



**Wambui v Kenya Red Cross Society (Cause 165 of 2019)
[2024] KEELRC 972 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 972 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 165 OF 2019
L NDOLO, J
APRIL 11, 2024**

BETWEEN

SUNDAY MAUREEN WAMBUI CLAIMANT

AND

KENYA RED CROSS SOCIETY RESPONDENT

JUDGMENT

1. Sunday Maureen Wambui, the Claimant in this case, was an employee of Kenya Red Cross Society, having been employed on 25th June 2018, in the position of Marketing Communications Manager.
2. Wambui brought this claim alleging unlawful termination of her employment and failure to pay terminal dues. The claim is documented by a Memorandum of Claim dated and filed in court on 14th March 2019. The Respondent filed a Memorandum of Response dated 11th June 2019, to which the Claimant responded on 23rd July 2019.
3. At the trial, the Claimant testified on her own behalf and the Respondent called its Human Resource Business Partner, Christine Muriuki. Both parties also filed written submissions.

The Claimant's Case

4. The Claimant states that she was employed by the Respondent in the position of Marketing Communications Manager, effective 25th June 2018. She earned a monthly salary of Kshs. 300,000.
5. On 17th October 2018, the Claimant was asked to attend a probation performance review discussion for the period between 25th June 2018 and 12th October 2018. For purposes of the review meeting, the Claimant was to prepare a report addressing the following questions:
 - a. What were your most important responsibilities and key result areas, how have you performed against these and how do you rate yourself?



- b. Which would be your areas of concern and challenge and what have you done about these, if any? What assistance do you require?
 - c. What were your top 3 goals for before and during the launch of the TV Station and how did you perform against the deliverables?
6. The Claimant states that the matters discussed at the meeting were not what she had been asked to prepare. She claims that she was instead informed of the termination of her employment. She was issued with a termination letter dated 18th October 2018.
7. The Claimant's case is that the Respondent's actions were unconstitutional, unlawful and unfair. She accuses the Respondent of breaching the following terms and conditions of her employment:
 - a. Clause 5.12(2) of the Respondent's Human Resources Policy & Procedure Guidelines which requires that a management staff serves a probation period of 3 months, yet the Claimant was put on probation for 6 months;
 - b. Clause 5.12(5) of the Respondent's Human Resources Policy & Procedure Guidelines which requires that if the immediate supervisor determines that work performance is unsatisfactory at any time during the probation period, a discussion must be held with the employee pointing out the deficiencies and measures that should be taken to correct them, yet the Claimant was never informed of any deficiencies in her performance;
 - c. Clause 12.3 of the Respondent's Human Resources Policy & Procedure Guidelines which requires that if an employee is not performing to the required level, their immediate supervisor should first counsel the employee on the nature of improvement required and agree on a timeframe within which reasonable improvement shall be expected, yet the Claimant was not counselled nor was she given an opportunity to improve.
8. The Claimant claims that the Respondent failed to remit her pension contributions for the months of June and July 2018.
9. The Claimant's claim is as follows:
 - a. A declaration that the termination of her employment was unlawful and unfair;
 - b. Kshs. 3,600,000 being 12 months' salary in compensation;
 - c. Kshs. 38,219.70 being pension contributions for June and July 2018;
 - d. Costs plus interest.

The Respondent's Case

10. In its Memorandum of Response dated 11th June 2019 and filed in court on 13th June 2019, the Respondent admits having employed the Claimant by letter of offer and contract of employment dated 22nd May 2018 and 5th June 2018 respectively.
11. The Respondent states that on 14th October 2018, the Group Head of Human Resource sent an email notifying the Claimant of a probation performance review meeting scheduled to take place on 16th October 2018.
12. The Claimant responded by a return email 15th October 2018, requesting for extension of time to submit a report and rescheduling of the review meeting.



