



Anjia v Wamuinga & 8 others (Sued as Trustees of Kenya Railways Staff Retirement Benefits Scheme) (Cause 161 of 2020) [2024] KEELRC 1547 (KLR) (21 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1547 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 161 OF 2020**

**J RIKA, J
JUNE 21, 2024**

BETWEEN

STEPHEN OKOTI ANJIA CLAIMANT

AND

HELLEN NYARUAI WAMUINGA 1ST RESPONDENT

JOHN KIMANTHI MAINGI 2ND RESPONDENT

PHILLIP JAMUHURI MAINGA 3RD RESPONDENT

WILBERFORCE ASAVA KADIMA 4TH RESPONDENT

JACQUELINE M'MBOGAH 5TH RESPONDENT

, VICTORIA MWONGELI MULWA 6TH RESPONDENT

JAMES KARIUKI KANYEKI 7TH RESPONDENT

HENRY WAMUKOTA TOIL 8TH RESPONDENT

ELIJAH OGOTI MOKAYA 9TH RESPONDENT

**SUED AS TRUSTEES OF KENYA RAILWAYS STAFF RETIREMENT BENEFITS
SCHEME**

JUDGMENT

1. The Claimant filed his Statement of Claim dated 19th March 2020.
2. He avers that he was employed by the Respondent Scheme as an Estate Clerk, at a monthly salary of Kshs. 30,000, on 20th December 2008. His salary was reviewed gradually, to Kshs. 89,533 monthly, by the time he left employment.



3. He was allocated by the Respondent, house number A3 at Nairobi West, and later house number 2 at Felling Court, after the Respondent sold its Nairobi West property.
4. He worked for 12 years. On 25th February 2020, the Respondent terminated his contract. Termination was unfair and unlawful.
5. He was sent on compulsory leave on 29th October 2019, on the allegation that he owed the Respondent rent in arrears, at Kshs. 2,879,000. He was required to surrender the house, which he did on 4th November 2019.
6. He received a letter to show cause, dated 6th February 2020. He replied, disputing that he was in arrears of rent. His position was that the Respondent continued to receive rent from him, through salary check-off.
7. The Respondent invited him to disciplinary hearing slated for 21st February 2020. He was not given adequate time to prepare for the hearing.
8. He subsequently received the letter of termination on 25th February 2020. He was offered 3 months' salary in lieu of notice. He avers that the Respondent confused the landlord-tenant relationship for employer-employee relationship, and proceeded to terminate his employment.
9. Termination was in violation of the *Employment Act*, the Kenya Railways Retirement Benefits Scheme Staff Regulations, 2006, *the Constitution* of Kenya, and Rules of Natural Justice.
10. He avers that, he had been appointed a Building Superintendent in an acting capacity, on 22nd July 019, earning a salary of Kshs. 115,405 monthly, a position he held until 25th February 2020.
11. Other Employees who had rent arrears went on working. Termination was discriminatory. The Respondent wished to fill the Claimant's position with its preferred candidate.
12. He prays for Judgment in the following terms: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Permanent injunction restraining the Respondent or its agents, from advertising or filling the position of Estate Clerk.
 - c. Reinstatement or re-engagement without loss of benefits.
 - d. Declaration that the Respondent violated the Claimant's rights under Articles 21 and 47 of *the Constitution*.
 - e. 12 months' salary in compensation for unfair termination.
 - f. 3 months' notice at Kshs 268,599.
 - g. House, telephone, transport, and entertainment allowance at Kshs. 204,000.
 - h. Unpaid leave days.
 - i. Certificate of Service to issue.
 - j. Costs and interest.
13. The prayers were amended, through a Statement of Claim amended on 4th November 2020. A prayer for an order restraining the Respondent from interfering with the Claimant's employment, was



introduced. It was clarified that reinstatement and re-engagement are pursued, as alternatives to the monetary remedies.

