



**Wakasiaka v Textbook Centre Limited (Cause 882 of 2019)
[2024] KEELRC 779 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 779 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 882 OF 2019**

**J RIKA, J
MARCH 28, 2024**

BETWEEN
PETERSON MULONGO WAKASIKA CLAIMANT
AND
TEXTBOOK CENTRE LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim dated 23rd December 2019.
2. He states that he was employed by the Respondent on 1st April 2015, and confirmed as Respondent's Branch Manager at the Junction Mall Nairobi, on 30th September 2016.
3. He issued the Respondent a 30-day notice of termination of his contract, dated 31st October 2019. It was effective, 30th November 2019.
4. The Respondent accepted his notice in writing, on 8th November 2019.
5. On 9th November 2019 however, the Respondent proceeded to suspend the Claimant from duty, from 9th November 2019 to 15th November 2019. He was not given reason for suspension.
6. He was summoned by the Respondent on 11th November 2019 and coerced into making a statement on various accounting discrepancies. Failing to make the statement, he was threatened by the Managing Director Armand Houahu, that he would be arrested, and not paid his terminal dues.
7. He was not given a chance to explain discrepancies. He was transferred from Junction to Garden City Branch abruptly, without the benefit of a proper handover. The Claimant insisted that he would see out his notice period, but on 14th November 2019, the Respondent issued him a letter of summary dismissal.



8. He states that dismissal was unlawful and unfair because, he was still under suspension when dismissed; no reason was given for suspension; there was no letter to show cause; he was not accorded a hearing in the presence of a colleague; and dismissal was harsh.
9. The Managing Director circulated an e-mail to staff, alleging that the Claimant was one of the Employees involved in fraud. The Claimant states that this e-mail was defamatory.
10. The Respondent advised the Claimant that he would not be paid terminal dues, because he was involved in fraud.
11. On 16th December 2019, he was arrested at the Respondent's shop at Garden Mall, at the instigation of the Respondent, on allegation of using a stolen shopping voucher. He was released on the same date. The Respondent was being malicious.
12. His last salary was Kshs. 178,646 monthly.
13. He prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Salary for 14 days worked in November 2019, at Kshs. 83,368.
 - c. 1- month salary in lieu of notice at Kshs. 178, 646.
 - d. Equivalent of 12 months' salary in compensation for unfair termination at Kshs. 2,143,752.
 - e. Damages for defamation at Kshs. 300,000.
Total Kshs. 2,705,766.
 - f. Costs.
 - g. Interest.
14. The Respondent filed its Statement of Response, dated 16th March 2020. Its position is that the Claimant was its Employee, from 1st April 2015, until 31st October 2019, when he resigned.
15. His letter of resignation was never withdrawn.
16. While he was serving notice, the Respondent learnt about malpractices involving several of its Branches, including the Junction, the Garden City and the Hub.
17. As a precaution, all the Branch Managers were suspended, to enable the Respondent audit its Branches. The Claimant was informed in his letter of suspension that the decision was taken, to facilitate audit.
18. Audit revealed that there was fraudulent encashing of an original, yet unpaid out, sales receipt at the Garden City Branch, where the Claimant was Manager. The sales originated from the Hub Branch.
19. The Claimant admitted in writing about stock loss of Kshs. 450,000. He admitted his involvement in the transaction between the two Branches. His admission was not coerced.
20. There was loss of trust and confidence, and the employment relationship between the Parties, became untenable.
21. The Respondent could not allow the Claimant to serve out his notice period, and therefore the Respondent opted to end the contract early.



22. There were no threats of any nature issued to the Claimant by the Managing Director. His admission was voluntary.
23. There was no summary dismissal; the Claimant resigned on 31st October 2019.
24. The notice to staff, on the Claimant leaving employment, was not issued to the public. There was no defamation.
25. The Claim has no merit. The Claimant admitted fraud; he resigned; and, he collected the shopping voucher and used it in abuse of his position.
26. The Respondent urges the Court to dismiss the Claim with costs.
27. The Claimant gave evidence on 4th October 2022 and 8th December 2022. His witness Francis Wambua, gave evidence on 16th March 2023, closing the Claimant's case. The Respondent's Head of Sales, Chaten Rugrani, gave evidence on 8th November 2023, closing the hearing.
28. The Claim was last mentioned on 15th December 2023, when the Parties confirmed filing and exchange of their closing submissions.
29. The Claimant adopted his witness statement, original and supplementary documents on record, in his evidence-in-chief. His witness statement is a replica of the Statement of Claim, whose contents have been summarized at the outset of this Judgment.
30. He confirmed that he wrote a resignation letter. It was accepted by the Respondent. The Respondent however later suspended him, on the ground that it was carrying out an audit of its Branches, including the Branch where the Claimant was Manager. There was no letter to show cause, and no hearing. The Respondent dismissed him. He restated his pleading on his transfer and arrest on allegation of using a stolen shopping voucher. He was not paid terminal dues, despite the promise by the Respondent, that his dues would be paid.
31. On cross-examination, he confirmed that he resigned. He decided to carry out stock count and discovered there was a variance of Kshs. 450,000. He started paying to make up for the shortfall. He paid Kshs. 150,000. There was a balance of Kshs. 300,000. He undertook to pay this in the month of October. By the time of resignation, Kshs. 300,000 was still outstanding. He did not disclose variance of Kshs. 300,000 at the time of writing his letter of resignation. He got the defamatory material from former colleagues. He did not have details of staff who dispersed the material. He was also told about the e-mail by Respondent's suppliers. He did not have details of these suppliers. The e-mail was indicated to have been sent to everyone, which would mean external and internal persons. It was not published in a newspaper.
32. Redirected, he told the Court that the Respondent rescinded its letter accepting the Claimant's resignation letter. He restated that he was not given a hearing and was not paid his terminal dues.
33. His witness Francis, told the Court that he was a Security Manager of the Respondent at all material times. He adopted as his evidence his witness statement on record. The Managing Director asked Francis to ensure that the Claimant wrote a statement which was agreeable to the Respondent. Francis was not instructed to investigate any fraud.
34. On cross-examination, he told the Court that he left employment around the same time the Claimant left. He was told that he was too old to continue working. There were other Employees older than him. He was not unhappy with the Respondent. He was not an auditor, and would not be able to



