



Kudheiha Workers v Pride Inn Paradise Beach Resort Limited (Cause E002 of 2023) [2024] KEELRC 785 (KLR) (11 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E002 OF 2023**

**M MBARŪ, J
APRIL 11, 2024**

BETWEEN

KUDHEIHA WORKERS CLAIMANT

AND

PRIDE INN PARADISE BEACH RESORT LIMITED RESPONDENT

JUDGMENT

1. The claimant is a trade union registered under the provisions of the [Labour Relations Act](#), 2007 (LRA). In this proceedings, the claimant is representing Lorna Adoyo Ologi, the grievant.
2. The respondent is a company carrying out business and providing hospitality, hotel and catering services.
3. The grievant was employed by the respondent as a cashier on 16 December 2016. She worked until 1st March 2018 when her work performance was reviewed and found satisfactory. She was appointed the food and beverage controller. However, on 6 February 2021, the grievant questioned the decision by the respondent to deduct employees' salary by 25% without prior notice and/or just cause. The grievance made these utterances in good faith to a fellow employee as a collective concern as to why her colleagues were unbothered with the deduction and cutting down salaries.
4. The claim is that on the same day, 6 February 2022, the respondent relied on hearsay and accused the grievant of planning to stage a strike and that she was threatening the wellbeing of the establishment by creating chaos. The security interrogated the grievant and later handed her over to the police at Bamburi. She was also handed a suspension letter and directed not to report to work until 11 February 2021 to allow for investigations and disciplinary hearings.
5. On 11 February 2021, the grievant reported to work and her suspension was extended and invited for a disciplinary hearing on 15 February 2021. At the hearing, the grievant denied organising, preparing or in any manner arranging a strike as alleged. The works committee when questioned admitted that there



- was no looming strike or planned industrial action but the respondent went ahead and terminated the employment of the grievant.
6. The claim is that the termination of employment was rushed, it had no basis and the allegations made against the grievant were not justified.
 7. The claimant reported the matter to the Minister but there was no resolution.
 8. The claimant is seeking the following;
 - a. A declaration that employment terminated unfairly, with malice and the grievant should be awarded damages;.
 - b. Two months' notice pay Kshs 70,030;
 - c. Annual leave for 2020 Kshs 37,515;
 - d. Leave travelling allowances of Kshs 5,000;
 - e. Four public holidays worked in December 2020 Kshs 10,000;
 - f. Damages for malicious prosecution and victimisation;
 - g. Costs of the suit.
 9. The grievant testified in support of the claim that on 6 February 2021 during the work break, while at the staff canteen with a fellow workmate, they were discussing an array of things including work issues. She innocently inquired from her fellow workmate as to why the company had deducted their salary by 25% without notice or explanation. The discussion also touched on why staff were not questioning the arbitrary decision by management. After the break, they went to their workstations.
 10. The grievant testified that later in the day, she was summoned by her head of department where she found the head of security who interrogated her on whether she knew of an imminent strike. The grievant denied these allegations. The security called the workmate who was questioned and stated that the grievant had said there would be a strike. The police were called in and arrested the grievant and taken to Bamburi Police station. The respondent suspended her until 11 February 2021 and later this was extended to 15 February 2021 to allow for investigations and to attend the disciplinary hearing. Despite the grievant denying the allegations made against her, her employment was terminated without good cause or justification.
 11. Upon cross-examination, the grievant testified that upon termination of employment, she was not satisfied and hence lodged an appeal but there was no response. The parties went before a conciliator who ordered a reinstatement. The respondent did not issue an official communication on reinstatement. There was no direct communication to the grievant about the reinstatement. There was a letter to report to the Nairobi office but it was not in person. The respondent's letter dated 17 May 2022 was to J.K. Katana, Mombasa County Labour Officer copied to the claimant with regard to the reinstatement of the grievant. The letter indicated that the grievant had refused to report to work as required hence absconded duty.
 12. The grievant testified that the letter dated 17 May 2022 was not sent to her directly but to the claimant as her representative. The respondent's letter of transfer to the Nairobi office was sent to the claimant and the Labour Officer. It was a reinstatement and transfer letter.
 13. In response, the respondent admitted that the grievant was an employee. The allegations that there was a unilateral decision to deduct employees' salaries are not correct. The termination of the grievant's



employment was rescinded, though it had been on account of a breach of terms of employment hence lawful and justified.

14. The grievant was informed of her general misconduct and breach of employment terms. She was given a hearing and allowed to respond to her case. The decision to terminate employment was communicated to the grievant and she was allowed the right to appeal.
15. The dispute concerning the termination of the grievant's employment was referred for conciliation in line with Section 62 of the LRA and the same was amicably resolved after the conciliation process under the law. the suit herein is res judicata, an abuse of the court process and the same should be dismissed with costs.
No witness was called.
16. At the close of the hearing, both parties agreed to file written submissions. Only the claimant complied.

