



Siso v Governor, County Government Of Siaya & 2 others (Cause E085 of 2023) [2024] KEELRC 13305 (KLR) (28 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 13305 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E085 OF 2023
CN BAARI, J
NOVEMBER 28, 2024**

BETWEEN

CHARLES SISO CLAIMANT

AND

GOVERNOR, COUNTY GOVERNMENT OF SIAYA 1ST RESPONDENT

COUNTY GOVERNMENT OF SIAYA 2ND RESPONDENT

SIAYA COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

JUDGMENT

Introduction

1. In a memorandum of claim dated 2nd November, 2023, the Claimant herein, seeks the following relief against the Respondents:-
 - a. An order setting aside the notice of termination of employment dated 4th October, 2023 and reinstate the Claimant to his position with full salaries and benefits.
 - b. Payments of all salaries, benefits and allowances in accordance with the contract of employment between the Claimant and the Respondents.
 - c. In the alternative, the Claimant seek payment of salaries, allowances and benefits for the remainder of the contract of employment until end of such contracts.
 - d. In the alternative, a declaration that the termination of the Claimant contract of employment without providing reasons or grounds thereof, offends Sections 43 and 45 of the [Employment Act](#) and [the constitution](#), and hence amounts to unfair termination thereof is illegal and unlawful.
 - e. Issuance of a certificate of service



- f. Costs and interest thereon.
2. The Respondents filed a statement of defence dated 4th December, 2023 denying the Claimant's claim, and asserting that the Claimant's termination was within the law.
3. The Claimant's case was heard on 29th April, 2024. The Claimant testified in support of his case, adopted his witness statement and produced the documents filed in the matter in support of his case.
4. The Respondents' case was heard on 24th June, 2024. One Joseph Ogutu testified in support of the Respondents' case, adopted his witness statement and produced documents filed on behalf of the Respondent.

The Claimant's Case

5. It is the Claimant's case that he was employed by the 2nd Respondent in the position of Chief Officer on 7th May, 2019 on a five (5) year contract. He states that his starting salary was Ksh.132,000/ per month, exclusive of other allowances.
6. The Claimant states that it was a term of his contract that the employment shall be subject to all regulations for officers in the public service which are in force or which maybe promulgated from time to time.
7. It is his case that the 1st Respondent upon being elected into office in 2022, appointed an audit task force and all County Executive Committee members and Chief Officers were asked to report at the County headquarters by 4th October, 2023, for the unveiling of the said task force which was referred to as "The Edward Ouko led Task Force".
8. He states that upon the unveiling of the task force on 4th October, 2023, the 1st Respondent issued all Chief Officers with letters sending them on compulsory leave for a period of 30 days ostensibly, to allow for a comprehensive audit review. It is his case that the compulsory leave was extended for a further 30 days and recalled back to work in January, 2023, where he served until 4th October, 2023 when he was replaced.
9. The Claimant states that the letter of notice or termination of contract did not state any reasons for the termination of his employment nor any grounds for issuance of such notice.
10. It is the Claimant's case that he had been in gainful employment before taking up the contract of employment subject herein, with the understanding, knowledge and expectation that the same was to last for the entire contract period.
11. He avers that the failure to provide grounds for termination of employment amounts to unfair termination which is against Section 45 of the [Employment Act](#), and that the communication of notice through social media and later by press statement, amounts to unfair labour practices and contrary to [the Constitution](#) and the law.
12. The Claimant prays that this court allows his claim and award him the reliefs sought.

The Respondents' Case

13. The Respondents admit that the Claimant was an employee of the 2nd Respondent engaged pursuant to the law under contract of employment running for a period of 5 years as a chief officer in charge of agriculture, and later lands and physical planning, survey and urban development.