14. The Claimant gave evidence and closed his case on 3rd October 2023. The Respondent did not call a witness. It was agreed on 14th February 2024, that the witness statement of Aurelia Okumu Pauline, dated 10th March 2023 is admitted as the evidence of the Respondent. The Claim was last mentioned on 14th April 2024 when the Claimant confirmed filing and service of his closing submissions.
15. The Court has not traced any Statement of Response filed by the Respondent in the Court file. The minute sheet and the file movement tools in the file, do not capture filing of a Statement of Response.
16. The Claimant relied on his witness statement dated 19th March 2020, and documents exhibited as 1-13. He restated that his contract was unfairly and unlawfully terminated. His tenancy of the Respondent's house, and employment contract were treated as one contract by the Respondent. He was issued a letter to show cause for rent arrears.
17. Cross-examined, he told the Court that he dealt with correspondence, externally and internally, relating to the Respondent. He oversaw payment of land rates and rents. He was also a tenant of the Respondent. All staff were at the time, housed by the Respondent. He did not have arrears of rent, of over Kshs. 2 million. He had arrears, but the amount was disputed. He was not involved in conflict of interest. He received letter to show cause. He attended disciplinary hearing. He was not paid terminal dues. Pay slip is not evidence of payment. Redirected, he told the Court that there was no conflict of interest involved in his work. Payment of terminal dues would have shown in his bank account.
18. Aurelia Okumu Pauline, identifies herself as the Respondent's Human Resource Manager, in her witness statement. She confirms that the Claimant was employed by the Respondent as pleaded. The Respondent is allowed by its Trust Deed, to lease its houses to its Employees and the public. The Claimant was tasked with collection of rent on behalf of the Respondent.
19. The Claimant was one of the tenants at the Respondent's Felling Court. He had rent arrears, and was asked to vacate the house. He vacated on 29th October 2019. He was surcharged for the arrears, and sent on compulsory leave, on 29th October 2019. The Respondent carried out investigations. The Claimant was taken through a disciplinary hearing, and dismissed. He was found guilty of conflict of interest and pecuniary embarrassment. He owed the Respondent rent, in the sum of Kshs. 2,892,000. His contract bound him to do everything to protect the interest of the Respondent. He was fairly heard. He was dismissed for valid reasons. The Respondent urges the Court to dismiss the Claim.
20. The issues are whether the Claimant's contract was terminated following a fair procedure, and for valid reason; and whether he merits the remedies sought.

The Court Finds: -

21. The Claimant was employed by the Respondent as its Estate Clerk through a letter dated 20th December 2008.
22. His duties included collecting rent for the Respondent, from tenants of the Respondent's apartments.
23. He pleaded that he was also appointed as a Building Superintendent by the Respondent, in an acting capacity. This appointment does not seem to the Court to be related to the issues in dispute.
24. He was a tenant of the Respondent, first at Nairobi West, and lastly at Felling Court, house number 2. He therefore held an employment contract, and a tenancy contract.



25. He was sent on compulsory leave by the Respondent on 29th October 2019, on the allegation that he was in rent arrears of Kshs. 2,879,000. He was alleged to have been involved in gross misconduct. Details of gross misconduct appear to have been, that the Claimant as the Estate Clerk responsible for rent collection, was conflicted in having rent arrears; and secondly, the large sum of arrears, placed him in a pecuniary embarrassment.
26. Procedure was largely fair, save that the Respondent does not seem to have advised the Claimant, on his right to be accompanied by a colleague or trade union representative of his choice, at the hearing.
27. He was issued a letter to show cause dated 6th February 2020; he replied on 17th February 2020; he was invited to the disciplinary hearing through a letter dated 17th February 2020; and was heard on 21st February 2020.
28. Although he told the Court that he was not granted adequate facility to conduct his defence, the nature of the charges did not require more than the 3 days availed to him to prepare, from 17th February 2020 to 21st February 2020. At the heart of the accusations was his arrears of rent, at a staggering sum of Kshs. 2,879,000.
29. He had as far back as 4th November 2019, written to the acting CEO of the Respondent, acknowledging the arrears and giving his undertaking to pay up. The accusations were therefore not such as would require weeks or months of preparation for the disciplinary hearing.
30. Procedure was largely in compliance with Section 41 of the [Employment Act](#).
31. It is however questionable if valid reasons were established, to justify termination.
32. The Claimant's contract of employment and pay slips show that he was paid house allowance by the Respondent.
33. The Respondent allocated him one of its houses. In the letter dated 7th September 2010, allocating to him a house, the Respondent directed him to pay the monthly rent, through salary check-off or in cash.
34. The Respondent would have been expected to effect salary check-off, by deducting its rent dues, from the Claimant's salary. It boggles the mind, how the Claimant ended up owing rent to the Respondent, in the amount of Kshs. 2,879,000, while the tenancy agreement authorized the Respondent /Landlord, to recover its rent from the Claimant's salary. The Claimant did not administer the Respondent's payroll.
35. The charges of conflict of interest and pecuniary embarrassment were farfetched. The Respondent was aware that the Claimant was its Estate Clerk, and responsible for rent collection, when it allocated him a house. There was no conflict for the Claimant to declare. His residence of the Respondent's house, and role as an Estate Clerk, charged with the collection of rent, originated from the Respondent. There was nothing for the Claimant to disclose or declare. It is also not comprehensible, how the Claimant was involved in pecuniary embarrassment, while tenancy agreement, enabled the Respondent to recover rent monthly, from the Claimant's salary. If the Respondent failed to do so, and the rent accumulated as it did, any pecuniary embarrassment occasioned to the Claimant was not his own creation; it would be blamed on the failure by the Respondent to effect check-off.
36. It was the statutory obligation of the Respondent, under Section 31 to avail the Claimant a house, at or near his place of work, or pay him a reasonable amount as house allowance, under Section 31 of the [Employment Act](#). The Respondent offered the Claimant housing and paid him house allowance, and was expected to recover the rent from the Claimant by check-off.



