



**Hindira v Universal Corporations Limited (Cause E769 of 2022)
[2024] KEELRC 2845 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2845 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E769 OF 2022
DKN MARETE, J
OCTOBER 30, 2024**

BETWEEN

MICHAEL HINDIRA CLAIMANT

AND

UNIVERSAL CORPORATIONS LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of the Claimant’s Statement of Claim dated 25th July, 2022. The issue in dispute is therein cited as;

Unfair Termination of employment and refusal by the Respondent to pay terminal benefits due to the claimant.
2. The Respondent in a Memorandum of Response dated 19th December, 2022 denies the claim and pray that it be dismissed with costs.
3. The Claimant’s case is that from 4th October, 2018 the Respondent engaged the services of the claimant as an Assistant Documents Engineering Department at a gross monthly salary of Kshs.43,563.00.
4. The claimant’s further case is that he served the Respondent diligently and loyalty until the termination of his employment contract which was before its expiry or lapse.
5. The Claimant’s other case is that;
 - a. The Grievant/Claimants’ observed terms and conditions of employment at the time of employment.
 - b. The Claimant terms of employment obligation and/or duties were basically as Assistant Documents Engineering Department.



- c. The Claimant without being given any prior warning and/or any accusation against him and without being provided with reasons and without being given a chance to be heard was unilaterally removed from his employment.
 - d. The Claimant several attempts thereafter to regain access to his place of employment and/or to have audience with the Respondent management have been denied and thwarted by Respondent.
 - e. The Respondent conduct had left no doubt that the Claimant services have be terminated when he is ready and willing to lawfully discharge his duties.
 - f. The Claimant was never given the opportunity to defend himself or appear himself and or appear before anybody to give his fashion (sic) of the story within the Respondent Company's Authority.
6. He avers that his dismissal and or the Claimant dismissal and/or termination of employment was therefore illegal, null, void and unconstitutional an affront to the principles of natural justice and is therefore entitled to the following;
- I. Three month's salary in lieu of notice =Kshs.130,689.00
 - II. Service pay $(43,563/30 \times 15 \times 1 = \text{Kshs.}21,782.00$
 - III. Annual leave pays $(43,563/30 \times 21 \times 1) = \text{Kshs.}30,494.00$
 - IV. Payment for early retirement $(43,563 \times 4 \text{ months}) = \text{Kshs.}174,252.00$
- Total =Kshs.357,217.00
1. A declaration that the termination and/or dismissal of the Grievant from employment was unlawful and illegal.
 2. Terminal dues and statutory compensation to the totalling of Kshs. 357,217.00.
 3. Interest of 2 above from the date of employment until payment in full.
 4. An order that the Respondent do forth with issue the Grievant with a certificate of services.
 5. Any other statutory entitlement.
 6. Costs of this case.
7. The Respondent's case is that the Claimant was employed by the Respondent as a Document Assistant at a gross salary of Kshs.17,125.00. He was lawfully dismissed for gross misconduct and this after being accorded a proper hearing as required of the law.
8. Again, and in response to paragraph 6 of the statement of claim, the Respondent avers that the Claimant was summarily dismissed from employment after he engaged in a fight with a fellow employee while at work where by the Claimant caused the said employee serious injuries.
9. The Respondent avers that before his dismissal, the Claimant was accorded a proper disciplinary hearing that entailed a notice to show cause, letter inviting claimant to a disciplinary hearing, a written explanation by the Claimant for his gross misconduct among other steps as envisaged in law. The dismissal was therefore fair, lawful and procedural and therefore the Claimant's claims that the same was illegal, null, void or unconstitutional are therefore completely baseless.



10. The Respondents further denies the relief sought by the Claimant as follows;
- i. In respect of the Claimant's prayer for three (3) month's salary in lieu of notice, the Respondent denies the same as lacking in basis. With the Claimant having been summarily dismissed, he was not entitled to any payment in lieu of notice. In any event, the law only envisages a one (1) month's payment in lieu of notice in cases of termination but the Respondent avers that the Claimant was not even entitled to the same having been summarily dismissed for good cause.
 - ii. In respect of the Claimant's prayer for service pay, the same is denied and the Respondent avers that the Claimant was a member of National Social Security Fund (NSSF) where contributions were done by the Respondent for his benefit and by dint thereof, he is statutorily precluded from claiming service pay.
 - iii. With respect to the claim for accrued leave days, the Respondent denies the same and avers that the Claimant duly took all his leave days and where any were not taken, the same were paid for in cash hence the Claimant's claim is without basis.
 - iv. With respect to the Claimant's prayer for four (4) month's salary in early retirement, the Respondent denies the same and avers that the Claimant was dismissed for gross misconduct and was not sent on early retirement and therefore the prayer is totally lacking in merit.
11. The issues for determination therefore are;
1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
12. The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in his written submission dated 14th November, 2023 reiterate the case of unlawful termination of employment.
14. It is his case that submission that the purported termination of his employment on grounds of redundancy vide a letter 4th October, 2018 was improper for being un-procedural and a contravention of section 40(1) of the *Employment Act*, 2007. The notice of redundancy were issued to ministry of labour instead of the area labour office at Mombasa road and was not copied to the Claimant. Yet a look at the letter of termination of employment in the Claimant's bundle of documents indicate that the Claimant's termination from employment was gross misconduct. He was in breach of the Respondent's policy by fighting and injuring a colleague at the work place. Redundancy did not arise in the circumstances.
15. The Respondent in his written submission dated 4th December, 2023 reiterate his case and submit that the Claimant was dismissed from employment for gross misconduct. All necessary disciplinary process was undertaken. He was issued with show cause letter and invited to a disciplinary hearing, heard and dismissed as such. He was paid his dues and left employment.
16. The Respondent's bundle of documents is supportive of a clear cut disciplinary process in that the claimant was invited and taken through a hearing where he was found culpable of involving himself in a altercation plus fight with a colleague, Lukes Lino. He was summarily dismissed but left with



Kshs.54,883.00 being his computed the annual benefits. This is collaborated by the witness statement of Boniface Molondo, the Engineering Manager of the Respondent.

17. The Respondent's submission further comes out as follows;

The burden of proving unfair termination is always on the Claimant, it is only after the Claimant has established a *prima facie* case of unlawful termination does the burden shift to the Respondent to prove that the termination was lawful. This is in line with Section 47(5) of the *Employment Act*;

47 (5) for any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

13. The standard of proof is set out under section 47(5) of the *Act*. In terms thereof, the employee shall adduce *prima facie* evidence that there was no valid reason to dismiss him from employment and once that is done the employer bears the burden of justifying the dismissal. In other words, the Respondent bears the evidential burden of rebuttal. If the employer is unable to rebut the evidence by the Claimant, then the employee is said to have proven that there was no valid reason to dismiss him on a balance of probabilities.

Again,

In *Eastern Produce (K) Ltd V. John Lumumba Mukosero*, Eldoret Civil Appeal No. 25 of 1998, it was held,

The fact that one party has filed a suit or made a claim by itself is not proof that there is a *prima facie* case which the defendant must rebut. It is for the plaintiff to prove liability and this onus of proof does not shift whatsoever”

18. The Claimant has failed to satiate a case for unlawful termination of employment. He fails the evidentiary test of such proof. In the circumstances, a case of lawful termination of employment founds itself and I hold as such.

19. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment he becomes disentitled to the relief sought.

20. I am therefore inclined to dismiss the claim with orders that each party bears their cost of the same.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Omondi holding brief for Seda instructed by Orwa Seda & Co. Advocate for the Claimant.

Mr. Waihaki instructed by Mumbi & Company Advocate for the Respondent.

