



**Saoyo v Baus Optical (Cause 116 of 2018)  
[2024] KEELRC 2667 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2667 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 116 OF 2018  
L NDOLO, J  
OCTOBER 31, 2024**

**BETWEEN**

**STELLA TECLA SAOYO ..... CLAIMANT**

**AND**

**BAUS OPTICAL ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. Stella Tecla Saoyo, the Claimant in this case, was an employee of Baus Optical, having joined at the entry level of Sales Executive and later being elevated to the position of Branch Manager. She worked from 7<sup>th</sup> March 2013 until 12<sup>th</sup> May 2017, when she was summarily dismissed on allegations of gross misconduct. She thereafter brought this claim alleging wrongful and unfair dismissal by the Respondent.
2. The Claimant's claim is documented by a Memorandum of Claim dated 6<sup>th</sup> February 2018 and the Respondent's defence is contained in a Memorandum of Response dated 27<sup>th</sup> February 2018. At the trial, the Claimant testified on her own behalf and thereafter called Mandela Chege. The Respondent called its Operations Manager, Maurice Kyalo.

**The Claimant's Case**

3. By a contract of employment dated 23<sup>rd</sup> April 2013, the Claimant was employed by the Respondent, as a Sales Executive effective 7<sup>th</sup> March 2013, subject to a probationary period of three (3) months. She worked on six (6) months' renewable contracts, with the last contract being issued on 1<sup>st</sup> April 2017.
4. The Claimant rose to the position of Branch Manager and was put in charge of the Nyeri Branch. In June 2016, while working in Nyeri, the Claimant lost a pregnancy upon which she requested for a transfer to Nairobi where her husband was based. She was transferred to Buruburu Branch and after



two weeks, she was transferred to Ongata Rongai Branch. She claims to have relocated her matrimonial home from Ruaka to Ongata Rongai.

5. On 10<sup>th</sup> April 2017, the Claimant was transferred yet again to the Hilton Branch. She states that at this time she was four (4) months pregnant. By a letter from her Advocates, the Claimant asked the Respondent to reconsider this transfer but the Respondent declined. On 12<sup>th</sup> May 2017, the Claimant was dismissed.
6. The Claimant states that the dismissal was wrongful and unfair. She specifically blames the Respondent for destabilising her through intermittent transfers. Further, the Claimant alleges that she was discriminated against, on account of pregnancy. She now claims the following:
  - a. 1 month's salary in lieu of notice;
  - b. 12 months' salary in compensation;
  - c. Service pay for 4 years;
  - d. Salary for 12 days worked in May 2017;
  - e. Damages for wrongful dismissal;
  - f. Costs plus interest.

### **The Respondent's Case**

7. In its Memorandum of Response dated 27<sup>th</sup> February 2018, the Respondent admits having employed the Claimant on 6 months' renewable contracts.
8. While denying the Claimant's claim of wrongful and unfair dismissal, the Respondent states that the Claimant was summoned for disciplinary proceedings vide a show cause letter dated 8<sup>th</sup> May 2017. The Respondent adds that the Claimant failed to show cause why she should not be summarily dismissed, thus necessitating a summary dismissal.
9. The Respondent concedes having transferred the Claimant from Nyeri to Nairobi, at her request. The Respondent further admits that the Claimant was transferred to Ongata Rongai but denies the Claimant's allegations that the transfers were intermittent and destabilising.
10. The Respondent claims that the Claimant's work was unsatisfactory as she started asking for sick leave every other day on account of pregnancy. The Respondent adds that the Claimant was advised to take unpaid leave to run until delivery, after which she was to be granted 3 months' paid maternity leave. The Claimant is said to have declined the Respondent's suggestion.
11. The Respondent also concedes having notified the Claimant of a decision to transfer her to the Hilton Branch. The Respondent claims that the Claimant asked to be assigned light duties in line with her doctor's recommendation. Upon considering the Claimant's request, the Respondent cancelled her appointment to a managerial position and re-appointed her to the position of Sales Executive, which she is said to have willingly accepted.
12. The Respondent states that the position of Sales Executive was unavailable in Ongata Rongai, hence the Claimant's transfer to Hilton Branch. It is pleaded that on 13<sup>th</sup> April 2017, the Claimant notified the Human Resource Officer that she would not be reporting to Hilton Branch, citing her pregnancy and difficulty in commuting from Ongata Rongai.



## Findings and Determination

13. There are two (2) issues for determination in this case:
  - a. Whether the Claimant's dismissal was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

## The Dismissal

14. The Claimant's dismissal was communicated by letter dated 12<sup>th</sup> May 2017, stating as follows:

“Dear Madam,

Re: Summary Dismissal

The above matter refers.

