



Akaranga v Shah & another (Employment and Labour Relations Cause E715 of 2022) [2024] KEELRC 2454 (KLR) (4 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2454 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E715 OF 2022
AN MWAURE, J
OCTOBER 4, 2024**

BETWEEN

ROSELYNE MUNAJI AKARANGA PETITIONER

AND

MR MANISH SHAH 1ST RESPONDENT

MRS SHAROJ SHAH 2ND RESPONDENT

JUDGMENT

Introduction/Claimant's Case

1. The claimant filed a claim dated 27th September, 2022. She claims that she was employed by the respondents who were a husband and a wife.
2. She says her salary was Kshs 105,000/- per month paid on weekly basis. She says her salary was increased until by 2021 she was earning Kshs 150,000/-.
3. The claimant says that on 21st April 2022 the 2nd respondent without warning or justifiable cause of notice she was verbally informed that her employment with the respondent had been summarily dismissed. She says the termination caught her by surprise as she had not committed any offence to qualify to be referred as gross misconduct.
4. She says that despite being promised to be paid her terminal dues she has not been paid the same to date.
5. She also says that her NHIF and NSSF dues were not being paid to the relevant authorities.
6. She claims damages as set out in the memorandum of claim.



Respondent's Case

7. The respondent filed their response dated 30th November 2022. The respondent avers that the claimant worked for the respondent from April 2016 to April 2022 when she absconded from duty and stopped working abruptly.
8. The respondent said he produced record to show vouchers of wages and advances and to the claimant and in particular Kshs 15,000/- loan which is till outstanding.

Submissions

9. The court considered the submissions by the claimant dated 28th May 2024. The respondents however do not seem to have filed their submissions and also did not give their evidence in court.

10. Analysis and Determination

- a. The issue which the court is to consider in this matter is: Whether the claimant was unlawfully terminated or did she abscond duty.
 - b. The court will also consider if the claimant is entitled to the reliefs sought.
11. The jurisprudence in the cases of the employment laws in Kenya is now settled that for an employee to be terminated from employment the employer must show he had a valid reason to terminate the employee and that he followed the right procedure. Section 45(1) of the *employment act* provides as follows:

“No employer shall terminate the employment of an employee unfairly”.
 12. Section 43 as well of the said *Employment Act* also provides as follows:

“In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.”
 13. The respondent in his response to the claim dated 22nd November 2022 did not give any valid reason as to why they terminated claimant. They just allege casually that she absconded her duties and disappeared from the workplace. They have not given details of the said desertion or any efforts made to recall the claimant and find out if she was interested in proceeding with the employment.
 14. The claimant in her pleadings which she adopted at the hearing the claimant states that on 21st April 2022 the claimant was verbally informed that her employment had been summarily terminated. The respondent did not vail any evidence to controvert the allegation by the claimant that she was verbally dismissed and was not given any reasons for her dismissal.
 15. If the claimant absconded from her employment as alleged by the respondent the respondent should proactively have demonstrated efforts made to find out why the claimant had not gone to work. They should also have invited her for a disciplinary hearing on the reason of desertion. The law on termination of an employee is that he must be taken through fair disciplinary process as provided in section 41 of the *Employment Act*. The said section 41 of *Employment Act* provides as follows:

41(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to



the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

16. Desertion of employment is a gross misconduct under section 44(4)(a) of the Employment Act and it provides as follows:
 - “(a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;”
17. In the case of Shotara v Orange Garage for WorldCo Ltd Cause No 1770/2017 the trial judge observe that even though desertion /absconding is a valid ground for summarily dismissal an employee under section 44(4)(a) and (c) of the Employment Act the employer however must show he made reasonable efforts to reach the employee and inform him or her he was considering termination of the employee from employment for the reason of desertion before taking the decision to terminate.
18. In this case the respondent did not tender any such evidence and they only mentioned in their response to the claim that the claimant absconded her duty.
19. The court finds the respondent did not therefore establish their reason for terminating the claimant from employment and at the same time there is no proof of desertion.
20. The court is satisfied the claimant has proved a case for unlawful termination from employment and so judgment is entered in her favour.
21. The court proceeds to award the following reliefs to the claimant.
 - a. One month salary in *lieu* of notice Kshs 15,000/-
 - b. Prayers c for unpaid salary for April 2022 is awarded Kshs 10,500/-.
 - c. Prayers D, E, F, G, H, I, J are not proved and are declined and also (i), M, N none of these are proved.
 - d. Claimant is awarded NSSF and NHIF dues for 2016 June to December 2016 at Kshs 7,000/.
 - e. Damages for unlawful termination are awarded at an equivalent of 6 months and so amounts to Kshs 15,000x6 = 90,000/-
 - f. The court awards interest at 14% p.a from date of judgment till full payment.
 - g. Court also awards costs to the claimant. Total amount is Kshs 122,500/-.

Counterclaim

The counterclaim by the respondent of Kshs 15,000/- is not proved and so is declined as it is not clear the terms under which it was advanced and terms of repayment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4TH DAY OF OCTOBER, 2024.

ANNA NGIBUINI MWAURE

JUDGE

ORDER



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the [Civil Procedure Rules](#), which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the [Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the [Constitution](#) and the provisions of Section 1B of the [Procedure Act](#) (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