- investigate audit issues. He did not have training in computer and accounting. The Managing Director was not in the room, when the Claimant wrote his self-incriminating statement.
35. Redirected, Francis told the Court that he was 62 years when he left employment. He had investigated stock loss before, but not on this occasion.
36. Chaten Rugrani relied on his witness statement filed on 28th September 2023, and exhibited documents filed by the Respondent, marked 1-8.
37. He conceded that the letter accepting the Claimant's resignation, had been crossed with the statement 'rescinded.' The Human Resource Department could explain the significance of this crossing. The Respondent's Advocates, in responding to the demand letter issued by the Claimant, stated that the Claimant was summarily dismissed. There was no disciplinary hearing. The Claimant was suspended. There was no external audit. He was owed Kshs. 178,646 in terminal dues, but owed the Respondent some money. He was not criminally prosecuted. E-mail to staff was to inform them, that the Claimant had left employment.
38. Redirected, Rugrani told the Court that the Claimant himself established that Kshs. 450,000 was missing. He said he had paid Kshs. 150,000, and that he would pay the balance at Kshs. 300,000.
39. The issues are: -
- a. Whether the Claimant left employment through resignation or dismissal;
 - b. If termination was at the instance of the Respondent, whether it was fair and lawful; and,
 - c. Whether the Claimant merits the remedies sought.

The Court Finds: -

40. The Claimant was employed by the Respondent as an Assistant Branch Manager, on 11th March 2015.
41. He was confirmed on 1st October 2016.
42. His documents, contained in a list dated 23rd December 2019, includes a letter dated 8th November 2019 from the Respondent, accepting his resignation.
43. The Claimant excluded his letter of resignation from his list of documents.
44. The letter of resignation, dated 31st October 2019, is however, exhibited by the Respondent.
45. The letter states, " Please accept this letter as my formal resignation, effective as from 31st October 2019."
46. Although the letter indicates ambiguously, that the Claimant issued a 1-month notice of termination, the effective date is stated to be 31st October 2019.
47. The Respondent then suspended the Claimant on 9th November 2019 to audit its Branches; it implicated the Claimant in fraudulent activities at the end of audit; and issued a letter of summary dismissal dated 14th November 2019. The Claimant was advised that he had been summarily dismissed effective 14th November 2019.
48. Resignation or dismissal? It is common evidence that the Claimant issued the Respondent a letter of resignation. The letter is dated 31st October 2019.
49. " Please accept this letter as my formal resignation, effective as from 31st October 2019," the Claimant wrote.



