



**Osok v Parliamentary Service Commission & another (Petition
E056 of 2021) [2024] KEELRC 582 (KLR) (15 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 582 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
PETITION E056 OF 2021
B ONGAYA, J
MARCH 15, 2024**

BETWEEN

MITCHELLE AYORO OSOK PETITIONER

AND

PARLIAMENTARY SERVICE COMMISSION 1ST RESPONDENT

STEPHEN NJENGA RUGE 2ND RESPONDENT

JUDGMENT

1. The petitioner initially filed a petition. By order of the Court, the matter was to proceed as an ordinary action. Thus, the petitioner filed the amended statement of claim on 17.10.2022 through Mitullah, Shako and Associates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the 1st Respondent is in violation of the claimant's rights under Articles 28, 31(c), 41 and 236 of *the Constitution* of Kenya.
 - b. A declaration that the Claimant's resignation was involuntary and amounted to wrongful termination by the 1st Respondent.
 - c. A declaration that the 2nd Respondent is liable for tortious interference in the employment contract between the Claimant and the 1st Respondent leading to loss of income.
 - d. Damages for wrongful termination of employment amounting to 12 months' pay of Kshs. 2,857,200 less statutory deductions.
 - e. Damages for breach of the Claimant's employment contract by the 2nd Respondent leading to loss of income to the sum of Kshs. 80,001,600.
 - f. Service pay for the period worked.
 - g. A certificate of Service.



- h. Costs of this Claim.
 - i. Interest of all sums at court rates.
 - j. Any other orders, writs and/or directions this Honourable Court deems fit and just to grant.
2. The petitioner's (claimant's) case was that she was employed by the 1st Respondent in May 2014 and in August 2014 she took a two year study leave to pursue her Masters' degree in the USA and resumed in July 2016.
 3. That since her return, the 2nd Respondent who was the then Deputy Director of the 1st Respondent treated her in a derogatory and abusive manner.
 4. In her statement, the claimant narrated instances in which she felt the 2nd Respondent had discriminated against her including failure to reimburse money she had used during an official work trip, denial to attend to a funeral, being asked to write a memo for a mishap that other colleagues committed but no action taken on them, being called for disciplinary action while on leave due to medical grounds, being denied the opportunity to attend work functions both locally and abroad and being subjected to undertake a medical test for depression; all these causing her to have no option but resign .
 5. The claimant pleaded that her rights had been violated under Article 31 (c), 41 (2) (b) of *the Constitution*, Sections 12, 45, 46 and 47 of the *Employment Act*, 2007 and envision of Regulation 24 of the Parliamentary Service Commission Regulations.
 6. The claimant particularized the acts of torture by the 2nd Respondent as;
 - i. Denial of compassionate leave without reasonable cause on two separate occasions.
 - ii. Refusal to sign the Authority to Incur Expenditure (AIE) that had already been approved through the Reimbursement Memo signed by the Clerk to the Senate even though he has signed many others under the same or similar circumstances.
 - iii. Institution of frivolous disciplinary proceedings against the claimant in letters dated the 28th October 2020 and 29th October 2020.
 7. The Respondents filed their response to the amended statement of claim dated 21.11.22.
 8. The Respondent denied the issues in dispute as set out by the claimant and pleaded that there is no justification for the claim before the Honourable Court.
 9. That upon employment and being a member of the Directorate of Legislative and Procedural Services, the Claimant was added to the Directorate WhatsApp group.
 10. That on 18.10.2020, an officer in the Sergeant-at-arms department passed on due to suspected COVID 19 complications.
 11. That the claimant went ahead to post on the Whatsapp group on the demise of the said officer insinuating negligence and ethnic discrimination on the part of the management.
 12. That vide a letter dated 29.10.2020 the claimant was issued with a show cause letter for having used disrespectful language towards the 2nd respondent in an email she had sent to him and threatened him with legal action which amounts to intimidation. The said email was attached and produced as evidence.



