



**Namachi v National Transport and Safety Authority (Cause
728 of 2019) [2024] KEELRC 2496 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 728 OF 2019
M MBARÚ, J
OCTOBER 3, 2024**

BETWEEN
MAUREEN NANYANGA NAMACHI CLAIMANT
AND
NATIONAL TRANSPORT AND SAFETY AUTHORITY RESPONDENT

JUDGMENT

1. The respondent employed the claimant on 16 January 2014 as a graduate trainee. On 29 October 2014, she was confirmed and posted to the Driving Licence Department and in the year 2016, she was assigned to the Driving Test Unit located in Karen. Her role was writing, signing and issuing driving licences until 4 April 2017 when she was deployed to the Driving Licence Section.
2. The claim is that on 5 December 2018, the claimant was issued with a notice to show cause why disciplinary action should not be taken against her over the alleged fraudulent endorsement of driving licences.
3. The claim is that the show cause notice was issued by the director general contrary to the human resources policy of the respondent. The claimant was also transferred to the Registration and Transfer Department in January 2019.
4. On 30 January 2019, the claimant was arrested alongside other registration and transfer staff by Anti-Terrorism Police Officers for alleged fraudulent registration and transfer of motor vehicles. She was detained and made to write statements and later released on condition that her phone be left behind and not to report to her place of work and keep on reporting to the police unit daily which she did until March 2019 when she was cleared.
5. Upon return to work, the claimant was transferred to the Nyeri office with effect from April 2019. On 10 May 2019, she was invited to a disciplinary hearing for allegedly being involved in the fraudulent



- endorsement of driving licences. She attended and her case was heard but this was done contrary to the human resources policy of the respondent.
6. On 2 September 2019, the respondent issued the claimant with a notice of summary dismissal.
 7. The claim is that the NTSA-approved HR Manual provides that the disciplinary committee should report for the disciplinary hearing but should not give any recommendations of what they believe should happen to the claimant. But in this case, the respondent did not adhere to these provisions since the committee gave a recommendation which was upheld by the director general. At the time, the claimant could not access her place of work upon being dismissed. There was no prior warning and the claimant is seeking the following;
 - a. 3 months' notice pay at Ksh.121,66 x 3 = 365,001;
 - b. General damages for unfair termination of employment, stress and mental anguish;
 - c. An order of reinstatement and all terminal dues;
 - d. Punitive damages;
 - e. Constitutional damages;
 - f. Proof of statutory remittances to the NSSF and NHIF;
 - g. Certificate of service;
 - h. Costs of the suit.
 8. The claimant testified in support of her case that her employment with the NTSA was diligent and was responsible for processing and issuing driving licences from July 2014. In the year 2015, a decision was made to move driving licence operations from the semi-manual KRA system to a government online platform the E-Citizen system. The claimant was appointed by the director to spearhead the project.
 9. In the year 2016, the department under which the claimant was working was moved from Times Towers to a new building. There was migration of data in preparation for the new NTSA system, TIMES to facilitate issuance of the new generation Drivers Licence.
 10. The claimant testified that on 5 December 2019, she was issued with a show cause notice by the director general who is the CEO. The allegations were that she had done unprocedural endorsements of class A, publications and replacement of genuine licences. The claimant replied to these allegations and denied and indicated that due to the transition from KRA to the E-Citizen system, large numbers of data were missing and needed to be updated due to errors. The updating was occasioned by customer complaints and she had authority from the Director of Registration and Licencing who was the head of the directorate to make amendments.
 11. On 10 May 2019, the claimant was invited to attend a disciplinary hearing by the director general and she defended herself but was then issued with notice of summary dismissal which was unfair and the claims made should be allowed. She had done nothing wrong and no particular offence was proved.
 12. Upon cross-examination, the claimant testified that she was issued with a notice to show cause and attended a disciplinary hearing. She did not file any appeal.
 13. The claimant testified that the allegations made against her were that she facilitated other persons to use her staff credentials to access and make changes to the logs and when responding to these allegations she did a general response without giving specifications. The respondent was aware of the noted incidents and complaints by drivers seeking services and errors in data. In February 2018 the system had a



problem and when she tried to log into the system, she assisted other employees using her credentials. They used her credentials to log into the system which was authorized by her supervisor. An internal memo was issued to all staff not to share login credentials. Through a letter dated 14 December 2018, the respondent wrote to the claimant indicating that she had shared her account credentials against policy.

