



**Wambari v Nairobi Bottlers Limited (Cause E129 of 2022)
[2024] KEELRC 919 (KLR) (8 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 919 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E129 OF 2022
BOM MANANI, J
APRIL 8, 2024**

BETWEEN

MONICAH NJOKI WAMBARI CLAIMANT

AND

NAIROBI BOTTLERS LIMITED RESPONDENT

JUDGMENT

1. The instant suit by the Claimant challenges the Respondent's decision to terminate the employment relation between the parties. The Claimant contends that the decision was unlawful. Thus, she prays for a declaration to that effect and for inter alia, an order for compensation for unlawful termination of her employment.
2. The action is resisted by the Respondent. It is the Respondent's case that the Claimant was terminated from employment following her acts of insubordination. Further, the Respondent avers that it accorded the Claimant fair process before her contract was terminated. As such, it (the Respondent) avers that the instant case is devoid of merit and ought to be dismissed.

Claimant's Case

3. The Claimant states that she was first employed by the Respondent in 2021 as an Account Developer. She says that she was later promoted to the position of Key Accounts Executive in June 2013. Over time, her monthly salary allegedly rose from Kshs 37,026.00 to Kshs 74,077.00.
4. It is her case that she continued to discharge her duties diligently until 2021 when she began experiencing challenges at the workplace. She avers that from early 2021, her line manager commenced a witch hunt against her. She states that the line manager's conduct rendered the work environment uncondusive.



5. The Claimant states that the line manager begun sending her a series of notice to show cause letters raising unsubstantiated claims against her. The line manager allegedly accused her of failure to follow up on critical matters.
6. It is the Claimant's case that these accusations were followed with a final show cause letter on 1st December 2021 and a disciplinary hearing on 17th December 2021. She contends that she was eventually relieved of her duties on 10th January 2022.
7. The Claimant states that the accusations leveled against her were without basis. Further, she avers that the Respondent failed to ensure due process in the handling of her disciplinary case.
8. According to her, the Respondent had pre-determined her fate. As such, she was allegedly denied the opportunity to express herself on the accusations against her.
9. The Claimant contends that evidence of the line manager's ill will can be discerned from the various email exchanges between them. She avers the line manager would sent some of the emails to her outside work hours.
10. The Claimant further accuses the Respondent of discriminatory treatment. However, she does not provide particulars of the alleged discrimination in her Statement of Claim.

Respondent's Case

11. On its part, the Respondent denies that the Claimant's contract was unfairly terminated. According to it (the Respondent), the Claimant's line manager asked her to attend a meeting on 1st December 2021. This request was communicated through an email dated 30th November 2021. However, the Claimant allegedly declined to attend the meeting. She allegedly sent an email to her line manager on the same day (30th November 2021) stating that she will not honour the invite for the meeting.
12. The Respondent contends that the Claimant's conduct amounted to outright defiance of lawful instructions from her line manager. As such, the behaviour amounted to insubordination.
13. The Respondent avers that following this misconduct by the Claimant, she was asked to show cause why her services should not be terminated for insubordination. She was later subjected to a disciplinary hearing on 17th December 2021 following which a decision was taken to terminate her contract.
14. The Respondent contends that before the disciplinary hearing, the Claimant was informed of her right to be accompanied by a fellow employee of her choice and bring any evidence that was material to her case. It (the Respondent) further contends that the Claimant was accorded the opportunity to be heard during the hearing. As such, she was accorded due process.
15. The Respondent asserts that the Claimant was asked to clear with its management in order to be paid her terminal dues but is yet to do so. Hence the delay in paying her off.

Issues for Determination

16. After analyzing the pleadings and evidence on record, the following are the issues that emerge for consideration: -
 - a. Whether the Claimant's contract of service was unfairly terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.



