



**Chuphi v Tintoria Limited (Cause E717 of 2021)
[2024] KEELRC 541 (KLR) (8 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 541 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E717 OF 2021
SC RUTTO, J
MARCH 8, 2024**

BETWEEN

SALIM KENYA CHUPHI CLAIMANT

AND

TINTORIA LIMITED RESPONDENT

JUDGMENT

1. The Claimant herein, avers that he was employed by the Respondent as a Marketing Assistant with effect from 12th August 2008. He avers that he diligently carried out his duties as assigned by the Respondent. It is the Claimant's case that at no point during his employment did he face disciplinary action challenging his integrity or efficiency.
2. From the record, the Claimant's employment was terminated on 31st March 2021. Terming his termination from employment unprocedural, unlawful, irregular and illegal, the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the Claimant's purported termination was unlawful.
 - b. Damages for unlawful termination (12*26,830) Ksh.321,960.
 - c. Unpaid House allowance (15%*26,830*151 months) Ksh607,699.50.
 - d. Loss of expected income (12*4*26,830) Ksh.1,287,840.
 - e. Unremitted NSSF deductions Ksh58,520.
 - f. Interest on 2, 3, 4, 5 and 6 above.
 - g. Cost of this claim.
 - h. Any other relief as this Honourable Court may deem fit to grant.



3. The Respondent countered the Claim through its Memorandum of Response dated 30th November 2021. According to the Respondent, the Claimant was terminated for a justifiable cause and the process it applied was lawful. Consequently, the Respondent has asked the Court to dismiss the Claimant's claim with costs.
4. During the hearing which took place on 14th November 2023, both parties called oral evidence.

Claimant's Case

5. The Claimant testified in support of his case and at the outset, sought to adopt his witness statement to constitute his evidence in chief. He further produced the list and bundle of documents filed alongside his Claim, as exhibits before Court.
6. The Claimant stated that sometimes in December 2020, one of the Respondent's clients by the name Mrs. Grace Macharia took several clothes for cleaning.
7. During the cleaning process, he (Claimant) noticed that one of the shirts belonging to Mrs. Macharia had been torn. He reported the incident to the receiving sorter who in turn advised him to spin and take the shirt back to him (sorter).
8. The Claimant further averred that he was informed that the shirt was repaired and delivered to the owner whom he was informed, demanded compensation.
9. The Claimant contended that he was taken through an unfair termination procedure, with a pre-determined outcome. Thereafter, he was terminated from employment without being paid his dues.
10. He strongly believes that his termination was a witch hunt as he had developed bad blood with some of the top employees including the operations manager.
11. The Claimant averred that he has never heard from the management regarding the torn shirt. He also discovered after his termination that his National Social Security Funds (NSSF) deductions were never remitted. That further, he was not paid his house allowance.

Respondent's Case

12. Mr. John Thuo who testified on behalf of the Respondent as RW1, identified himself as the Laundry Manager. Similarly, he adopted his witness statement and the list and bundle of documents filed on behalf of the Respondent, to constitute his evidence in chief.
13. RW1 confirmed that he is aware of the events leading to the termination of the Claimant's employment.
14. It was his evidence that on or about 5th March 2021, the Respondent became aware of an incident involving a garment within the care of the Claimant that wound up torn and damaged.
15. The Claimant was requested for an explanation as to how the garment wound up torn and damaged whilst in his care and he offered a verbal explanation to his immediate supervisor.
16. The verbal explanation was not sufficient hence the Respondent issued the Claimant with a letter dated 11th March 2021 requesting him to show cause why disciplinary action should not be taken against him.
17. By a letter dated 12th March 2021, the Claimant responded to the Notice to Show Cause and admitted to damaging the shirt during cleaning. He further stated that he arranged for the torn shirt to be repaired without informing his supervisor.