14. The claimant testified that the system was hacked and her account credentials used. She did not make any report and has no evidence of such a matter.
15. The claimant admitted that she was arrested by the Anti-Terrorism Police Unit and then cleared. She wrote her statement on 24 October 2019. She was arrested due to fraudulent transfer of motor vehicles and following the terrorist attack at the Dusit Hotel in Nairobi. The entire department staff were arrested. She was created.
16. The EACC wrote a letter to the respondent indicating that the claimant had received Ksh.7, 000 from a security guard to facilitate registration of a motor vehicle. She was invited to the disciplinary hearing and a recommendation that her employment be terminated by summary dismissal. The claimant's case is that she was not issued with any investigations report to allow her to defend herself and is aware she was among 6 other employees dismissed by the respondent. Under the HR policy manual, clause 3 deals with gross misconduct and bribery and fraud are among the listed matters that lead to summary dismissal.
17. In response, the respondent admitted that the claimant was employed from October 2014. In April 2019 the claimant was placed under NTSA Grade 8 and informed that the HR manual applied to her employment together with the employment contract.
18. The claimant was issued with a notice to show cause in December 2018 for misconduct. It was gross misconduct for the claimant to engage in conduct that put to risk the safety of other users and unqualified persons in the data system of the respondent. The claimant had put to risk the safety of other users as unqualified drivers were introduced into the respondent's system causing harm to the members of the public. In August 2019 the claimant was summarily dismissed due to this misconduct. She was invited to the disciplinary hearing and the same matters were subject to EACC investigations over the claimant's involvement in corruption and bribery activities as an employee of the respondent. According to EACC, there was sufficient evidence that revealed criminal culpability on the claimant and the matter was reported to the DPP for concurrence and charges.
19. The response is that the respondent invited the claimant to attend a disciplinary hearing upon reasonable cause and genuine belief that she had engaged in gross misconduct. She failed to give satisfactory responses over her conduct leading to summary dismissal.
20. In evidence, the respondent called Margaret Kabochi the deputy director and head of human resources and administration who testified that in the year 2017, the respondent received various complaints on the issuance of driving licences which included specific complaints against the claimant. On 5 December 2018, she issued the claimant a notice to show a cause relating to a bribery incident of publication and issuance of driving licenses where she had replaced genuine cases without procedural endorsements of drivers. All the particulars of the cases and complaints were in the notice to show cause.
21. Ms. Kabochi testified that the claimant responded to the show-cause notice. The claimant alleged that her system and credentials had been hacked but she had not made any such report to the respondent. There is no incident report of any hacking into the system. The claimant was invited to the disciplinary hearing and failed to give satisfactory responses or explanations to the allegations made against her.



22. At the close of the hearing, the parties agreed to file written submissions. These are put into account and the issues which arise for determination are whether there was an unlawful and unfair termination of employment; whether the remedies sought should be issued and who should pay costs.
23. The claimant has admitted that she was arrested and wrote her statement with the Anti-Terrorism Police Unit following alleged fraudulent activities concerning her duties and employment with the respondent. She was later released.
24. It is also the respondent's case against the claimant that the EACC also commenced investigations against her and recommended that she be charged.

These facts are not denied.