Analysis

17. The law on termination of contracts of service requires that the decision by an employer to terminate such contract must be supported by valid reasons. Further, the employer is obligated to only release the employee in accordance with due process.
18. Sections 41 and 44 of the *Employment Act* list some of the grounds upon which the employer may terminate a contract of service. These include misconduct, poor performance and physical incapacity.
19. Section 41 of the Act requires the employer to inform the employee of the infraction that he is accused of before a decision to terminate his (the employee's) contract is rendered. During the process, the employee is entitled to be accompanied by a co-employee or a trade union official of his choice. In addition, the employee is entitled to be heard in his defense.
20. Sections 43, 45 and 47 of the *Employment Act* place the burden of justifying the decision to terminate a contract of service on the employer. Although section 47 of the Act requires the employee to demonstrate that the decision is unlawful, the burden placed on the employee in this respect is one that requires him to simply present a prima facie case of unfair termination of his contract. Once he (the employee) does this, the burden of proof shifts onto the employer to justify his decision.
21. In the instant case, the Respondent has accused the Claimant of insubordination. The Claimant is said to have disregarded her line manager's instructions to attend a meeting on 1st December 2021.
22. The evidence on record shows that on 30th November 2021, one Rachel sent the Claimant and other members of staff an email at 11.13 am asking them to block their calendars for a meeting scheduled for the following day at 3.00 pm. The record further shows that on the same day (30th November 2021) at 13.19 hours, the Claimant wrote to the said Rachel informing her that she will not attend the proposed meeting.
23. In the aforesaid rejoinder, the Claimant indicated that a client by the name Powerstar had been issued with a credit note. Yet, Rachel had issued her (the Claimant) with a notice to show cause accusing her of not having issued the said credit note to the aforesaid client. For this reason, the Claimant stated that she was not going to attend the meeting called by Rachel.
24. Apparently, Rachel was the Claimant's line manager. As a matter of fact, the Claimant confirms this in her witness statement when she describes her accuser in the proceedings as her line manager.
25. When the Claimant failed to turn up for the meeting of 1st December 2021, the Respondent issued her with a notice to show cause why disciplinary action should not be taken against her for insubordination. The Respondent accused the Claimant of refusing to adhere to lawful instructions from her superior contrary to its Business Code of Conduct.
26. Eventually, the Claimant was invited for a disciplinary session on 17th December 2021 where she faced a charge of insubordination. After the session, her contract of service was terminated.
27. Section 44 of the *Employment Act* entitles an employer to terminate an employee's contract of service on account of gross misconduct. Under the provision, gross misconduct includes refusal by an employee to heed lawful instructions of the employer or his superiors.



28. Quoting the decision of *Palluci Home Depot (Pty) Ltd v Herskowitz & others* [2014] ZALAC 81, the court in *Christopher Komen Chebet v Brinks Security Services Limited* [2019] eKLR observed on the matter as follows:-

“A failure of an employee to comply with a reasonable and lawful instruction of an employer or an employee’s challenge to, or defiance of the authority of the employer may justify a dismissal, provided that it is willful (deliberate) and serious. ... The sanction of dismissal should be reserved for instances of gross insolence and gross insubordination as respect and obedience are implied duties of an employee under contract law, and any repudiation thereof will constitute a fundamental and calculated breach by the employee to obey and respect the employer’s lawful authority over him or her.”

29. Thus, in the instant case the questions to be considered are the following:-

- a. Was the Claimant’s line manager entitled to require the Claimant to attend a staff meeting?
- b. Was the Claimant’s refusal to attend the meeting deliberate and in defiance of lawful instructions from her line manager to attend the meeting?

30. As the Claimant’s immediate supervisor, the Claimant’s line manager was entitled to require her to attend staff meetings. Indeed, this was necessary in order for the line manager to maintain her supervisory control over the Claimant’s discharge of her duties. Thus, it was lawful for the line manager to issue instructions to the Claimant to attend staff meetings including the one of 1st December 2021.

31. On the other hand, the Claimant was obligated to attend the staff meetings convened by her line manager. She did not have the option to decline directions to attend such meetings unless she was able to demonstrate that they were unlawful or convened in excess of the line manager’s mandate.