13. The claimant responded to the show cause letters vide a letter dated 04.11.20 in which she justified her actions and aired her grievances and went on to request that the two show cause letters be expunged from her record as they are injurious to her reputation and dignity.
14. The matter was referred to the Staff Advisory Committee in which the committee observed that; some sections of the claimant's response to the show cause letters were disrespectful, she portrayed management as discriminative, insensitive and oppressive.
15. That the claimant was in contravention of Regulation 24 and 26 (a) of the Parliamentary Service Commission Regulations, Article 5(e) and (m), Article 9(b) of the Parliamentary Service Commission Code of Conduct and Ethics, 2009.
16. The respondent pleaded that the claimant failed to report to work on 1st December, 2020 when she was required to be physically present in the office in which she was also given a show cause letter dated 21.12.20.
17. That on 17.02.21 the 1st respondent resolved that the claimant be advised to seek the services of a medical counsellor or other appropriate medical professional and submit the report of the assessment and recommendations of the doctor who undertakes the counselling.
18. The Respondents pleaded that the allegations of bullying, harassment and unfair treatment to the claimant are untrue and instead they have facilitated and supported the claimant and other employees.
19. That the 1st respondent was surprised by the resignation of the claimant vide a resignation letter dated 07.04.21 which it accepted vide a letter dated 12.04.21.
20. The respondents pleaded that the claim herein was unfounded in law and that the claimant was not entitled to the reliefs sought hence same should be dismissed with costs.
21. The parties filed their respective submissions. The court has considered the all the material on record and makes findings as follows.
22. To answer the 1st issue parties are in agreement that they were in a contract of service at all material times.
23. To answer the 2nd issue, the Court returns that the contract of service ended by the claimant's resignation letter dated 07.04.2021. The claimant stated that she was resigning because of hostile and unconducive work environment characterised with malicious institution of several unwarranted disciplinary matters and being constantly harassed, bullied and mistreated by her boss, the 2nd respondent. That she had been transferred to a new station with no workstation and had been assigned no work. She was therefore serving a one-month notice of termination of her employment contract and her last day at work being 07.05.2021.
24. The 3rd issue is whether the resignation amounted to unfair constructive termination. The evidence is that the claimant's record of service is replete with several letters to show cause with allegations and particulars of insubordination, use of abusive language and complaints about how the 1st respondent was handling junior staff concerns during the COVID 19 situation. The matters culminated in the 1st respondent considering the disciplinary case against the claimant at its 289th meeting held on 17.02.2021 at which it was resolved that in the claimant's disciplinary matter, it would be important that there be intervention by way of appropriate medical assessment prior to consideration of disciplinary matter. The resolution was communicated to the claimant by the letter dated 23.02.2021 and advised her to seek professional services from any of the listed three providers being approved medical service providers for the 1st respondent namely, Dr. Frank Njenga at Upperhill Medical Centre;



Dr. Marx Okonji of Nairobi Hospital Doctor's Plaza; or, Chiromo Lane Medical Centre. The letter directed the claimant to submit to the 1st respondent a report of the assessment and recommendation of the Doctor that would have undertaken the counselling. By email dated 25.02.2021 the claimant welcomed the 1st respondent's decision. The claimant stated that the 1st respondent had at last recognised her grievance and need for support and that her predicament had been due to workplace harassment, discrimination and mistreatment. She requested for time off to undertake the medical evaluation because she could not continue to do departmental assignments or parliamentary work in general until she was better. The evidence was that the 1st respondent had instituted staff assistance and support system like the one the claimant was advised by the 1st respondent to attend. Her email not to work until after the evaluation was replied by one dated 04.03.2021 explaining that advise would be sought if she would be on duty or not in view of her request.

25. The Court has carefully considered the evidence. It is that the 2nd respondent was simply performing his duties as the claimant's supervisor pointing out the claimant's alleged misconducts and unexpected behaviour. There is no established fundamental breach of the terms and conditions of service on the part of the respondent and through the manner, the 2nd respondent as the claimant's supervisor would communicate with the claimant and initiate disciplinary proceedings. The 1st respondent considered all the circumstances and recommended the medical evaluation and counselling. Instead of complying, the claimant opted to resign. There is no material evidence on record that her stressful status had been brought to her by the 1st respondent through the supervisory actions of the 2nd respondent. The claim for unfair and constructive termination will collapse. The Court further finds that the 1st respondent accorded the claimant the access to the prevailing support system but she appears not to have taken it up? The Court has considered the workplace interactions between the 2nd respondent and the claimant and they appear to be genuine supervisor's concerns about unexpected behaviour and misconduct of an officer the 2nd respondent was authorised to supervise. In particular, the Court finds that the initiation and continuing of a disciplinary proceeding against the employee in circumstances like in the instant case where there were real allegations levelled with due particulars cannot amount to discrimination or bullying or harassment at work. Claims of unfair treatment or discrimination will equally collapse.
26. The 4th issue is on reliefs sought. The Court has found that the claimant has failed to establish the claims of breach of rights and unfair constructive termination. The prayers will fail except issuance of the certificate of service per section 51 of the [Employment Act](#), 2007. Each party will bear own costs of the suit.

In conclusion the suit is hereby determined with orders the suit fails except for delivery of the certificate of service within 30 days hereof and each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 15TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