Determination

17. The issues for determination are whether there was an unfair termination of employment and whether the remedies sought should be issued.
18. As outlined above, the claimant is a registered trade union under the provisions of LRA. Hence, the claimant is allowed to represent its members before this court. Further, the claimant is allowed under the LRA to report to the Minister any dispute arising at the shop floor with regard to its members and arising from the collective agreement between the parties.
19. The latitude allowed to the claimant under the LRA is far and wide. But such a mandate comes with a duty. To ensure that in representing its members, the claimant should and ought to be keen and act with utmost responsibility.
This claim was filed on 8 January 2023.
The respondent filed the response on 27 April 2023.
20. The background to the dispute is that the grievant's employment was terminated on 19 February 2021. The grievant appealed on 24 February 2021. The claimant reported the dispute to the Minister on 5 May 2021. The Conciliator invited parties to attend conciliation.
21. The claimant filed a letter dated 19 January 2022. This is the conciliator's report sent to the respondent and the claimant with a recommendation that the grievant should be reinstated to the previous position without loss of benefits. In the alternative, the claimant be paid her termination dues under the CBA.
22. The conciliator directed the parties to respond to their acceptance/non-acceptance of the recommendation.
23. Through a letter dated 17 February 2022, the respondent informed the claimant that even though the parties had no CBA at the time the dispute arose, they had decided to reinstate the grievant to her previous position with the same terms and conditions. The grievant would be deployed to another branch, Pride Inn Azure Nairobi. The respondent gave the grievant one month to report to her new station.
24. On 18 March 2022, the respondent made a follow-up with the claimant with regard to the communication dated 17 February 2022. It was noted that the grievant had not reported to work as directed.
25. This position is reiterated by the respondent through a letter dated 5 May 2022 to the claimant.



26. Finally, through a letter dated 17 May 2022, the respondent wrote to the claimant and noted that the grievant had absconded duty. This letter is copied to the Labour Officer.
27. On this background, why would the claimant file this claim on 8 January 2023?
28. One reason given by the grievant in her testimony was that she never received a personal letter directing her to report back to work. The only letter sent was to the claimant and the Labour Officer.
29. As outlined above, the claimant is the legal representative of the grievant by virtue of the *LRA*. The claimant is the entity with the legal mandate to secure her rights as a member. The claimant reported a dispute to the Minister, a conciliator was appointed and the matter was resolved. The respondent adopted the conciliator's recommendation reinstated the grievant and issued a letter of reinstatement and deployment. This communication was sent to the grievant's legal representative, the claimant.
30. To file this claim seeking to urge a case of unfair termination of employment while the matter is resolved by the conciliator in terms of Section 62 of the LRA is an abuse of the court process. The claimant as the entity representing the grievant in these proceedings cannot justify moving the court as herein done. There being an abuse of the court process, the claim cannot stand. It must be dismissed.
31. Before conclusion, it is important to note that, the grievant does not deny that while at a staff canteen, she discussed the issue of a salary cut with a workmate. In her own words, she admitted to making utterances to the effect that the respondent's unilateral decision to deduct salaries by 25% is without prior notice and/or just cause. Were these utterances by the grievant true? Were they factual as she stated them? Was the grievant stating these facts from a point of knowledge or in good faith?
32. The shop floor is a very sensitive space. Where the employer can pick the slightest move to dispute the peace, good cause exists to take proactive steps and resolve. The grievant does not deny uttering words in their nature that salaries had been deducted by 25%. She acknowledged that there was a works committee on the shop floor. This was the forum to urge her case. To call a colleague in an open space such as the staff canteen and proceed to make assertions that she had not verified, she cannot blame the employer for taking action to address.
33. Eventually, the matter was resolved through conciliation with a reinstatement. To secure the grievant from going back to the same workspace where she may have faced the same person who reported her (the workmate at the canteen), the respondent deployed her to a new workstation. She did not report. The standpoint of the grievant that she did not receive a personal letter or communication from the respondent to report to her new station is neither here nor there. She was reported at the conciliation in these proceedings by the claimant, her union of choice. A communication to her union is sufficient. The grievant cannot blame the respondent and seek to urge a case of unfair termination of employment.
34. On the claim for damages for malicious prosecuting, such only lies with the government agency that arrested the grievant and not the respondent. No damages are due from the respondent in this regard. A report to the police on good suspicion is a civic duty.
35. As outlined above, this claim upon being resolved amicably by the Conciliator ought not to have been filed. Being in abuse of court process is hereby dismissed. Each party bears its costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 11 DAY OF APRIL 2024.

M. MBARŪ

JUDGE



In the presence of:

Court Assistant: Japhet

..... and