32. The record shows that the Claimant was notified to attend the meeting of 1st December 2021. The record also shows that she wrote back declining the instructions to attend the meeting. Therefore, her decision not to attend the session was willful.

33. The Claimant has asserted that her reason for not attending the meeting was that she believed her line manager was engaged in some witch hunt against her. Yet, there is no evidence that she (the Claimant) had taken up this issue with the Respondent’s management.

34. The fact that the Claimant believed that her line manager had a bone to pick with her was no reason to justify her decision to snub staff meetings convened by the said manager. At the very least, she ought to have attended the meeting to express her frustrations there.

35. Thus, her (the Claimant’s) election not to attend the meeting of 1st December 2021 was an act of insubordination. It was an act of gross misconduct as contemplated under section 44 of the *Employment Act* for which the Respondent was entitled to terminate her services. As such, I arrive at the conclusion that the Respondent had a valid reason to consider terminating the Claimant’s employment.

36. The record shows that when the Claimant declined to attend the meeting of 1st December 2021, she was issued with a notice to show cause why disciplinary action should not be taken against her for insubordination. The record further shows that the Respondent convened a disciplinary session for 17th December 2021 during which the Claimant’s case was heard.

37. The record shows that the Respondent informed the Claimant of her right to be accompanied by a co-worker of her choice during the hearing and to avail any material that she considered valuable to her



defense. The record also shows that the Claimant attended the disciplinary session on 17th December 2021 when she was interrogated on the accusations against her. The minutes of the proceedings show that although the Claimant avoided giving a direct response to questions on whether she declined the invite to attend the meeting of 1st December 2021, she eventually conceded that she did not get back to her line manager about the invite until after she had been served with the notice to show cause. Essentially, this was an admission that she (the Claimant) snubbed the meeting of 1st December 2021.

38. Contrary to the Claimant's contention that she was denied the opportunity to respond to the accusations against her, the foregoing evidence is clear testimony of the fact that she was indeed afforded this opportunity. Further and contrary to the Claimant's assertion that her accuser was the one who was directing the proceedings before the Disciplinary Panel, the minutes for the session show that the process was chaired by a Mr. Josphat Yegon.
39. There is no indication from the minutes of the session that the Claimant raised concerns of bias by some members of the Disciplinary Panel. In effect, the complaints that she raised in court in this respect can only be considered as an afterthought.
40. The record shows that the Claimant was issued with the letter of termination of her contract dated 10th January 2022. The said letter specifies the charge that she faced before the Disciplinary Panel and the verdict that was arrived at.
41. In addition, the letter informed the Claimant of her right to appeal the decision in the event that she was dissatisfied with it. However, there is no suggestion that she exercised this right.
42. From the foregoing, it is apparent that the Claimant's case was processed in accordance with fair procedure. As such, her contention that the Respondent failed to uphold due process whilst handling her case is not well founded.
43. The Claimant has suggested that the Respondent has refused to pay her terminal dues despite the fact that she has cleared with it (the Respondent). On the other hand, the Respondent contends that even though the Claimant returned company property, she did not circulate her clearance form through the various departments at its (the Respondent's) premises. The Respondent indicates that it is ready and willing to settle the Claimant's dues as soon as she clears this process.

Determination

44. Having regard to the evidence on record, I am satisfied that the Respondent had valid reasons for terminating the Claimant's contract
45. I am also satisfied that dismissal of the Claimant from employment was done in accordance with fair procedure.
46. Consequently, I arrive at the conclusion that the Claimant's case against the Respondent is devoid of merit.
47. As such, the suit is dismissed with costs to the Respondent.
48. The Respondent is free to process the Claimant's terminal dues in accordance with the conditionalities that are set out in the letter of termination dated 10th January 2022.

DATED, SIGNED AND DELIVERED ON THE 8TH DAY OF APRIL, 2024

B. O. M. MANANI

JUDGE



In the presence of:

..... for the Claimant

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