18. RW1 further stated that the Respondent considered the Claimant's response and determined that there was cause for disciplinary action to be taken against him.
19. By a letter dated 17th March 2021, the Respondent informed the Claimant that a disciplinary hearing was scheduled for 19th March 2021 at 11.00 am. He was also informed that he was entitled to be accompanied by a colleague and that if he failed to attend, a decision could be made in his absence. Further, that he should attend well prepared to state his case.
20. The Claimant attended the disciplinary hearing on 19th March 2021 and once again, he admitted to damaging a customer's shirt during the cleaning process.
21. The Panel considered the Claimant's representations and noted his admissions. The panel determined that the Claimant acted negligently and recommended that this employment be terminated for knowingly breaching the terms of his employment.
22. By a letter dated 31st March 2021, the Respondent informed the Claimant that it had resolved to terminate his employment and stated the reasons for termination. The Claimant was also paid one month's salary in lieu of notice.
23. RW1 further averred that following the issuance of the termination letter, the Claimant was also issued with a Cheque and a No Dues Certificate dated 31st March 2021, indicating that he had received all his dues. He also signed a discharge letter indicating that he had no further claims against the Respondent.
24. He believes that it is incorrect for the Claimant to assert that his employment was terminated without just cause because he was granted an opportunity to be heard and he admitted to the negligence.
25. He is also aware that the Claimant was involved in another incident where he damaged a customer's duvet by tearing it while cleaning. The Claimant concealed his negligence by repairing and delivering it to the customer without informing the Management. Consequently, the customer rejected the duvet and the Respondent had to incur Ksh.6,466/= to replace the torn duvet.
26. RW1 contended that the Claimant failed to exercise utmost care and diligence at all times. That given the competitive nature of the Respondent's business, the quality of services rendered and the care exercised while rendering those services is paramount because it operates under the banner of an executive dry cleaners.

Submissions

27. It was the Claimant's submission that while he had worked for the Respondent for 12 years, it elected to terminate his employment based on one incident. He further submitted that he was not given an opportunity to speak at the disciplinary hearing. It was his contention that the said disciplinary hearing was a mere formality hence in contravention of Section 41 of the [Employment Act](#).
28. It was the Claimant's further submission that his termination from employment was premeditated and that the Respondent's manager was looking for a way to edge him out for having one of the employees close to him fired for attempted fraud.
29. In opening, the Respondent submitted that a business centered around excellent service delivery in a competitive market rarely gets a second chance to leave a lasting positive impression and as such, its workers should at all times, present the best in terms of service delivery. The Respondent further submitted that this is the plight that resulted in the Claimant's termination. In the Respondent's view, the Claimant's termination was lawful and fair.



30. The Respondent further submitted that the No Dues Certificate is a binding contract between the parties and as such, the Claimant is barred from instituting a matter he voluntarily agreed not to institute as consideration thereof. In support of the Respondent's submissions, the case of *Linda Nzemba Mcgaw v Crown Motors Group Ltd* (2021) eKLR and *Raceguards Limited v Chea & 4 others* (2022) KEELRC 3784 (KLR) was cited.
31. It was the Respondent's further submission that no evidence was tabled before the Court to prove the Claimant's allegations that the disciplinary hearing was a mere formality and in violation of Section 41 of the *Employment Act*. To this end, the Court was invited to consider the cases of *Alice Wanjiru Rubiu v Messianic Assembly of Yahwe* (212) eKLR and *Mohammed Guyo Boru Boru v Richard Mwilaria Aritho* (2022) eKLR.
32. The Respondent maintained that not only was the process compliant but the Claimant has not satisfactorily met the burden of proof on his shoulders. On this score, the Respondent posited that the hearing was conducted in line with the provisions of Section 41 of the *Employment Act*.
33. Placing reliance on the case of *Galgalo Jarso Jillo v Agricultural Finance Corporation* (2021) eKLR, the Respondent further submitted that the Claimant was fairly terminated and that he was unable to dislodge the burden of proof as envisioned under Section 47(5) of the *Employment Act*.

Analysis and Determination

34. Flowing from the pleadings by both parties, the evidence on record, and the opposing submissions, the Court singles out the following issues for determination:
 - i. Whether the Respondent was absolved from further liability and action arising from the termination by executing the No Dues Certificate;
 - ii. Whether the Claimant's termination was fair and lawful; and
 - iii. Whether the Claimant is entitled to the reliefs sought.

