



REPUBLIC OF KENYA



**Gakumbi v Africare Limited (Employment and Labour Relations Cause
180 of 2020) [2024] KEELRC 789 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 789 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 180 OF 2020**

MN NDUMA, J

APRIL 11, 2024

BETWEEN

ALFRED MURIITHI GAKUMBI CLAIMANT

AND

AFRICARE LIMITED RESPONDENT

JUDGMENT

1. The suit was filed on 4/5/2020 by the claimant seeking the following reliefs:
 - a. That a declaration be issued that the termination of employment of the claimant is unlawful, unjustified and unfair.
 - b. General damages for mistreatment and/or harassment.
 - c. Damages for unlawful and unfair termination
 - d. For unlawful and unfair termination of employment, the claimant be awarded 12 months' salary
 - e. Costs of the suit
 - f. Interest at court rates from the date of judgment until payment in full.
 - g. Any other relief that the court may deem fit.
2. The suit proceeded ex parte due to a failure by the respondent to attend court.
3. The claimant (CW1) testified by adopting a witness statement dated 28th April 2020. CW1 stated that he was employed by the respondent by a letter dated 20/11/2014 and was confirmed to the appointment on 1/4/2015. The claimant was Head of Human Resource and was promoted through the ranks to the position of Vice president Human Resource and Administration earning Kshs.



- 350,000/= effective from 1/3/2018 and was also entitled to a petrol allowance of Kshs. 50,000/= per month.
4. In early 2019, the claimant was added as a signatory to the respondent's bank account and in November 2019, was further included as an authority for any transactions/payments from the company through cheques and online banking.
 5. That on 27/11/2018 the chief operating officer who is the same management level as the claimant humiliated the claimant in the presence of junior staff by commanding the claimant out of a meeting claiming that the claimant was late to attend the meeting. The claimant stated that the notice of the meeting was issued while the claimant was on leave.
 6. The claimant stated that he was served with a notice to show cause on 2/12/2019 accusing the claimant of:
 - a. Propagating a culture of fear and intimidation in the company.
 - b. Lack of support
 - c. Unfair recruitment process
 - d. Failure to maintain proper and accurate records.
 - e. Lack of transparent appraisal system
 - f. Consistent lateness for work and management meeting, despite being reminded of the same.
 - g. Lateness of staff members.
 7. CW1 testified that he replied to the notice to show cause by a letter dated 3/12/2019 setting out a defence to the charges.
 8. That on 4/12/2019, the CEO instructed the claimant to hand over all the Human Resource files to the chief operating officer with immediate effect without attaching any reason for the action. This move incapacitated the claimant's office.
 9. The claimant was issued with a notice to attend disciplinary hearing vide a letter of 16/12/2019. At the hearing, the respondent explained to the claimant that his written explanation was insufficient and should attend a disciplinary committee hearing on 19/12/2019 which the claimant did only to be kept waiting for more than an hour. The meeting was rescheduled for 6/1/2020.
 10. The claimant wrote to the respondent stating that the notice to attend the hearing was too short. That the complaints and allegations were vague and the findings of the investigations had not been shared with the claimant.
 11. The claimant further requested for a list of persons in the disciplinary hearing panel, a full disclosure of list of witnesses to be called and the statement of allegations against the claimant. The claimant further requested for documents to be relied upon, permission for counsel to attend the hearing and a few days period to study the documents shared to prepare a defence.
 12. The meeting went on 6/1/2020 after the claimant filed a defence on 3/1/2020. On 17/1/2020 the claimant was issued with a letter of termination on grounds of propagating culture of fear and intimidation, lack of support to staff members, failure to maintain proper and accurate records and lack of transparent appraisal system.



