



**Monda v International Committee of the Red Cross (Cause
90 of 2020) [2024] KEELRC 103 (KLR) (1 February 2024) (Judgment)**

Neutral citation: [2024] KEELRC 103 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 90 OF 2020
L NDOLO, J
FEBRUARY 1, 2024**

BETWEEN

DR. JONATHAN MONDA CLAIMANT

AND

INTERNATIONAL COMMITTEE OF THE RED CROSS RESPONDENT

JUDGMENT

1. Dr. Jonathan Monda, the Claimant in this case, was employed by the Respondent in the position of Staff Health Doctor. He brought this claim following termination of his employment on 19th November 2019.
2. The Respondent filed a Memorandum of Response dated 9th October 2020, to which the Claimant duly responded.
3. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager-Nairobi Regional Delegation, Caroline Murage Macharia. The parties also filed written submissions.

The Claimant's Case

4. The Claimant was employed by the Respondent as a Staff Health Doctor effective 3rd June 2019. He earned a gross monthly salary of Kshs. 304,405.
5. The Claimant worked for the Respondent until 19th November 2019, when his employment was terminated, on allegations of failure to meet required standards. The Claimant states that the termination of his employment was without justifiable cause and in violation of due process. He claims that he was subjected to a sham hearing and appeal process.
6. The Claimant's claim against the Respondent is as follows:



- a. A declaration that the Claimant's rights to fair labour practices and reasonable working conditions under Article 41(1) and (2)(b) of the Constitution have been violated;
- b. A declaration that the Claimant's right to be treated with dignity as provided under Articles 28 and 54(1) of the Constitution has been violated;
- c. An order compelling the Respondent to pay the Claimant a sum equivalent to the unexhausted remainder of his contract period of 6 months being Kshs. 1,826,550;
- d. Special damages as enumerated hereunder:
 - i. Kshs. 304,405 being 1 month's salary in lieu of notice;
 - ii. Breach of contract.
- e. General damages;
- f. Costs plus interest.

The Respondent's Case

7. In its Memorandum of Response dated 9th October 2020, the Respondent admits having employed the Claimant in the position of Staff Health Doctor, effective 3rd June 2019.
8. The Respondent states that the Claimant was on probation for the first 3 months of his employment, in line with Clause 2 of the Respondent's Staff Regulations.
9. The Respondent adds that during the initial 3 months' probationary period, the Claimant's work was found to be below par, leading to the extension of the probation period for a further 3 months.
10. The Respondent avers that despite being given an opportunity to improve, the Claimant did not make any notable improvement, leading to a decision to terminate his employment on 19th November 2019.
11. The Respondent's case is that the termination of the Claimant's employment was executed pursuant to Section 42(4) of the Employment Act, Clause 2 of the employment contract and the Respondent's Staff Regulations.
12. The Respondent states that the Claimant exercised his right of appeal and was accorded an appeal hearing on 8th January 2020 whereupon the decision to terminate his employment was upheld.
13. The Respondent avers that the Claimant was paid all his terminal dues, which he accepted in full and final settlement of all claims against the Respondent.
14. The Respondent asserts that by virtue of Section 42(1) of the Employment Act, the provisions of Section 41 of the Act do not apply to the Claimant's termination. The Respondent adds that the Claimant was not entitled to a one-month termination notice.

Findings and Determination

15. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought.



The Termination

16. The termination of the Claimant's employment was communicated by letter dated 19th November 2019, stating as follows:

“Dear Jonathan,

Re: Termination of Contract During Probation Period

Reference is made to the above mentioned subject.

Following communication given to you on August 30th, 2019, your probation was extended for three months to allow more time for adaptation, understanding of the position and settling within the organization. Your line manager advised on more commitment from your end, being more proactive and to make yourself available to the staff.

As per the ICRC staff regulations, the first three months is a probation period, with a possible extension of three additional months. During this period, you are expected to settle in quickly and also to prove that you are able to handle the tasks and responsibilities of the position.

In the same period, the ICRC has carefully evaluated your performance and your supervisor has expressed dissatisfaction regarding your performance.

In view of the above, the International Committee of the Red Cross Wishes to Terminate your contract, in accordance with the ICRC Staff Rules and Regulations with effect from 1st of December 2019.

Attached is the clearance form to circulate to the relevant departments/units. On completion of this process, your final dues will be computed less the statutory deductions and any liabilities as detailed below:-

- i. Days worked up to and including 1st December 2019
- ii. Leave days accrued up to 1st December 2019
- iii. 13th month salary calculated on pro-rata basis

We take this opportunity to thank you for the contribution you have made towards the Red Cross Movement and wish you all the best in your future endeavours.

Yours faithfully

(signed)

Debarta Oliveira Boszcovski

Human Resource Manager”

17. According to this letter, the Claimant's employment was terminated on account of poor performance during his probation period. The Claimant's complaint is that he was not afforded a fair hearing prior to the termination of his employment.
18. There is however evidence on record that the Respondent had raised concern regarding the Claimant's performance during the probation period. In fact, the Claimant was placed on an extended probation period as evidenced by letter dated 30th August 2019.



19. In addition, the Respondent produced contract validation forms signed by the Claimant and his supervisor, confirming that the Claimant was subjected to a performance evaluation process. The Court observed that the Claimant did not object to either the evaluation process or the extension of his probation period.
20. In a claim based on termination of employment on the ground of poor performance, all the employer is required to demonstrate is that the employee was made aware of their shortcomings and given an opportunity to improve (see *Jane Wairimu Machira v Mugo Waweru & Associates* [2012] eKLR).
21. In this case, the Claimant was notified of his shortcomings and given an opportunity to improve, through an extended probation period. He was also subjected to a participatory evaluation process. The Court is therefore satisfied that the Respondent followed due process before making the decision to terminate the Claimant's employment on account of poor performance.
22. The claim for unlawful termination of employment is therefore without basis and is disallowed. As the Claimant was still on probation at the time of termination, he was only entitled to 7 days' notice period for which he was duly paid.
23. Ultimately, the Claimant's entire claim fails and is dismissed.
24. Each party will bear their own costs.
25. It is so ordered.

DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF FEBRUARY 2024

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JUDGE

Appearance:

Mr. Lusweti for the Claimant

Mr. Weru for the Respondent

