



**Nderi v Syngenta Pollen Limited (Cause E009 of 2022)  
[2024] KEELRC 1649 (KLR) (24 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1649 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E009 OF 2022  
NZIOKI WA MAKAU, J  
JUNE 24, 2024**

**BETWEEN**

**SAMUEL NDERI ..... CLAIMANT**

**AND**

**SYNGENTA POLLEN LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 11<sup>th</sup> January 2022, seeking relief for the alleged unfair and unlawful termination, unfair labour practices, discrimination and damages as against the Respondent Company. He averred that the Respondent employed him on full time basis as a Technical Operations Lead under permanent and pensionable terms and pursuant to an Employment Contract entered on 1<sup>st</sup> January 2005. He asserted that over the 16 years he served the Respondent, he executed his duties with diligence and gusto and rose over the ranks from an intern on to a senior manager. That in the end, he had served the Respondent in the capacities of electrician, section supervisor, senior supervisor, and lastly as the Technical Operations Lead. It was the Claimant's averment was that at the time of the unlawful termination of his employment, he was earning a monthly gross salary of Kshs. 205,603/-. That his diligence contributed to the Respondent Company experiencing tremendous growth and expansion. He also noted that he had never been summoned over any disciplinary and/or performance issue(s).
2. The Claimant's case is that by a letter dated 28<sup>th</sup> July 2021, the Respondent issued him with a Notice to Show Cause requiring him to respond to ten (10) charges within 24 hours. He averred that the accusations levelled against him were vaguely drafted surmises and conjectures lacking sufficient details to reasonably respond to and that the charges included various accusations as listed in para 12 of his Claim. He contended that when he sought clarification including requesting sufficient information to enable him respond adequately to the accusations, the same was never provided to him. It was the Claimant's averment that the Respondent unlawfully, unfairly and wrongfully terminated his services



without following the laid down procedure in law and that when he appealed against the said decision, he was informed that his termination would be effective 3<sup>rd</sup> September 2021. As regards the issue of discrimination, the Claimant averred that the Respondent levelled the said accusations when he was on sick leave after having undergone medical surgery to remove kidney stones. He argued that the Respondent's actions are indicative of discrimination based on his health status and further indicative that the Company had another preference to fill in his position, which preference is/was not based on merit.

3. According to the Claimant's particulars for the claim of unlawful and unfair termination, the Respondent failed to give any reason for terminating his employment contract and that the reasons given, if any, were vague, baseless and spurious. Moreover, the notice of 24 hours was short and the Respondent failed to accord him a fair hearing or a reasonable opportunity to make representations prior to the termination of his employment as mandated by law. He asserted that he has consequently suffered loss or damage and that considering he was 41 years old at the time of the termination, he seeks damages, basic salary for the remaining 10 years of his employment tenure, 12 months' salary for the unlawful termination, and one-month pay in lieu of notice. The Claimant further prays that judgment be entered against the Respondent for:
  - a. A declaration that the Claimant's employment services with the Respondent were terminated wrongfully, maliciously and or unfairly.
  - b. A declaration that the Claimant's right to equality and freedom from discrimination has been violated by the Respondent contrary to the provisions of Article 27(1), (2), & (6) of the Constitution and section 5 of the Employment Act.
  - c. An order do issue that the Respondent pay the Claimant a sum of Kshs. 2,672,839/- being damages for unfair and unlawful termination.
  - d. An order do issue that the Respondent pay the Claimant the sum of Kshs. 46,877,484/- for the remainder 19 years of his employment tenure.
  - e. An order to issue that the Respondent to pay the Claimant Kshs. 500,000/- being damages of breach of the employee's constitutional rights, underpayment, embarrassment and discrimination at the time of dismissal.
  - f. Any other relief that the Honourable Court may deem fit to issue.
  - g. Costs and interest.