The company is granting you summary dismissal effective today 12/5/2017 because of your gross misconduct.

On 10<sup>th</sup> April 2017 you defied orders from management of your transfer from our Rongai Branch to Hilton Branch.

You attended one of our staff's wedding event on 15<sup>th</sup> April 2017 despite your informing management that you were on sick leave on the material day.

You refused to sign the Staff Discipline Memo which is mandatory and was issued all company staff despite several attempts from management to explain your reasons why.

Based on the above you have defied company orders which is against company policies and procedures as per the staff manual. Further you have violated provision of *the constitution* and Labour Laws. Note that this is an act of insubordination that warrants summary dismissal.

You are hereby required to hand over all company property/equipment in your possession to your immediate manager/supervisor with immediate effect.

Sincerely,

(signed)

Aaron Chen

General Manager & C.E.O”

15. According to the dismissal letter, the Claimant was dismissed for defying an order transferring her from Ongata Rongai to Hilton Branch. The Claimant was also accused of refusing to sign a staff discipline memo.
16. On her part, the Claimant fingered the Respondent for subjecting her to intermittent transfers, thus destabilising her at a time she was battling pregnancy complications. It is on record that the Claimant was first transferred from Nyeri to Buruburu, Nairobi upon her request, after losing a pregnancy.
17. Barely two weeks after reporting to Buruburu, the Claimant was rerouted to Ongata Rongai. She appears to have taken this transfer well and even went ahead to relocate her residence in the month of October 2016. She however did not stay long in Ongata Rongai as she was issued with a transfer



letter dated 10<sup>th</sup> April 2017 relocating her to Hilton Branch in the Central Business District, effective 18<sup>th</sup> April 2017.

18. At this time, the Claimant was four months pregnant and there is evidence that the pregnancy was delicate, a fact that the Respondent was evidently aware of. This is confirmed by the Respondent's letter dated 10<sup>th</sup> March 2017, by which the Claimant was downgraded from the position of Branch Manager to Sales Executive. This letter states in part:

“You have taken several sick offs where the doctor recommended that you be allocated light duty and avoid stressful work due to your maternal health conditions. Most recently the doctor recommended that you take a seven day rest....Your current position is very demanding and the management is concerned that based on your health concerns and the doctor's directive you might not be able to handle the demanding and dynamic role that comes with it.”

19. The Claimant asked the Respondent to reconsider her transfer to Hilton Branch but her request was not granted; she was issued with a summary dismissal letter on 12<sup>th</sup> May 2017. The events leading to the dismissal are in dispute; the Claimant states that she was not subjected to any disciplinary process prior to the dismissal.
20. In his testimony before the Court, the Respondent's Operations Manager, Maurice Kyalo gave contradictory accounts. During cross examination by the Claimant's Counsel, he stated that the Claimant was not issued with a show cause letter, and she did not attend a disciplinary hearing. Kyalo sought to change this account in re-examination by the Respondent's Counsel.
21. As held by the Court of Appeal in *Abudi Ali Mabadhi v Ramadhan Said & another* [1999] eKLR evidence that is contradictory is worthless and must be rejected. I therefore reject the testimony of Maurice Kyalo and adopt the Claimant's testimony regarding the events leading to her dismissal. With this finding, I hold that the allegations levelled against the Claimant which led to her dismissal were not proved at the shop floor as required by Sections 41 and 43 of the *Employment Act*.
22. My conclusion in this regard is bolstered by the Respondent's failure to accommodate the Claimant during her difficult pregnancy, going as far as suggesting that the Claimant should take unpaid leave during the gestation period and downgrading her position from Branch Manager to Sales Executive. The Claimant's dismissal was therefore wrongful and unfair and she is entitled to compensation.

## Remedies

23. Consequently, I award the Claimant twelve (12) months' salary in compensation. In making this award, I have taken into account the Claimant's length of service, the finding that she did not contribute to the dismissal and the Respondent's callous behaviour in handling her case; with particular focus on the failure to accommodate the Claimant during a delicate pregnancy.
24. I further award the Claimant one (1) month's salary in lieu of notice and salary for 12 days worked in May 2017.
25. In light of the Claimant's admission that the Respondent remitted her National Social Security Fund (NSSF) dues, the claim for service pay fails and is disallowed.
26. In the end, I enter judgment in favour of the Claimant as follows:
- a. 12 months' salary in compensation.....Kshs. 276,000



- b. 1 month's salary in lieu of notice.....23,000
- c. Salary for 12 days in May 2017.....9,200
- Total.....308,200

- 27. This amount will attract interest at court rates from the date of judgment until payment in full.
- 28. The Claimant will have the costs of the case.
- 29. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OCTOBER 2024**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Sigoma for the Claimant

Mr. Botany for the Respondent