37. There is persuasion in the evidence of the Claimant, that the Respondent appears to have confused the employment contract, with the tenancy agreement.
38. Rent arrears, ought to have been pursued and enforced, under the tenancy agreement and tenancy laws. It was difficult to justify the accusations on conflict of interest and pecuniary embarrassment, in a matter involving tenancy dispute.
39. The Claimant indeed, acknowledged his rent delinquency, and offered to pay up through the contracted mode of payment- salary check-off- way back on 4th November 2019. In her statement, Pauline explains that the Respondent sent the Claimant on compulsory leave, and surcharged him for rent.
40. He surrendered possession of the house to the Respondent, and the prudent thing for the Respondent was to take up his offer to pay up the rent arrears through check-off. It is not clear why the Respondent opted to invoke the disciplinary procedure, in a tenancy dispute. Disciplinary action, while the Respondent had opted to surcharge the Claimant, and the Claimant had conceded to payment through check-off, was illogical.
41. Termination was not based on valid reason or reasons, under Sections 43 and 45 of the [Employment Act](#).
42. The prayers for reinstatement or re-engagement are not reasonable, practicable or legally permissible. The Claimant left employment over 3 years ago. He was an Estate Clerk, and left employment because the Respondent was of the view that he did not collect its rent, as instructed. He does not suggest to the Court in what role, he would fit in, on re-engagement. The management of the Respondent's properties does not appear to be a large enterprise, akin to a manufacturing industry, with multiple employment positions, such as would enable the Claimant go back, to the same or similar role as he discharged. His role as Estate Clerk was limited. These prayers are declined.
43. There is no justification in restraining the Respondent permanently, from interfering with a contractual relationship that ended in 2020. There is no logic in restraining the Respondent from employing another person to the position of Estate Clerk. The Claimant was never employed as an Estate Clerk for life. The Court is not able to agree with the Claimant, that his constitutional rights have been violated. The dispute between him and the Respondent, revolves around employment and tenancy contracts, and can adequately be dealt with under the employment and landlord/ tenant legislation. There is no need to draw in the organic law in this dispute.
44. He worked for 12 years, from 2008 to 2020. He did not cause, or contribute, to the circumstances, leading to his dismissal. His contract was open-ended. The contract states that he was permanent and pensionable. The Respondent did not offer evidence, to establish that any terminal dues were paid to the Claimant. His wish was to be reinstated or re-engaged and to continue drawing an income, until retired. There is no evidence from the Respondent, to dispute why he should not be maximally compensated. The Court has denied him the remedies of reinstatement or re-engagement, and instead allows him the prayer for compensation for unfair termination, equivalent of 12 months' gross salary at Kshs. 1,074,396.
45. He was entitled to termination notice of 3 months, or 3 months' salary in lieu thereof. He is granted notice at Kshs. 268,599.
46. He has not established his prayer for house, transport and telephone allowances at Kshs. 204,000. Why does he claim house allowance, while he owned up being in rent arrears? His contract provided for house allowance, which was paid. These prayers are declined.



47. The prayer for unpaid leave days is unspecified.
48. Certificate of Service to issue.
49. Costs to the Claimant.
50. Interest granted at court rate, from the date of Judgment, till payment is made in full.

It Is Ordered:-

- a. It is declared that termination was unfair and unlawful.
- b. The Respondent shall pay to the Claimant equivalent of 12 months' salary in compensation for unfair termination at Kshs. 1,074,396 and notice at Kshs. 268,599 – total Kshs. 1,342,995.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.
- e. Interest granted at court rate from the date of Judgment, till payment is made in full.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 21ST DAY OF JUNE 2024.

JAMES RIKA

JUDGE