### **Respondent's Case**

4. The Respondent filed a Memorandum of Defence dated 13<sup>th</sup> May 2022 and eight (8) Witness Statement dated various dates in 2023. It denied the Claimant's allegations that he was wrongfully, unfairly and unlawfully terminated from employment and contended he is as such not entitled to the orders sought. It averred that the Claimant breached the terms of his employment contract and violated its policies by engaging in acts that constituted gross misconduct, thereby resulting in his summary dismissal on 10<sup>th</sup> August 2021.
5. The Respondent's case is that sometime in 2021, it discovered that the Claimant may have been involved in serious breaches of its Policies, following a number of reports made against him by the Respondent's staff members to its internal investigations unit. That the allegations made against the Claimant included him forcefully engaging employees to perform personal favours in violation of the Company's conflict of interest policy, physically and verbally harassing employees at the workplace,



allowing supervisors in his department to borrow money from his junior employees without repaying, and using the Company's tools and premises for private purposes without authority. That after investigations revealed possible violation of the Company's Code of Conduct and Conflict of Interest Policies, its representatives held a meeting with the Claimant on 28<sup>th</sup> July 2021 and issued him with a Letter to Show Cause of even date. It averred that the Claimant was invited to a disciplinary hearing scheduled for 30<sup>th</sup> July 2021 and informed *inter alia* of the Respondent's resolution to lawfully suspend him and his right to representation by a colleague. As per the Respondent, the Claimant had sufficient time to respond to the allegations levelled against him as he did not at any point request for an extension of time to put in his response. That the Claimant attended the disciplinary hearing as scheduled and was given an opportunity to defend himself. It averred that after considering the evidence presented by the Claimant, it found the reasons provided to be unsatisfactory and his actions to be in violation of the Respondent's Code of Conduct and Conflict of Interest Policies, tantamount to gross misconduct.

6. It was the Respondent's further averment that the Claimant was substantively informed of the reasons for his termination in the Termination Letter dated 10<sup>th</sup> August 2021. That his appeal hearing was held on 3<sup>rd</sup> September 2021, on which day it considered his appeal and submissions and found no justifiable reasons to reverse the decision made and that it thus wrote to the Claimant on 14<sup>th</sup> September 2021 upholding the decision to summarily dismiss him from employment. The Respondent denied that the said dismissal was actuated by malice or discrimination as alleged and maintained that it had provided the Claimant with comprehensive investigation summary to enable him respond to the allegations against him. It further denied that the Claimant is entitled to any compensation and damages as particularised in his Claim because his summary dismissal on the basis of gross misconduct was fair and was carried out in accordance with the law. It asserted that the Claimant is not entitled to any of the reliefs sought and prayed that his case be dismissed with costs to the Respondent.
7. In the Witness Statements filed in Court, all eight witnesses stated that the termination of the Claimant's employment was justified considering his mistreatment of employees, assault and the verbal threats they personally endured under him. They also noted that the Claimant used to terminate employment contracts of seasonal employees verbally during departmental meetings. The statement by Mr. Oscar Mandelmeier (RW1) was that in regards to the Claimant's request for disclosure, it is not prudent for any employer to disclose names of employees making complaints against management staff, to avoid instances of future victimisation and ill-treatment. RW1 asserted that the Claimant was duly advised that the information he sought was confidential and that he was still at liberty to respond as he wished in his reply to the Show Cause Letter. He also noted that after the termination and upon clearance, the Respondent paid the Claimant all his due benefits due and issued him with a Certificate of Service.
8. The Respondent's second witness Mr. David Ciira Kimani (RW2) stated that he personally experienced verbal abuse, harassment, and intimidation from the Claimant who was his immediate supervisor and that he had not spoken up about it for fear that the Claimant would terminate his employment. RW2 confirmed that the Claimant approached him in January 2017 and requested that he perform personal work for him outside the regular working hours. That when he expressed exhaustion and explained that he was unable to continue working, the Claimant immediately informed him that he was aware of RW2's job application for a permanent Mason position and threatened to hinder his chances in future interviews. That true to the Claimant's word, he failed to get the Mason position and continued as a seasonal employee, working only on an as-needed basis. RW2 stated that when he also declined the Claimant's request to work for him on Sundays at his personal house he was constructing, their differences resurfaced and the work environment became uncomfortable. RW2



confirmed that the Claimant verbally terminated his employment contract without any valid reason and before the said contract's original end date.