Import of the No Dues Certificate

35. The Respondent has submitted that the No Dues Certificate executed by the Claimant is a binding contract between the parties and as such, he is barred from reinstating a matter he voluntarily agreed not to institute in consideration thereof. The Respondent has further argued that the said pretrial settlement precludes the Claimant from seeking his terminal dues and as such, the court would do little to change that. Notably, the Claimant did not submit on this issue.
36. Thus, the question that begs for an answer is whether the No Dues Certificate fully discharged the Respondent and thereby precluded the Claimant from instituting a claim as he has done through the instant suit.
37. To put the issue in context, it is imperative to review the Certificate in question and thus ascertain its import.
38. The No Dues certificate which was ostensibly executed by the Claimant on 21st March 2021, is couched as follows:

“No Dues Certificate

I Salim Kenya have received Kshs 22,463/= vide Cheque No. 008xxx dated 31.03.2021 being full and final settlement of all my dues including salary, leave encashment and other claims



in relation with my employment with Tintoria Limited I will not raise any claim or demands in regards to pending dues in future.”

39. The import of a settlement agreement or discharge voucher has been considered in a catena of decisions by our Courts. Case in point is *Coastal Bottlers v Kimathi Mithika* [2018] eKLR, in which the Court of Appeal held as follows:

“ [18.] Whether or not a settlement agreement or a discharge voucher bars a party thereto from making further claims depends on the circumstances of each case. A court faced with such an issue, in our view, should address its mind firstly, on the import of such a discharge/agreement; and secondly, whether the same was voluntarily executed by the concerned parties.”

40. It is thus clear that there is no general rule that a settlement agreement and discharge voucher will automatically discharge an employer and thus bar an employee from making further claims. Each case must be considered in light of its circumstances.

41. Turning to the instant case, my construction of the No Dues Certificate herein, is that the same was only limited to a claim of pending dues but not any other claim with regards to the Claimant’s termination. That is to say, the Claimant did not absolve the Respondent from bringing a further claim for unfair termination and making further claims relating to this employment. As such, he did not abandon all monetary compensations that may be due to him in exchange for the payments received.

42. In this regard, I am of the view, that the discharge was only limited to “dues” which are ordinarily paid upon termination of an employment contract.

43. The bottom line is that the Claimant did not waive his right to institute proceedings relating to his termination from employment.

44. The Respondent has placed further reliance on the letter dated 31st March 2021 from its Operations Manager to the Claimant. In this regard, the Operations Manager addresses the Claimant in part:

“ There should be no further claims against Tintoria Ltd by yourself.”

45. In my view, the statement reproduced above did not constitute a waiver or discharge of the Respondent from further claims by the Claimant seeing that it was being addressed to him. It was not and cannot be construed to constitute an agreement between the parties. Indeed, it cannot be said that there was a meeting of the minds between the two parties.

46. That said I now turn to consider whether the termination of the Claimant’s employment was fair and lawful.

Whether The Claimant’s Termination From Employment Was Unfair and Unlawful

47. Pursuant to Section 45(2) of the *Employment Act*, termination of an employee’s contract of service is unfair where the employer fails to prove that it was based on a valid reason related to the employee’s conduct, capacity or compatibility. Further, the employer is duty bound to prove that the termination from employment was in accordance with fair procedure. In other words, an employer is enjoined to prove that termination of employment was both fair substantively and procedurally.

48. That said, I will start by considering whether the Respondent has proved that it had a substantive reason to terminate the Claimant’s employment.



