



**Kenya Shipping Clearing Freight Logistics and Werhouses Workers
Union v Volt Management Services Limited (Cause E126 of 2022)
[2024] KEELRC 13322 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13322 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E126 OF 2022
DKN MARETE, J
NOVEMBER 27, 2024**

BETWEEN

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND WERHOUSES
WORKERS UNION CLAIMANT**

AND

VOLT MANAGEMENT SERVICES LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 23rd February, 2022. The issue in dispute is therein cited as;

Summary dismissal of Olivia Gesare Motiere
2. The Respondent in a Statement of Response dated 31st March, 2023 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that she is a registered trade union with capacity to represent her members nationally. It is also her case that the Respondent is a company operating as outsourcer of labour services and operates in the Republic of Kenya.
4. The claimant's case is that at all material times to this claim, the grievant, Olivia Gesare Motiere was employed by the Respondent as a grader working at Kett Complex Old Airport Road, Embakasi in September 2018. This was through employment contract letter dated 20th February, 2020 and expiring on 21st May, 2020. The lease agreement between the Respondent and the mother company was stable and therefore grievant continued working.



5. The claimant's further case is that the grievant started at a monthly consolidated salary of Kshs.15,610/= but her payslip indicated this as the basic salary. Her duty normally involved standing or arranged tables for ease of grading, sorting and arranging the beans in grades.
6. Again, in this arrangement there was normally a head table which conveys the instructions from the production manager in terms of international standards. The activities carried in the warehouse is for goods meant for export. In most cases workers happen to scramble for the day's work as each employee tries to have produce to be counted for the day's work and at the same time to meet the day's target. In the circumstances each employee may pick a quarrel which sometimes one may opt to carry out of work to a later time or even outside working hours.
7. The Claimant's other case is that the grievant admits that there was a quarrel between herself and Evalyne Kerubo and this happened outside the work place. She was picked by police for questioning on 7th May, 2020 and recorded a statement with the police on 10th May instant in which the disputants were able to resolve their differences before the police.
8. The Claimant avers that on around 9th April, 2020, the grievant was denied entry into the Respondent's premises and was informed by the security guards to report on 11th May, 2020. She was never summoned to any disciplinary hearing but instead served with a letter of summary dismissal dated 9th May instant.
9. The Claimant's further case is that the grievant reported the matter to her and efforts to resolve the dispute failed due to lack of co-operation on the part of the Respondent. Ultimately, the conciliator appointed to resolve the dispute came out with an absurd recommendation that the grievant be paid one month salary and a certificate of service in total compensation of her claim for dismissal.
10. The Claimant brings out this action and avers that the Respondent's act of summary dismissal had no basis. It is her case that the events complained of by the Respondent happened outside her premises and therefore cannot be used to vilify the grievant. The grievant should be paid on account of redundancy in that summary dismissal amounted to unfair termination of employment.
11. She prays as follows;
 - i. The Respondent to pay the grievant Kshs.712,925.26 as final benefits.
 - ii. The Respondent is to pay the grievant house allowance as stipulated under Section 31 of *Employment Act, 2007*.
 - iii. The Respondent to pay the costs.
12. The Respondent's case is that it had offered the grievant employment as a general labourer through a fixed term contract of employment. Her terms of employment were as follows;

Particulars Of Grievant's Fixed Term Contract

 - a. We are pleased to offer you employment contract as a General Labourer under the following terms and conditions;
 - b. You will be posted at our client's premises (Keitt Complex) and you shall report to the designated manager as directed by the company;
 - c. Subject to provisions of sub-sections 2.1 and 2.2 herein above, this employment contract is for a period of three (3) months from 01.03.2020 and will automatically expire on 31.05.2020 by



effluxion of time, or on the date the relationship between Volt Management Services Limited and the client comes to an end, whichever is earlier;

- d. You will be paid a gross consolidated salary of Kshs.15,610/= on achieving the set monthly output targets. The output targets and other performance details will be communicated separately. This salary is inclusive of house allowance, for the avoidance of doubt;
 - e. The company reserves the right to dismiss you summarily for gross misconduct.
13. The grievant read, agreed and attested to these conditions and was always bound by them. She was never nor engaged on a continuous term of service and no permanent employment was ever had with her.
14. The Respondent's further case is that the grievant was never an astute worker but had lapses and misconduct which prompted her to be issued with several verbal warning from both her supervisor and management. On 20th April, 2020, she confronted her colleague Everlyne Kerubo at the work place which confrontation disrupted work operations as she became uncontrollable even after counsel by her supervisor. This depicted in her show cause letter issued by the Respondent which came out as follows;

Particulars Of Show Cause Letter Dated 31st April, 2020

- a. On 31st April, 2020, you are reported to have issued threats to our colleague Everlyne Kerubo. This comes months after you physically beat and injured her and reasons of which is only known to you;
- b. With the above-mentioned incidents; show cause as to why disciplinary action should not be taken against you;
- c. This must be done in writing on a clear paper and reach the undersigned before the close of business of 6th May 2020;
- d. You are invited for a disciplinary hearing meeting on the same date, time to be communicated then.