25. However, in employment and Labour relations, an employer is allowed to formulate policies and procedures with regard to securing its business. The respondent had an HR Manual with an outline of various human resources matters including what constituted a case of misconduct and gross misconduct. This is allowed under Sections 10, 12 and 13 of the *Employment Act*. An employer has the prerogative to pass a policy that addresses matters that constitute gross misconduct over and above the matters set out under Sections 41 and 44 of the *Employment Act*.
26. The claimant was hence regulated under the employment contract and the respondent's HR manual and policy.
27. Through notice dated 30 August 2019, the respondent terminated the claimant's employment through summary dismissal on the basis that following a show cause notice dated 5 December 2018 the claimant was alleged to have been involved in fraudulent endorsement of driving licences and system logs indicating the specific actions that she undertook which was sufficient evidence that she had replaced genuine drivers' records with those of persons whose qualifications could not be ascertained. These acts occurred between 10 March 2016 to 30 August 2018. Such conduct went contrary to section 3 of the HR Policy Manual.
28. In the notice to show cause dated 5 December 2018, the particulars of the allegations made against the claimant were set out. The respondent noted the conduct of the claimant;

... Analysis of your activity logs on DL records for the day of 23rd February 2018 between 2200hrs and 2350hours revealed forty-six (46) cases of publications. It was also noted that the CoCs and file reference numbers of the records did not match the records in DLIS and there was a clear trend in the sequence of the CoC and file reference numbers. Further, it was observed that the records you published were later archived on 13th February 2018 by another officer. In addition, fourteen (14) cases where genuine driver's records were replaced with those of individuals whose qualifications could not be ascertained in the period between 10th March 2016 and 30th August 2018 were flagged. There was also an unprocedural endorsement of Class 'A' for twenty (20) drivers without evidence of payment of narration in the system. ...

29. In reply to the show cause notice, on 14 December 2018, the claimant noted that in the transition from KRA licencing systems to the NTSA online platform, a large number of cases had not been updated in the KRA system. Upon integration, some records did not appear in the NTSA online system.
30. The claimant also responded that in the year 2016, she was made acting supervisor DL and was given the rights to publish licences that had not been captured in the KRA system and update of endorsements that were not updated once the payment was done and the licences signed in Class 'A'.



31. Further, the claimant responded and noted that the respondent was aware of the matters she was faced with and she attended to the necessary updates but in February 2018 the dataflow system had a problem with receiving codes once an officer logged in, due to the fact that is was acting supervisor, I would facilitate people with my log in credentials to enable them to perform their duties.

This was the crux of the matter.
32. During the hearing, the claimant was put to great task to explain her response and role in allowing other employees in her department to use her login credentials. Indeed, the claimant admitted that during this period, she allowed other employees to use her system log credentials whereas each employee was required to use their credentials. Within this period, the matter leading to the notice to show cause, fraudulent activities leading to 46 cases of driver's license publication, 14 cases of driver's records replaced, and 20 cases of endorsement of Class 'A' drivers without following procedure arose.
33. The claimant admitted that she was aware of the policy not to share login credentials with employees.
34. The claimant was also aware that where there was a breach of her credentials, this had to be brought to the attention of the respondent immediately and in writing. She did not do as per the HR Policy requirements. She failed to secure data integrity in her department. The respondent analyzed the system logs and flagged out the claimant's activities. The claimant did not challenge these activities under her credentials.
35. The claimant was invited to attend a disciplinary hearing and failed to give a satisfactory response. Her case that her credentials and account had been hacked and that she informed the administrator, Reuben Ngeso was without evidence. There was no written report about such a matter. All login codes were traced to her phone number 072567...87 and she confirmed that this was her number.
36. The claimant failed to give a proper account as to why she procedurally endorsed driver's licences. She was given the cases of Githumbi Mahenia whose details and records were changed with those of Njuguna Wanjiru and those of Nicholas Odhiambo Ogone changed and replaced with those of Patriciah Mbithese Mwanza.
37. The claimant failed to explain these disparities under her name, credentials and system logs.
38. Under the provisions of Section 44(4) of the *Employment Act*, the employer is allowed to terminate employment by summary dismissal for gross misconduct. Under Section 3 of the NTSA HR manual and policy, the respondent defined matters that constituted gross misconduct. These included fraud, and failing to maintain integrity and honesty in the discharge of one's duties. Indeed, section 44(4) (c) of the Employment requires that;
 - (c) An employee willfully neglects to perform any work which it was his duty to perform, or if he carelessly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.
39. The Court of appeal in the case of Kenya Revenue Authority v Maginga Salim Murgani [2010] eKLR, held that the fairness of a hearing is not determined solely by its oral nature. It may be conducted through the exchange of letters to buttress the conduct of the employee. In this case, the claimant was invited to explain her conduct but failed to give satisfactory responses.
40. The claim that the director general acted outside his mandate and contrary to the HR policy is neither here nor there. As the CEO, the director general had the greatest responsibility to ensure the entity of the respondent had employees who were accountable and acted within their employment contract.