13. By an email dated 16th October 2018, the Claimant was allowed extension of time for submission of her report and was informed that the review meeting had been rescheduled to 17th October 2018.
14. The Respondent states that the Claimant was given prior notice of the issues that needed to be addressed. The Respondent adds that no new issues were introduced at the review meeting of 17th October 2018.
15. According to the Respondent, the Claimant's employment was terminated after it was discovered from the review meeting that the Claimant was not carrying out her obligations with integrity, transparency and accountability. The Respondent asserts that the termination was lawful and regular in line with Clause 16.6 of its Human Resource Policy and Procedures Guidelines.
16. The Respondent further claims that following the review meeting, the Claimant tendered her resignation by letter dated 17th October 2018. The Respondent points out that at the time a termination letter was issued on 18th October 2018, the Claimant had already tendered her resignation.
17. The Respondent avers that according to Section 42 of the [Employment Act](#), the provisions of Section 41 of the Act do not apply to the Claimant's case as she was serving a probationary contract.
18. The Respondent denies that it failed to remit the Claimant's pension contributions for the months of June and July.

Findings and Determination

19. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

20. The Respondent filed a letter written by the Claimant on 17th October 2018 stating:

“Dear Joanna,

RE: Resignation

Following the session held today, please accept this letter as my formal resignation from the position of Head of Marketing effective today as my last day.

Thank you for the opportunities and the learnings during the past 4 months.

I wish the company continued success.

Sincerely

(signed)

Sunday Wambui”

21. Subsequent to this letter, the Respondent sent its own letter dated 18th October 2018 to the Claimant stating as follows:

“Dear Sunday,

Probationary Termination Of Employment



Reference is made to the above and to your employment contract as Head of Marketing, Switch TV, under which you were on probation for six months.

Arising from the performance discussions held on 17th October 2018, facts you are well aware of (sic), the management has reached a decision to terminate your services with effect from 18th October 2018.

Your final dues will be computed as follows:

1. One month's salary in lieu of notice
2. Salary for days worked until 18th October 2018
3. 11 leave days earned but not utilized
4. Pension dues currently invested by the fund managers

Please note that your dues will be released to you after you have completed the enclosed Clearance Certificate and returned all company property in your possession. Kindly also complete the attached exit interview form.

Yours sincerely,

(signed for)

Dr. Abbas Gullet, M.B.S

Secretary General”

22. The Respondent's line of defence is that after the Claimant tendered her resignation on 17th October 2018, the employment relationship between the parties dissipated.
23. In its final submissions dated 26th February 2024, the Respondent cites the decision in Edwin Beiti Kipchumba v National Bank of Kenya Limited [2018] eKLR where it was held that a resignation is a unilateral act by the employee and its effectiveness is not dependent on acceptance by the employer.
24. The Respondent further relies on the subsequent decision in Kennedy Obala Oaga v Kenya Ports Authority [2018] eKLR where the Court, citing the persuasive decision by the Labour Court of South Africa in Mtati v KPMG (Pty) Ltd (2017) BLL 315 (LC) held that where a resignation takes effect immediately, the employer is instantly deprived of jurisdiction to commence or continue any disciplinary proceedings, with respect to the resigning employee.
25. I do not need to say more on this issue; the Claimant having resigned with immediate effect on 17th October 2018, the employment relationship came to an end and the Respondent had no basis to issue a termination letter on 18th October 2018. Further, the Claimant made no effort to recall her resignation letter. In the result, I find and hold that the letter dated 18th October 2018, purporting to terminate the Claimant's probationary contract had no force of law and was to that extent, null and void.
26. That said, the Claimant's claim that her employment was terminated unlawfully and unfairly cannot stand. The claim for compensation is therefore without basis and is disallowed.
27. The claim for unpaid pension contributions was not proved and is dismissed.
28. Finally, the Claimant's entire claim fails and is dismissed with an order that each party will bear their own costs.
29. Orders accordingly.



DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF APRIL 2024.

LINNET NDOLO

JUDGE

Appearance:

Mr. Weru for the Claimant

Mr. Nura for the Respondent

