchers whose value was Ksh. 4,840,000.00 thereby overshooting the Respondent's budget by approximately Ksh. 3,367,800.00.
4. The evidence on record shows that after the Claimant prepared the list, she forwarded it to the procurement department who went ahead to procure the vouchers with the concurrence of the Respondent's management. Later on in January, 2020 as the vouchers were being distributed to members of staff, it was realized that the Claimant's list had been inflated.



5. The Claimant asserts that the inflation was out of an inadvertent mistake. She avers that once she noticed the mistake, she corrected it and used the corrected list to process the release of the vouchers.
6. Rectification of the error inevitably meant that there was a surplus of the vouchers. According to the Claimant, she handed the excess vouchers to the Respondent's management who in turn surrendered them to the supplier for cancellation. In effect, the Claimant contends that there was no actual loss to the Respondent since the error was nipped in the bud.
7. The Claimant contends that the mistake in procuring excess vouchers should in any event not be solely blamed her. She avers that after she prepared the list in question, it was submitted to other departments within the Respondent's institution including procurement and finance. According to her, officers in these departments had a duty to cross check the list and flag the errors in it.
8. For the Respondent, it is contended that the issue of concern is not that there was no loss following the error. Rather, it is the negligent execution of the Claimant's mandate that exposed it (the Respondent) to the risk of loss.
9. The Respondent contends that the error in the list originated from the Claimant. Had the Claimant cross checked the list before submitting it for further processing, the error would have been avoided. The failure to detect the mistake in the list was as a result of failure to cross check it, a matter that speaks to the Claimant's negligence in execution of her duties. Therefore, she shoulders responsibility for it.
10. In March 2020, the Respondent also realized that one Jane Moraa had been drawing salary from the establishment from November 2019 without being on duty. According to the evidence on record, this individual had been engaged as a nurse in November 2019 but reported on duty for only a few days in that month before she deserted. However, she continued drawing salary until close of March 2020.
11. The Respondent accused the Claimant of not cross checking the presence on duty of this member of staff before including her in the monthly payroll which she (the Claimant) was charged with preparing. It is the Respondent's case that in preparing the monthly payroll, the Claimant was expected to use data from the duty roster to determine which employees have worked in the month. The Respondent accuses the Claimant of having failed to do so thereby sanctioning payments to an individual who had long deserted duty.
12. The Claimant's position on the matter was that the function of determining the presence of employees on duty lies with the Heads of Departments. In this case, the Head of Department where Mora was attached did not notify her (the Claimant) of the fact of Mora's desertion.

Issues for Determination

13. After analyzing the pleadings and evidence on record, I form the view that the following are the issues that require determination in the cause:-
 - a. Whether the Claimant's contract was lawfully terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

14. On the first issue, the evidence on record shows that indeed, the Claimant submitted to the Respondent's management a staff list that had errors resulting in the Respondent procuring more gift vouchers than was necessary. In her evidence and response to the notice to show cause, the Claimant



acknowledged this error. As a matter of fact, she stated that she rectified the error when she noticed it in January 2020.

15. This error resulted in the Respondent procuring gift vouchers for Ksh. 4,840,800.00 against its initial estimate of Ksh. 1,473,000.00. It is conceded by the defense that when the error was discovered, the excess vouchers were returned to the supplier for cancellation. Therefore, there was no actual loss. The Respondent was only exposed to potential loss.
16. However, the issue under consideration is not whether there was actual loss as a result of the error. The important question is whether the circumstances surrounding the preparation of the staff list disclose negligence by the Claimant in execution of her duties which exposed the Respondent to potential loss.
17. The parties agree that the duty of preparing the list lay with the Claimant in her capacity as the HR Officer. In this capacity, the Claimant held data on the Respondent's employees and hence the allocation of the function of generating the accurate staff list to her.
18. The Claimant has argued that blame for the error does not solely lie with her. According to her, the procurement and finance departments ought to have flagged the error since they also interacted with the list.
19. This argument does not hold water. The fact that another department acquiesced to the error does not change the position that the Claimant originated it (the error). This cannot absolve her of blame for the error.
20. Second, it is not disputed that it is the Claimant who generated the impugned list. It is not disputed that the list ought to have been based on data on the Respondent's human resource which was in the Claimant's possession. If the Claimant had cross checked the list against the data in her custody, such error would not have occurred.
21. The evidence on record shows that the duty of preparing the Respondent's payroll lay with the Claimant. It is indicated that the Claimant maintained the name of one Jane Moraa on the payroll between November 2019 and March 2020 despite the fact that she had deserted duty. As a result, the Respondent continued to pay salary to the said individual despite her not being in its employment.
22. The evidence on record shows that the Claimant was notified about the absence of Moraa for three days in November 2019. The record shows that despite this information, the Claimant did not act on the matter to ascertain whether the employee had resumed duty. Instead, she turned a blind eye to the report and continued to treat the employee as being present at work thus occasioning loss to the Respondent through irregular salary payments.
23. The evidence on record shows that the Claimant was expected to use the monthly duty roster whilst preparing the payroll in order to ascertain which employees were on duty during the month and for how long. It is apparent that she ignored this requirement and kept running the payroll without ascertaining its accuracy against the aforesaid data.
24. These two incidents paint a picture of an employee who was negligent in the performance of her duties. If the Claimant had cross checked the gift list against the human resource data in her possession, she would have noticed the errors in the list and corrected them. If she had consulted the duty roster whilst preparing the monthly payroll, she would have noticed that Jane Moraa was no longer reporting on duty and removed her from the payroll.
25. The Claimant's conduct constituted dereliction of duty. Under section 44 of the *Employment Act*, such conduct amounts to gross misconduct for which the employer is entitled to terminate the services



of an employee. In the premises, I arrive at the conclusion that the Respondent had a valid reason to terminate the Claimant's services.

26. The record shows that the Respondent issued the Claimant with a notice to show cause detailing the above accusations and requiring her response. The record also shows that the Claimant responded to the notice to show cause before she was subjected to a disciplinary hearing.
27. The minutes of the disciplinary hearing demonstrate that the Claimant was given an opportunity to state her case before a decision to terminate her services was reached. In the premises, I reach the conclusion that the Respondent upheld due process in releasing the Claimant from employment.

Determination

28. Having regard to the totality of the evidence on record, I find that the Claimant's contract was terminated for valid reasons and in accordance with due process.
29. Consequently, I find that the instant case against the Respondent is unmerited.
30. Accordingly, the suit is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED ON THE 15TH DAY OF FEBRUARY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

ORDER*

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

JUDGE

