



Odhiambo v Kenya Revenue Authority (Employment and Labour Relations Cause E893 of 2022) [2024] KEELRC 467 (KLR) (1 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 467 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E893 OF 2022**

AN MWAURE, J

MARCH 1, 2024

BETWEEN

PAUL OKOTH ODHIAMBO CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The claimant filed memorandum of claim dated 23rd November 2022.

Claimant's case

2. It is the claimant's statement that he was employed by the respondent and worked diligently in the customs department until 27th August 2021 when he received a letter terminating his employment on unfunded allegations.
3. He says he was not given any document in relation to his case during the disciplinary hearing and the disciplinary hearing did not comply with the respondent's code of ethics. He says he was also discriminated against and so prays that his termination be declared illegal and null and void and prays for general damages or reinstatement to his employment plus costs.

Respondent's case

4. The respondent filed his response dated 5th January 2023. He says claimant was employed by the respondent as a graduate trainee on 24th December 2008. He was confirmed on permanent terms on 19th July 2011 in Mombasa Customs & Border Control Department.
5. He says the claimant's termination was procedural and according to law having been found culpable of soliciting for a bribe in the course of his employment.



6. He says claimant was culpable of negligence of duty and dishonesty. In particular respondent alleges claimant unprocedurally released goods by customs offices leading to a loss of revenue amounting to kshs 608,212/-.
7. The internal affairs investigations department recommended the claimant to be investigated of that offence. Claimant was invited to show cause letter why disciplinary action should not be instituted against him by the letter dated 8th July 2021 and he responded by his letter dated 13th July 2021.
8. Claimant was invited to appear before the disciplinary committee by his letter dated 30th July 2021 to appear on 6th August 2021. The claimant was served with a termination letter dated 27th August 2021 and was informed of his right to appeal.
9. The claimant appealed by his letter dated 23rd September 2021 but the termination was terminated and he was informed by the respondent's letter of 18th October 2021.
10. The respondent avers the claimant was fairly and procedurally terminated and prays the court to dismiss his claim with costs to the respondent.

Claimant's evidence

11. The claimant gave his evidence on 27th April 2023. The claimant says his termination was based on a verification done by one Juma and yet Juma is still working for the respondent. He says Juma was found culpable and claimant was exonerated as on that day he was on duty out of the station in Voi.
12. He said he was accused of form F88 which is used by goods accompanied but goods cleared at Shimoni are not accompanied. He says Juma did the verification but he was to be disciplined but was not still disciplined and still workeign for KRA.

Respondent witness

13. The respondent testified on 18th September 2023. He introduced himself as Dominic Mugendi Mwenda an investigating officer at KRA. He said the investigation allegations that claimant had assessed two trucks and undervalued the same at that was truck KBP 483(20 whose value was US \$11331 and KXQ 731L whose goods were valued at US\$ 10320. He says claimant raised direct assessment and in KBP 483L there was a loss of 314,003. In KCQ the loss was 294,209. In total the loss to KRA was kshs 608,212. He says they recommended disciplinary action and referred the matter to the Human Resource Department.
14. He says the trucks had been cleared but were then intercepted. The witness says the claimant was in customs department and was the one to asses the taxes and raised a receipt referred as F147. Further the witness says the claimant was given a verification form by a junior officer. The witness says claimant noted some discrepancy according to his statement but still went ahead and assessed the same. He says claimant had authority to reject the verification but he went ahead and assessed the same. The witness says the goods exceeded US 2000.
15. The witness says form F88 is used for direct assessment of goods. He admits Said Juma failed to conduct proper investigation of goods and he recommended Juma to be disciplined. The witness admits Said Juma wrong verification partly led to the loss of revenue to KRA.
16. He says he is not aware if Said Juma is still working for KRA.