14. It is their case that the Claimant's employment was contractual and was for a period of 5 years. They state further that it was a term of the Claimant's contract that his employment was purely temporary, and carried no guarantee of permanent employment, and either party reserved the right to terminate the contract by giving one month notice or payment of one month salary in lieu of notice.
15. It is the Respondents' position that sometime on 22nd September 2022, the 1st Respondent appointed an audit task force to audit Siaya County systems and Governance reforms, and which audit was to be completed within 60 days.
16. The Respondents aver that it is by dint of the findings of the aforementioned task force that the Claimant was sent on compulsory for 30 days, a decision that was meant to pave way for a comprehensive audit review of his docket. They state that thereafter on 4th October 2023, a decision was reached to terminate the Claimant and a termination notice issued in accordance with paragraph 3 of his letter of appointment.
17. That the decision to terminate the Claimant was lawful and in the public interest since the position occupied by the Claimant was a position in the public service and not a preserve of the Claimant.
18. They pray that in the interest of justice the Claimant's suit be dismissed and the Respondents be allowed to proceed with its operations without interference.

The Claimant's Submissions

19. The Claimant contends that the termination and issuance of such termination notice was unlawful and unfair as no grounds were given for the termination.
20. Further relying on the provisions of Sections 41 to 44 of the *Employment Act*, the Claimant submits that the Respondents have not proved why the Claimant's employment was terminated as the *Employment Act* does not give liberty to terminate an employee at will or based on mere allegations. He cited the case of Kenya Revenue Authority -vs- Reuwel Waitaka Gitahi & 2 others [2019] eKLR and submitted that the Respondents did not show that the reason for termination was valid or reasonable.
21. It is further submitted that the termination was in breach of Sections 43 and 45 of the *Employment Act*, Articles 27, 41, 47 and 50 of *the Constitution* and Section 4 of the Fair Administrative Actions Act as the Claimant was never accorded a reason nor a chance to be heard before the dismissal. He placed reliance in the case of Chrispine Otieno Caleb -vs- Attorney General [2014] eKLR to buttress this assertion.
22. On whether he is entitled to the reliefs sought, the Claimant submits that he is entitled to the remedies sought in the Memorandum of Claim, including compensation for the premature termination of his employment, unpaid salaries, allowances and benefits for the remainder of the contracts.
23. It is his submission that he is entitled to salary in lieu of notice and gratuity on the premise that he was unlawfully terminated and as such, he is entitled to salary in lieu of notice plus compensation for unfair termination in accordance with Section 49(1) of the *Employment Act*.
24. The Claimant finally urges the Court to dismiss the Respondents' defence with costs.

Respondent's Submissions

25. The Respondents submit that although the employment contract for the Claimant stipulated that the contract was for 5 years, the said employment was temporary and not permanent. It is their submission that paragraph 3 of the Claimant's letter of appointment dated 7th May 2019, was clear that there was



- an expectation that either party would terminate the employment upon giving the other party one-month's notice or one month's salary in lieu of notice.
26. The Respondents contend that the Claimant in his testimony to Court confirmed that the letter of termination dated 4th October, 2023 gave him one month's notice. Further, it is submitted that the Claimant confirmed to court that during the one month notice period, he received all his salaries, allowances and other dues from the Respondents.
 27. Relying on the case of *Monica Wanza Mbavu -vs- Roofspec & Allied Works Co Ltd* [2021] J eKLR, the Respondents submit that Section 45 of the *Employment Act* on what constitutes unfair termination is only applicable in circumstances where termination of employment is effected pursuant to a disciplinary process, which the Respondents contend is not the case in the instant matter.
 28. Moreover, the Respondent contends that one of the Prayers made by the Claimant is for his termination to be annulled. The Respondent submits that the prayers raises two significant issues: First, given that the employment contract has already been terminated and this decision has been communicated to the Claimant, there is nothing to annul. They submit that there is no contract currently in existence between the parties that the court can reinstate.
 29. It is further submitted that the position once held by the Claimant, has since been filled, and a reinstatement would be ineffective, as there is no available position for the Claimant to return to. To substantiate this argument, the Respondent referenced the case of *Kenya Airways Limited v. Allied & Aviation Workers Union Kenya & 3 Others, Civil Appeal No. 46 of 2013* eKLR.
 30. It is the Respondents' case that the Claimant failed to prove that his termination was unfairly effected hence, the Claimant is not entitled to any of the compensatory reliefs he seeks from the court.
 31. It is urged that the Claimant has failed to prove his case to the required standard and the case should be dismissed with costs.

