



**Gideon v Elsabi Share Company Limited (Cause E920 of 2021)
[2024] KEELRC 689 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 689 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E920 OF 2021
J RIKA, J
MARCH 28, 2024**

BETWEEN

GLADYS NGINA GIDEON CLAIMANT

AND

ELSABI SHARE COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claim herein is undefended.
2. Service was effected by the Claimant, and a Memorandum of Appearance dated 8th February 2022, filed by the Respondent.
3. The Claim was subsequently mentioned before the Court on procedural orders. There is evidence that the Respondent was notified about the mention date, but did not attend Court, or file anything in response to the Claim.
4. The Claim was fixed for hearing on 8th November 2022, when the Respondent's Advocates appeared, and informed the Court that they were in the process of seeking the leave of the Court, to cease from representing the Respondent.
5. Hearing was adjourned to allow the Respondent's Advocate file the necessary Application.
6. On 29th November 2022, the Claim was scheduled for hearing. The Claimant's Advocates informed the Court that there was no Application for leave to cease acting, filed by the Respondent's Advocates.
7. Hearing was rescheduled for 6th June 2023, with an order that the hearing notice, is served upon the Respondent personally and the Respondent's Advocates.



8. On 6th June 2023, both Parties were represented, when the Hon. Deputy Registrar scheduled the Claim for hearing on 30th November 2023. The Advocate appearing for the Respondent asked for time to properly come on record, and to file a response.
9. There was no attendance in Court, on the part of the Respondent on 30th November 2023, and no papers in any form, had been filed by the Respondent. Hearing proceeded ex parte.
10. The Claimant adopted her Statements of Claim and Witness, filed on 9th November 2021, in her evidence-in-chief.
11. She was employed by the Respondent as a Credit Manager on 1st January 2021. Her contract was for 3 years. It was renewable. She was entitled to a monthly gross salary of Kshs. 400,000. Annual leave entitlement was for a period of 21 days, with full pay. The contract could be terminated by either Party, through a notice of 30 days, or pay in lieu thereof.
12. On 16th September 2021, she was locked out by the Security Guard, who alleged to have been acting on the instructions of the Group Chief Executive Officer.
13. On 21st September 2021, she attended a meeting with the CEO, Finance Manager and an Advocate, where the Respondent indicated its intention to terminate the Claimant's contract. The CEO complained rather strangely, that the Claimant had failed to greet him, and that she loaned out Kshs. 1 million to a customer, without notifying the Respondent.
14. Subsequently, she received an undated letter of termination. She was advised that she had been given the mandatory 1-month notice "to terminate your contract with immediate effect."
15. The letter did not indicate any reasons to justify the decision. There was no hearing preceding the decision. The Claimant states that this was contrary to Section 41 of the *Employment Act*, and Article 47 of *the Constitution*, requiring that she is granted a hearing before any adverse decision was taken against her.
16. She claims that she was owed salary for the month of September 2021; notice; and leave. She claims compensation for unfair termination and anticipatory salaries.
17. The specific amounts claimed are: September salary at Kshs. 400,000; notice at Kshs. 400,000; annual leave at Kshs. 160,000; compensation at Kshs. 4.8 million; and anticipatory salaries at Kshs. 10.8 million.

The Court Finds: -

18. The Claim is undefended. Every step required to be taken by the Claimant to bring the Respondent to Court, was taken. The Respondent opted to file no Response, and kept away from the Court.
19. The Claimant has established through her contract dated 23rd November 2020, that she was employed by the Respondent as a Credit Manager for a period of 3 years, commencing 1st January 2021.
20. The contract shows that her monthly salary was Kshs. 400,000. She was entitled to 21 days of annual leave. The contract allowed either party to terminate the contract, through a written notice of 30 days, or payment of 30 days' salary in lieu of notice.
21. There is evidence that the Claimant was locked out by the Respondent on 16th September 2021. She met the CEO, Finance Manager and an Advocate for the Respondent on 21st September 2021.



22. The Respondent expressed its intention to terminate the Claimant's contract. The reasons mentioned by the CEO were two: that the Claimant had not greeted the CEO; and that she had irregularly, loaned Kshs 1 million to a customer.
23. She subsequently received a letter of termination which is undated. The letter is paradoxical. It alleges to give the Claimant notice of 30 days, and in the same breath, terminate the contract with immediate effect.
24. The Claimant was not subjected to any form of disciplinary hearing, either on account of her refusal to greet the CEO, or on irregular loaning to a customer. There were no allegations, communicated to her, with the instructions to respond. Termination went against Sections 41, 43 and 45 of the *Employment Act*, as well as Article 47 of *the Constitution*, as submitted by the Claimant. Every known standard of fair dealing between an Employer and an Employee, was thrown out of the window by the Respondent.
25. There is adequate evidence to establish that the Claimant was not paid her September 2021 salary at Kshs. 400,000. The prayer is allowed.
26. There was absolutely no justification to terminate her contract, and procedure was clearly flawed. The Claimant worked for 9 months, and expected to work for another 27 months. Beyond the 3 years, she expected her contract would be renewed. She did not in any way cause, or contribute to termination of her contract. The Respondent has given no evidence, that would limit an award of compensation equivalent of 12 months' salary, as sought by the Claimant. She is granted equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 4,800,000.
27. Notice is granted at equivalent of 1- month salary, at Kshs. 400,000.
28. The prayer for anticipated salaries, pegged to the remainder of the contractual period, is not reasonable. Grant of anticipatory salaries, calculated at Kshs. 10,800,000, would amount to unjust enrichment. The Court, in granting equivalent of 12 months' salary in compensation for unfair termination, has taken into account the period left to the Claimant's contract, and the Claimant's expectation of renewal at the end of the initial 3 years. She is not entitled to salaries for a period she will not have rendered any service to the Respondent. The Court has recently, in Petition 138 of 2016, *Moni Wekesa v. Mt. Kenya University*, spoken against turning claims for unfair termination into a cash-grab industry. Grant of the Claimant's prayer for anticipatory salaries, would only assist in the entrenchment of this emerging cash-grab industry, in unfair termination claims.
29. The Court was not able to understand the prayer for annual leave. She claims Kshs. 160,000. She did not specify, in her evidence, over what period annual leave is claimed. How did she arrive at the sum of Kshs. 160,000? The Court is not able to grant this prayer.
30. Costs to the Claimant.
It is ordered: -
 - a. It is declared that termination was unfair.
 - b. The Respondent shall pay to the Claimant: September 2021 salary at Kshs. 400,000; notice at Kshs. 400,000; and compensation for unfair termination at Kshs. 4,800,000 – total Kshs. 5,600,000.
 - c. Costs to the Claimant.



DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI,
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT
PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF MARCH 2024.

James Rika

Judge

Court Assistant: Emmanuel Kiprono

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Daniel & Kenneth Advocates for the Claimant

Mtalaki & Company Advocates for the Respondent