9. The Respondent's third witness Mr. Peter Kamau (RW3) and eight witness Mr. David Anzaya (RW8) confirmed that they were among the employees who lodged an anonymous complaint against the Claimant in April 2021 through an anonymous Employee Satisfaction and Work Environment Survey. They further asserted that they were direct victims of the Claimant's verbal abuse, harassment and intimidation. RW3 further stated that he also experienced physical assault from the Claimant through a stone he threw at him injuring his right leg and that he had to seek medical attention for the deep cut he suffered. That in June 2020, the Claimant again struck him on the back of my head while he was plastering a wall in the course of his work as a mason in the Respondent Company and he subsequently experienced nosebleeds and collapsed. That the incident led to him seeking medical attention and after a doctor's examination, he was informed that he was experiencing stress and depression and recommended the assistance of a psychiatrist. RW3 noted that it is his wife who reported the matter to the Respondent's then HR Manager who assured him that the matter would be discussed. That when RW3 was however called upon to write a statement regarding the incident, he stated he hesitated due to concerns about his job security. RW3 also noted that the Claimant was fond of abusing the seasonal employees by calling them as "*kibii*" or "*ihii*" in reference to uncircumcised men in the Kikuyu language.
10. Mr. Evans Moku Miruka (RW4) stated that he was also assaulted physically by the Claimant and was consistently verbally abused, harassed and intimidated. RW4 asserted that in January 2020, the Claimant approached him and asked him to perform additional work at his sister's car wash and his MPESA shop during RW4's off hours. That he felt compelled to agree out of fear of losing his job as he was on a seasonal contract at the Respondent Company and he noted that the Claimant never compensated him for the work he did. That the Claimant called him "*mafi ya kuku*" in February 2020 and later verbally dismissed him after a departmental meeting.
11. Paul Gitau (RW5) stated that during his employment with the Respondent, the Claimant often directed him to perform repairs and services on his personal cars, including one car he used as an Uber taxi. That the Claimant usually directed him to use the Respondent's tools and materials to perform the said repairs and services, and that when RW5 declined to perform those services, the Claimant would threaten to terminate his contract.
12. The sixth witness for the defence Mr. Joshat Wanjohi (RW6) stated that the Claimant used to call him "*mjiga*", "*mzee wa aina gani*", "*hata kondoo ina akili kuliko*" in front of his other colleagues that he was assigned for the day. RW6 further noted that during the Covid-19 Pandemic, the Claimant made them work on the construction of a caravat without proper protective equipment and despite heavy and dangerous rainfall. In addition, that the Claimant constantly forced them to work long hours from 7:30 am to 9 pm, which extended beyond the normal working hours and that he often refused to approve their overtime and neglected to compensate them for the extra hours worked, in violation of the Company's policy.
13. James Mburu (RW7), a Plant Operator at the Company stated that during the Covid-19 pandemic and while using the Respondent's tractor to transport water tanks for distribution for the CSR Project from June to September 2020, the Claimant often instructed him to use the said tractor for personal purposes, such as collecting and delivering goods to the Claimant's premises. That additionally, the Claimant directed him to use the Respondent's tractor for farming activities at his premises, to tow the Claimant's truck that was stuck in the mud near his home and to plough his land. That the Claimant also insisted that RW7 provides training to some of the employees hired to operate the tractors but who did not possess the necessary certificates. RW7 asserted that the Claimant exerted control over



the permanent employment decisions and promotions, often disregarded the qualifications of certain employees and would grant promotions to individuals who lacked the necessary qualifications for the job.