49. It is discernible that the Claimant was terminated from employment on grounds that he performed his duties carelessly and negligently by failing to handle a client's item with the diligence required of him.
50. The record reveals that upon being issued with the show cause letter dated 11th March 2021, the Claimant responded as follows in his response dated 12th March 2021:
- “I Salim Kenya being employee of Tintoria Limited accidentally damaged a shirt belonging to one of our clients during cleaning. I have been working diligently for the last ten years and such incidence have never happened. I really regret for (sic) this incidence because once a customer is satisfied this also makes me happy. I therefore request for apology to the management as it happened accidentally.”
51. In essence, the Claimant admitted to damaging the client's garment and apologized. According to the Claimant, it was the practice of the Respondent that in the event of a complaint, the employee concerned would have his salary deducted to make good the loss.
52. This may have been the case. However, it is imperative to consider the industry in which the Respondent operates. the quality of service rendered is key as it ultimately determines whether the client will patronize the business. therefore, any mistake however insignificant it may seem, has the likelihood of driving away clients from the business.
53. In this case, the Claimant was a key player in the services rendered by the Respondent hence his quality of service would not only attract new clients, but retain the existing ones. Therefore, the Claimant's admission that he damaged the client's shirt, constituted a fair and valid reason for his termination from employment.
54. The foregoing is coupled by the fact that this was not the first incident in which the Claimant was alleged to have damaged a client's garment. Indeed, the Claimant admitted that sometimes in March 2021, a client's duvet was spoiled in the process of cleaning and a sum of Kshs 6,466/= was deducted from his pay.
55. Therefore, the second incident in which the Claimant damaged a client's shirt constituted a valid and fair reason for the Respondent to terminate his employment. The Claimant's termination from employment cannot therefore be termed as being substantively unfair.
56. With respect to procedural fairness, Section 45 (2) (c) of the *Act* places the burden on the employer to prove that termination of employment was in line with fair procedure. Further to this, Section 41 (1) of the *Act* makes specific requirements regarding the process to be complied with by an employer. This process entails notifying the employee of the allegations levelled against him or her and granting him or her the opportunity to make representations in response to the said allegations in the presence of a fellow employee or a shop floor union representative of own choice.
57. In this case, the Claimant was issued with a letter dated 11th March 2021, through which he was notified of the allegations levelled against him and asked to give a detailed explanation in writing why disciplinary action should not be taken against him.
58. The Claimant tendered his response through a letter dated 12th March 2021. Subsequently, he was invited to attend a disciplinary hearing scheduled for 19th March 2021. This was communicated through a letter dated 17th March 2021, in which he was also advised of his right to be accompanied by a colleague of his choice. During cross examination, the Claimant admitted attending the disciplinary hearing.



59. It was subsequent to the said disciplinary hearing that the Claimant was terminated from employment.
60. In light of the foregoing, I cannot help but find that the procedure for termination of employment as applied by the Respondent met the legal threshold under Section 41 of the Act. To that extent, the Respondent cannot be faulted for want of procedure.
61. In total sum, the Court returns that the Claimant's termination from employment was not unfair and unlawful.

Reliefs?

62. As there has been no finding of unfair termination, the claim for compensatory damages does not lie.
63. The claim for unpaid house allowance is equally declined as Clause 2 of the Claimant's contract of employment indicated that his salary was consolidated. Indeed, Section 31(2) of the Act, envisages such consolidation where then, the employer is not expected to pay a separate amount as house allowance.
64. With respect to the claim for unremitted NSSF deductions, it is notable that there are months in which the Claimant's NSSF statement reads "0". Be that as it may, there are some months when the Respondent made remittances in excess of the prescribed statutory deductions. Therefore, in my view, the excess remittances very well covered the shortfall in the months where remittances were not made.
65. The claim for claim for loss of expected income is declined seeing that this is an anticipatory relief. On this issue, I concur entirely with the sentiments of the Court in the case of Mary Mutanu Mwendwa vs Ayuda Ninos De Africa-Kenya [2013] eKLR, thus:

“My answer is that indeed loss of earnings/income is a damage which can be awarded by the Court but such damage is capped at the equivalent of twelve months gross wages irrespective of the duration of a particular contract.”

66. In any event, the Court has found that the Claimant's termination was not unfair and unlawful.
67. The total sum of my consideration is that the Claim is dismissed in its entirety with an order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF MARCH, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant Mr. Odhiambo

For the Respondent Mr. Biko Angwenyi

Court Assistant Millicent Kibet

Order

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments



and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