17. Respondent's second witness is Peter Kiambi a Human Resource Officer with the respondent. He explains how claimant was served with notice to show cause and invitation to disciplinary committee and he says this was not the first time claimant was being served a notice to show cause.
18. He also says there is a letter that came from customs that exonerated claimant but he says HR department is bound by recommendation of investigation officers. He says Said Juma was recommended to be disciplined. He says the claimant was taken through disciplinary proceedings and he issued him complete investigation report.
19. He says he does not have form 88 which is in the docket of Customs Department which has the technical knowledge. Custom Department exonerated the claimant. The management recommended he be reinstated. The witness says the customs report recommended claimant be exonerated but the investigation report found him culpable as he said he noted discrepancies and still proceeded with the assessment.
20. The claimant filed their submissions dated 15th November 2023 which the court considered.
21. Respondent's submissions

Analysis and determination

22. There are two issues for determination
 - i. Whether the termination of the claimant was illegal and wrongful
 - ii. Is claimant entitled to the reliefs he has sought

Issue One

23. The claimant received a termination letter dated 27th August 2021 whereby he was summarily dismissed from his employment among other charges for unprocedurally clearing goods from a vessel and loaded them into trucks KBP 483Z and KCA 73 through direct assessment. He was accused of unprocedural release of the trucks which led KRA to loose revenue of kshs 608,212/-.
24. It is trite law that a claimant should only be dismissed with a valid reason as provided in section 45(1) of the *employment act*. The same provides as follows.:

“No employer shall terminate the employment of an employee unfairly.”

Further in section 43 (1) also provides as follows:

In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

25. The facts and evidence and submissions in this case show claimant was the one who assessed the two trucks and apparently assessed unprocedurally using verification documents by one of the staff by the name Said Juma. The claimant according to the evidence was not present when the verification was being undertaken. He admits he based his assessment on the verification by his colleague Said Juma.
26. A report by customs and Border control department internal memo dated 8th February 2021 recommended the claimant's disciplinary process be halted by the HR and Said Juma to undergo disciplinary process.



27. The reverse happened and the claimant was not only taken through disciplinary process but was actually summarily terminated by the HR department. The respondent's HR manager Peter Kiambi admitted in his evidence that the technical department was the investigation team and yet he admitted they did not have to follow their recommendation. So that seems to be contradictory and raises red flags as to whether there was more to it to the summary dismissal of the claimant.
28. There is no clear policy or documents to show what was the role of the claimant vis-vis his colleague Said Juma in verification of the goods being cleared and assessing the taxes.
29. There as well are no guidelines as to the clearing of goods of over US\$2000 as testified by the respondent's witness. In other words, there is not clear reason as to why the claimant was found culpable of unprocedurally clearing the two trucks and Juma who did the verification and was recommended by investigation team to be investigated but was not investigated and the HR officer confirmed Juma is still working at KRA.
30. There is an allegation that the claimant conspired with the respondent to defraud the taxes but yet there is no iota of evidence given that the two conspired. In the courts view, there are a number of allegations raised against the claimant but are not verified or substantiated and the court find there are no basis to support those allegations.
31. In support of the fact that the respondent presented no valid reasons to terminate the claimant is the observations in the case of *Catherine Muthoni Wairimu v Walter REIF (The National Association of Pub Owners & Others* Cause No 458 of 2014 where court held :

“The respondents needed to prove the reason or reasons for termination and demonstrate these were valid reasons. Ultimately they did not do so. The court was left with the impression that there was an ulterior motive in removing the claimant from office.....”
32. Indeed the respondent needed to have set clear guidelines for clearance or guidelines of imports that do not qualify for direct assessment even as per the recommendations of the investigations and enforcement committee.
33. In view of the pleadings, evidence and submissions and authorities, the Court holds the respondent may have put the claimant through fair disciplinary process under section 41 of the *Employment Act* but there is no valid reasons given that the claimant committed gross misconduct to justify that harsh action of summary dismissal. It is the court's finding that the claimant was unfairly and wrongfully dismissed from his employment. The respondent is therefore called upon to compensate him as listed in the proceeding paragraph.
34. General damages/compensation for unlawful termination equivalent to 11 months of his basic salary at the date of his termination which amounts to kshs 1,650,000 plus costs and interest at court rates from date of judgment till full payment.
35. The order for reinstatement is declined as the claimant has been granted compensation.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 1ST DAY OF MARCH, 2024.

ANNA NGIBUINI MWAURE

JUDGE



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 has 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 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