Analysis and Determination

32. I have considered the pleadings herein, the witnesses' testimonies and the written submissions by both parties. The issues that crystallize for determination are:
 - i. Whether the Claimant was unfairly terminated
 - ii. Whether the Claimant is entitled to the remedies sought

Whether the Claimant was unfairly terminated

33. It is not disputed that the Claimant was an employee of the 2nd Respondent serving on a 5-year contract that was effective 7th May, 2019.
34. The Respondents vide a letter dated 3rd October, 2022 by the County Secretary, one Joseph Ogotu, invited the Claimant and other officers of the 2nd Respondent to attend a meeting on the unveiling of a county system audit. On the following day, the 4th October, 2022, the Claimant was sent on compulsory leave ostensibly, to pave way for the audit, and vide a letter dated 3rd January, 2023, the Claimant was recalled back to work at the end of the audit.
35. The Claimant's case is that vide a press release issued by the 1st Respondent, a replacement was appointed to his position, and the statement was swiftly followed by a letter evenly dated issuing notice of the Claimant's termination.



36. The question for this court is whether the chronology of events aforesaid leading up to the Claimant's termination, met the test of both procedural and substantive fairness as to render the Claimant's termination fair.
37. The Respondents' argument is that the Claimant was on a temporary employment and had no expectation for permanent employment. It is their further position that the Claimant's termination was pursuant to the findings of the audit task force. They argue further, that the Claimant was issued notice and paid salary for the entire of the notice period in accordance with his employment contract.
38. The report of the system audit that was commissioned by the Respondents was not produced in evidence to show that indeed, the Claimant was implicated or found culpable of any wrong doing as to warrant a unilateral termination of his contract.
39. Further, the Claimant's employment contract was in writing, with the term of the contract clearly stipulated as 5 years from 7th May, 2019. The Respondents' argument that the Claimant was on a temporary employment does not therefore hold, and the employer was thus not at liberty to without reason, invoke the termination clause. Any termination of employment, whether permanent, contractual or even probationary service, must be backed by fair, valid and justified reason (s), and preceded by fair process.
40. In the case of *Kenfreight (EA) Limited v. Benson K. Nguti* (2016) eKLR, the court held that apart from issuing proper notice according to the contract (or payment in lieu of notice), an employer is duty bound to explain to an employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of contract. The court added that an employee is further entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract is taken.
41. What this court can read into the termination, is nothing more than the change of regime. Regime changes is not valid nor justified ground to haunt workers out of office during the validity of their contracts.
42. It is evidently clear that the Claimant's termination had not been preceded by a fair procedure nor were any reasons given for the premature ending of his contract.
43. The termination of the Claimant's contract of employment thus constituted dismissal in terms of Sections 41, 43 and 45 of the *Employment Act*, 2007.
44. In the end, I return that the Claimant's dismissal was both substantively and procedurally unfair.

Whether the Claimant is entitled to the reliefs sought

45. A finding that a termination/dismissal is unfair, does by law entitle the terminated employee to a relief (See *Benjamin Langwen v National Environment Management Authority* (2016) eKLR). The Claimant sought a declaration that his termination is unfair, reinstatement, payment of salaries and allowances for the remainder of his term and the costs of the suit.

Reinstatement

46. The records shows that the Claimant was replaced the same day his notice of termination was issued. It is also evident that the Claimant held a senior position in the employ of the Respondents and therefore, his continued employment relationship with the 2nd Respondent is untenable.



Payment for the remainder of contract

47. The Claimant served on a limited term contract which was prematurely terminated. For the simple reason that the remainder of the Claimant's contract does not exceed 12 months, I will proceed to base the compensation awardable to the remainder of his term and the manner in which his services were terminated, and award him 7 months' salary for the unfair termination.
48. In whole, the court grants the following orders:
- a. A declaration that the Claimant was unfairly terminated
 - b. That the 2nd Respondent pays the Claimant 7 months' salary as compensation for the unfair termination at Kshs. 912,940/-
 - c. The Claimant will have the costs of the suit and interest until payment in full.
49. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF NOVEMBER, 2024.

C. N. BAARI

JUDGE

Appearance:

Ms. Onyango h/b for Mr. Ojuro for the Claimant

Mr. Okanda present for the Respondent

Ms. Esther – C/A