The claimant cannot be found to hide behind the notices issued by the CEO. This is an officer of the respondent with overall authority over her role.

41. In the case of Prof. Macha Isunde v Lavington Security Guards Limited [2017] eKLR, the Court of Appeal held that;

There can be no doubt that the Act, which was enacted in 2007, places a heavy obligation on the employers in matters of summary dismissal (Emphasis mine) for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for terminating (section 43) – and prove that the grounds are justified (section 47 (5), among other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.

42. In this case, the respondent referred to its HR policy and the law and found the conduct of the claimant as gross misconduct. She was allowed to the allegations made against her but failed to give a proper account as to why she replaced 14 genuine drivers' records with those of persons whose qualifications could not be ascertained in the period of 10 March 2016 and 30 August 2018. The claimant also failed to give a proper account of 12 instances of manipulation of driver's licence records.

43. Section 44 of the Employment Act stipulates when summary dismissal can occur;

Summary dismissal shall take place when an employer terminates the employment of an employee without or with less notice than that which the employee is entitled by any statutory provision or contractual term.

(3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligation arising under the contract of service.

44. In the case of Joyce Mukolwe v Mustek East Africa Limited [2021] eKLR, this Court held that;

In considering the procedural fairness of termination or summary dismissal of an employee the period under consideration has to be one from the time the employer conceives the intention to terminate or dismiss, to the preparation and issuance of the termination letter, or conveyance of the decision to terminate or dismiss.

45. The claimant was taken through due process and there reasons leading to summary dismissal were valid and justified.

46. The clearance by the Anti-Terrorism Police Unit did not stop the respondent from undertaking internal disciplinary proceedings in the application of its HR policy and the law. The motions of criminal procedures and internal disciplinary procedures carry different motions, standards or proof and requirements. See Judicial Service Commission v Shollei & another (Civil Appeal 50 of 2014) [2014] KECA that;

... While Article 226 (2) of the Constitution provides that the accounting officer of a national public entity is accountable to the national assembly for its financial management, this is in actual fact external accountability of the public entity through its accounting officer, for the public funds allocated to it. The external accountability is mandatory. It does not however absolve the accounting officer from internal accountability within the public entity, nor does it remove the accounting officer from the authority of the public entity. Indeed,



such internal accountability is not only prudent but also imperative in facilitating the achievement of the appellant's objectives as set out in ...

47. The remedy of notice pay, reinstatement or compensation is removed from the claimant.
48. Service pay is not available to the claimant. The letter of employment dated 29 October 2014 under clause (d) addressed the provisions of Section 35(5) and (6) of the [Employment Act](#).
49. The claim for proof of remittances to NSSF and NHIF can only arise upon where clause (d) of the letter dated 29 October 2014 was not adhered to. Also, these being statutory payments, the claimant did not urge a case that there were efforts to obtain a statement therefrom and borne no fruits.
50. On the findings that termination of employment by summary dismissal was justified, the claim for payment of damages, general or punitive does not arise. The loss of earnings until the claimant retired is not justified.
51. Save, a Certificate of Service is due at the end of employment in terms of Section 51 of the [Employment Act](#). The claimant should attend the shop floor and obtain the same.
52. Accordingly, the claim herein is without merit and is dismissed with costs to the respondent.

Delivered in virtual open court at Mombasa on this 3 day of October 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

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