50. An important aspect of this letter, which the Parties did not emphasize, is its effective date.
51. The Claimant states that he resigned, effective from 31st October 2019.
52. The effective date of termination [EDT], is the date when a contract of employment comes to an end. It is the date when mutuality of obligations, comes to an end.
53. It is converse to the effective date of employment, which is the date parties to the employment contract, begin their mutuality of obligations, to perform what has been agreed in the contract.
54. The Claimant ended the contract with immediate effect.
55. His other statements, after he gave the effective date, had no effect at all, on the effective date. He states ambiguously, “ effective to one-month period notice.” This statement was meaningless, the effective date having already been communicated as 31st October 2019.
56. It is correctly pleaded by the Respondent at paragraph 2.2. of the Statement of Response that the Claimant resigned immediately, on 31st October 2019. What the Parties did after this date, was to engage in legally redundant motions, as worthless as the seaweeds, to quote Roman Poet Virgil [70-19 BCE]. These motions, did not create any legally enforceable obligations.
57. The first of these motions, was the acceptance of the resignation by the Respondent, through its letter dated 8th November 2019.
58. In this Court’s decision, *Edwin Beiti Kipchumba v. National Bank of Kenya Limited* [2018] e-KLR, it was held that a notice of resignation, is basically a notice of termination of employment, given by the Employee. It does not have to be accepted by the Employer to take effect. There is no such obligation created by the *Employment Act*. Resignation, or termination of employment by an Employee, is a unilateral act, which is not validated through acceptance by an Employer.
59. The letter of acceptance by the Respondent was therefore, of no legal effect.
60. The Respondent subsequently purported to rescind its acceptance, suspend the Claimant, transfer him and dismiss him. All these were needless motions. The Claimant was an ex-Employee, as from 31st October 2019. Parties could only engage on post-employment obligations. The Respondent could only relate to the Claimant, as an ex-Employee. It no longer had disciplinary, or other managerial control over the Claimant. It could not suspend, investigate, transfer, discipline or dismiss the Claimant as an Employee. He was not an Employee, effective 31st October 2019.
61. The position might have been different if, the Claimant had expressed his desire to rescind his resignation letter. He did not communicate such a desire to the Respondent, any time after 31st October 2019. The Respondent’s submission, that the Claimant did not withdraw his letter of resignation, carries significant weight. The Respondent however, went on treating the Claimant as if he was still in employment, even after he resigned.
62. In the Irish Employment Tribunal decision, UD 946 MacManus v. Brian McCarthy Contractors, which was cited by the Court in *Edwin Beiti Kipchumba v. National Bank of Kenya Limited* [2018] e-KLR, it was held that a notice withdrawing a letter of resignation, issued by an Employee, may bind the Employer, taking into account the circumstances in which it is issued. This would include where an Employee resigns on the spur of the moment, or where resignation is coerced by the Employer. The law gives Employees in certain special circumstances, the opportunity to recall termination notices.



63. The Claimant in this dispute did not at any time express a second view, a desire to withdraw his letter of resignation, which as the Court has concluded, took effect of 31st October 2019. He stood by his letter of resignation throughout, and did not allege that it was in any way, an involuntary decision. He did not recall his letter of resignation.
64. Procedure and reasons. The answer to the issue identified at paragraph 39 [b] above must be that, there was no obligation on the part of the Respondent to show that it followed fair procedure, and acted on valid grounds, in terminating the Claimant's contract, under Sections 41, 43 and 45 of the [Employment Act](#).
65. Termination was at the instance of the Claimant. He resigned with immediate effect. The actions taken by the Respondent after this, had no legal effect, and Sections 41, 43 and 45 of the [Employment Act](#), would not come into play.
66. Even if the Court is mistaken on the effective date of termination, and the legal consequences of that date, evidence on record clearly shows that that the Claimant, was a man on the run, after he found out that he could not account for his Employer's stock, valued at Kshs. 450,000. His letter of resignation was intended to be a giant leap, away from the impending disciplinary process and adverse consequences. The Respondent thought that by rescinding its acceptance letter, it could bring back the Claimant to the fold, and bring him to justice.
67. He wrote a statement, which does not appear in any way to have been coerced, conceding that he realized he had a variance of Kshs. 450,000. In his evidence before the Court, he repeated this evidence, confirming that he had this variance, and paid Kshs. 150,000 to the Respondent. He had at the time he issued his letter of resignation, undertaken to pay the difference of Kshs. 300,000.
68. He did the stock count tallying against the computer stocks, of his own volition and in discharge of his responsibility as the Branch Manager. He states that " I realized it is a system data base error. I had no choice but to start preparing for paying of this stock. I paid/billed Kshs. 150,000. I planned to pay the balance [Kshs. 300,000] between mid-October 2019 and November 2019."
69. This was not evidence manufactured by the Respondent; it was the Claimant's own evidence of wrongdoing.
70. At the time he issued the letter of resignation, he was clearly, a man on the run. He was running away from his wrongdoing, the coming disciplinary process, and the other adverse actions open to the Respondent to take.
71. Even had he not terminated his contract on 31st October 2019, and instead subjected himself to the disciplinary process, the result would have been that the Respondent had valid grounds to justify termination.
72. Remedies. None is merited. The Claimant terminated his contract without notice to the Respondent. Why is he seeking notice from the Respondent? Why does he seek compensation? He initiated termination. He was not in any way defamed by the e-mail bringing it to the attention of his colleagues, that he had left employment. Mention of dishonesty in the e-mail of Armand Houahu, was not in the least defamatory to the Claimant. It was a truthful and fair comment about the statement of accounts at the Claimant's Branch. The Claimant himself confirmed the discrepancies, and undertook to pay Kshs. 450,000 which could not be accounted for. He paid Kshs. 150,000 and gave his word on the balance of Kshs. 300,000. He took responsibility. The e-mail from Armand was far from defamatory. The Claimant initiated termination, and his prayers have no foundation.

It is ordered



- a. The Claim is declined.
- b. Costs to the Respondent.

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

JAMES RIKA

JUDGE