### Claimant's Submissions

14. The Claimant submitted that the issues for determination by this Honourable Court are whether the Claimant was unlawfully and/or unfairly terminated from employment and whether he is entitled to the reliefs sought. It was the Claimant's submission that as per the decision in [Kenfreight \(E.A\) Limited v Benson K. Nguti](#) [2019] eKLR, the Court is called upon to examine the substantive and procedural tests in satisfying itself as to whether a dismissal was unfair or not. As regards the substantive test, he cited section 45(2) of the [Employment Act](#) providing that a termination of employment by an employer is unfair if the employer fails to prove that the reason for the termination is valid, a fair reason related to the employees conduct, capacity or compatibility, or based on the operational requirements of the employer. Further, it must be proved that the employment was terminated in accordance with fair procedure. He further cited section 43(1) of the [Act](#) that places the burden of proof on the employer to show that a fair reason existed at the point of termination of employment. The Claimant noted that the Investigation Executive Summary Report was an afterthought because it was produced in Court 1½ years after the Respondent had filed its defence and accompanying documents. That there was therefore no reason whatsoever to justify the termination of his employment that was orchestrated.
15. For the procedural test, the Claimant submitted that the same is as encapsulated under Section 41 of the [Employment Act](#) and noted in [Janeth Chepkemoi Machira & another v Laikipia University](#) [2021] eKLR. He submitted that his claim for procedural unfairness is three-fold, in that he was terminated on vague claims such that he could not properly answer to any of the claim; he was not afforded requisite materials by the employer to enable him properly answer to any of the claims against him; and the purported investigators who allegedly made findings against him were part of the disciplinary hearing committee members. He argued that from the allegations as contained in the Notice to Show Cause dated 28<sup>th</sup> July 2021, it was clear he was being called upon to answer to allegations about unnamed persons who could have been anyone out of the scores of employees that worked for the Respondent Company for the period concerned. That with such vague allegations, he could not sufficiently respond to any of the allegations to his prejudice. The Claimant relied on the case of [Munir Sheikh Ahmed v National Bank of Kenya](#) [2020] eKLR in which Ongaya J. held that where such allegations are vague devoid of sufficient particulars, the termination deriving therefrom would amount to unfair termination. That the Court in [Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology](#) [2014] eKLR similarly held that in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. It was the Claimant's submission that he was denied the requisite documentary material. That in [Postal Corporation of Kenya v Andrew K. Tanui](#) [2019] eKLR, the Court of Appeal emphasized the importance of any employer, before terminating the employment of any employee, to disclose to the employee any information including any document, for the employee to make a detailed response to any allegation. Lastly with regards to the purported investigators, the Claimant fronted that RW1 testified that he had participated in the investigations whereas he also sat in the disciplinary hearing committee. That the same was a case of jury being judge and executioner and therefore the subsequent decision was bereft of impartiality and would not pass to be fair process.
16. The Claimant submitted that having indicated how his dismissal was unfair/unlawful, he is entitled to the remedies as prayed in his Claim based on section 49 of the [Employment Act](#). That having worked for a period of more than 16 years and on permanent and pensionable terms, he had the expectation



that he would continue working up until his age of retirement and therefore would have expected to work for an additional 19 years. That further considering he was a reputable manager who joined the organization as an intern and rose to the position he held owing to his repute and hard work, the Court ought to consider all the foregoing factors in assessing the damages payable to the Claimant.

17. The Respondent did not file any submissions.
18. The Claimant seeks relief against the Respondent for the alleged unlawful and illegal dismissal. The Claimant was employed by the Respondent after serving as an intern. The Claimant, in his own words, executed his duties with diligence and gusto and rose over the ranks from an intern on to a senior manager. His last post with the Respondent was Technical Operations Lead, a senior position in the establishment. He served it for 16 or so years before the termination. The Court having heard the Claimant and the Respondent's many witnesses, if there ever was a person deserving of the sack, it was the Claimant. He was obnoxious, rude, callous and intemperate. He insulted his fellow workers, calling the men he interacted with, 'boys' (*kihihi*), as well as enslaving some of them by subjecting them to cruel and inhumane treatment making them work for no pay at his side hustle – the car wash and his farm. The Claimant was notified of the allegations made against him in the notice to show cause. The letter enumerated his sins and he was granted an opportunity to give his response. The Respondent accorded the Claimant the rights one is entitled to in the paradigm of natural justice. The Claimant was taken through the process one is entitled to under section 41 of the *Employment Act*. He was thereafter notified of the verdict and was also paid his terminal dues. The Claimant had no business attempting a suit against the Respondent knowing full well as he did, that the Respondent had more than sufficient reason to terminate his services. The suit is unmerited and is accordingly dismissed with costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JUNE 2024**

**NZIOKI WA MAKAU**

**JUDGE**