13. The claimant was paid terminal dues determined by the respondent. That the termination was unprocedural, unfair and unlawful for lack of evidence to support the charges laid against the claimant.
14. That the claimant was not indicted by the employee satisfaction survey and its author did not appear before the disciplinary committee. That charges and complaints were based on anonymous findings in the said employee satisfaction survey. No prove of data collected was tendered. No accusers were identified and so the claimant did not have opportunity to face any one of them.
15. The claimant filed written submissions in support of the suit in which issues for determination were identified to include: -
 - a. Whether the termination of the employment of the claimant was lawful and fair.
 - b. Whether the claimant is entitled to the reliefs sought.
16. he claimant submitted that the respondent failed to prove that it had valid reasons in terms of section 43(1) and (2) read with 45(1) and (2) of the Employment Act, 2007 to terminate the employment of the claimant. That the respondent failed to demonstrated that it had followed a fair procedure in terms of section 41 of the Act and Human Resource and Administration manual of the respondent in terminating the employment of the claimant.
17. The claimant relied on the case of Walter Ogal Anuro versus Teachers Service Commission [2013] eKLR quoted in the case of Amos Kitavi Kivite versus Kenya Revenue Authority [2020] eKLR where the court held that:

“...For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer to effect the termination.”
18. The claimant further relied on the case of Pamela Nelima Lutta versus Mumias Sugar Company Ltd [2017] eKLR for the proposition that lawful and fair termination must satisfy substantive and procedural test in that the employer must prove that it had a fair reason to terminate the employment and that it followed a fair procedure in terminating the employment.
19. The court has carefully considered the evidence tendered by the claimant and summarized in its judgment and upon considering that no evidence was tendered in rebuttal of the credible evidence by the claimant, the court finds that the respondent failed to demonstrate that it had a valid reason to terminate the employment of the claimant. Furthermore, the respondent did not tender any evidence to show that it followed a fair procedure before terminating the employment of the claimant.
20. Consequently, the termination of the employment of the claimant was unlawful and unfair. The claimant was mistreated by the chief operating officer and was not provided with material requested to defend herself. The offences laid against her were vague and lacked clarity and further particulars were not provided to him upon request.
21. In addition, no witnesses were called to elaborate the general charges laid against the claimant. Indeed, his accusers were not disclosed and were not called to face him at the disciplinary hearing.
22. Reliance on a raft of generalized views allegedly derived from the customer satisfaction survey was unfair and oppressive to the claimant.



23. The claimant is entitled to compensation in terms of section 49(1)(c) and (4) of the Employment Act, 2007. In this regard the claimant lost unfairly and in a most unexpected manner a very high-end well-paying position.
24. The claimant was traumatized by mistreatment meted on him by the chief operating officer in the presence of junior staff. The CEO added insult to injury by dealing with the claimant in a most dismissive and arbitrary manner despite his high position in the organization. The respondent did not place any record of adverse conduct by the claimant before court.
25. The claimant was a high flier, rising from one position to another and almost reached the helm of the organizational structure before he was suddenly confronted in the cavalier manner by the respondent leading to the unlawful and unfair termination of employment.
26. The court finds that there is no evidence that the claimant contributed to the unlawful termination. The claimant suffered great financial loss as a result of the termination. He suffered loss and damage. The claimant had served the respondent for a period of six (6) years from 20/11/2014 to 17/1/2020. The claimant was not compensated for the loss and damage suffered by him and his immediate dependents.
27. Considering that there was neither substantive nor procedural fairness in this termination and following the pronouncement in the case of Winnie Mbete Mutua versus Brackhurst Kenya Limited [2021] and case of Postal Corporation of Kenya versus Tamin [2019] eKLR and Pius Macheffe Isundu versus Lavington Security Guard Limited [2017] eKLR, the court awards the claimant the equivalent of ten (10) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs (350,000 x 10) 3,500,000/=.
28. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:
 - a. Kshs. 3,500,000/= in compensation.
 - b. Interest at court rates from date of judgment till payment in full.
 - c. Costs of the suit
29. For the avoidance of doubt the above reliefs satisfy the claim set out by the claimant against the respondent and no further damages are merited.

DATED AT NAIROBI THIS 11TH DAY OF APRIL, 2024

Mathews Nderi Nduma

JUDGE

Appearance:

Mr. Githiomi for claimant

Mr. Rapado for respondent

Mr. Kemboi, Court Assistant