This is her answer to show cause letter;

- a. Sincerely on 31st April 2020, Everlyne came to my table simply because she had not done her work properly and so she had to repeat her work;
- b. I took the mandate to request her to freely move to her table since we had to keep a social distance within our table in order for her to repeat the work from her table. She turned out to be rude on me;
- c. Out of temper, I had to remind her of the case which had happened between I and her in 2018 whereby the case was resolved by the management whereby she was held culpable of the conflict.
- d. It was a fine Thursday evening of last week when I was called by my supervisor to actually give explanations on what had happened between me and Everlyne of which I explained.
- e. I now wonder if my kind request to turn to her table is a threat. I never issue threats to my workmates; it is a lie. I do like team work but also, we need to keep social distancing due to this corona pandemic.



15. The Respondent further avers that the Ms. Everlyne Kerubo had on 4th April, 2020 complained of continuous harassment by the grievant as follows;
- a. I Everlyne Kerubo, an employee of the above company on Thursday at around 2 pm while performing my duties was confronted by Olivia Gesare and started threatening me for reason not known;
 - b. This is the first time I am receiving such threats and late last year 2019 she had even gone to the extent of fighting me on my way home. A matter that is well known by the management of the company and even the police at Villa Police Station at Imara;
 - c. I have decided to notify the company of the same because my life is more important and I am so much concerned to know her intentions.
 - d. Finally, I would like the management to intervene and solve the matter in between.
16. On 6th June, 2020, the Respondent conducted a disciplinary hearing on the episode in which the grievant was found culpable and not remorseful and therefore it was decided that she be kept away from the company premises through dismissal from employment.
17. The Respondent penultimate case is that this claim is unfounded with no legal basis. The Claimant having been lawfully dismissed and paid her terminal dues.
- The issues for determination therefore are;
- i. Whether the termination from employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
 - ii. Whether the Claimant is entitled to the reliefs sought.
 - iii. Who bears the costs of this cause.
18. The Claimant in her written submissions maintains that the grievant committed no offence at all. She posits as follows;It is clear from the purported disciplinary hearing held on 6/5/2020 that the grievant was not in that meeting which is marked as VM-6.The Respondent has failed to state he Michael Mwanzia, as a Human Resource Manager, tried to handle the matter at factory level fail. Therefore what he purports to respond in statement of response is a mere wordings.The Claimant Union strongly deny that the show cause letter purported to have been issued to the Grievant was never issued by checking the Grievant signature is not hers comparing to the signature appearing on fixed term employment contract letter dated on 20/2/2020.The Claimant union argue that the Respondent is trying to mix the issue of threats which was reported to police and purport that there occurred fight involving the herein Grievant. If really there was a fight, the respondent could have demonstrated by a proof of exhibit file in court.The claimant union strongly oppose the exhibit marked VM-4 with one word that the hand writing appearing on VM-4 and VM-5 is similar, the Grievant did not write that letter at all.
19. The Respondent seeks solace in Sections 41 and 43 of the *Employment Act*, 2007 as a show of substantive and procedural justice in the termination of the employment of the Claimant. It is her case that the Claimant was taken through a disciplinary process after the issue of a show cause letter which she answered in acknowledgement of her wrong doing. Again, the reasons for termination of employment are explained in the show cause letter and therefore a case of lawful termination of employment in the circumstances.



20. The Claimant's submissions faults the Respondent's case in that the grievant did not attend the disciplinary meeting held on 6th May, 2020. The Respondent does not explain why the grievant was not asked to sign the disciplinary meeting proceedings despite her name appearing as an attendee.
21. The Claimant further disputes the authorship of exhibits VM-4 and VM-5 all of which are letters purported to have been written by the grievant and complainant, Everlyne Kerubo as being in the same hand. This is not absolutely true. The handwritings are not the same.
22. The Claimant further disputes issue of the show cause letter to the grievant. It is her case that the grievant's signature on the show cause letter and that on the Fixed Term Employment Contract are dissimilar. This is the case and I agree.
23. In this kind of situation, the test of balance of probabilities and preponderance of evidence becomes useful in a determination of the matter. The Respondent's case in the circumstances takes sway over that of the Claimant. It is not denied that the grievant was involved in an altercation with her colleague and co-worker, Everlyne Kerubo, leading to fisticuffs that was reported to the police. The Respondent testifies of another episode at the work place that caused disruption to the work place.
24. The Respondent's case overwhelms that of the Claimant on a preponderance of evidence. She has adduced evidence to the extent of the grievant's misgivings and lack of diligence at the work place leading to disruption, delay and loss to her business. This was addressed through disciplinary proceedings in which the grievant was invited and attended. In as much as this is not ably synchronized and documented by the Respondent in the disciplinary meeting proceedings, this is probable of the two scenarios. I therefore find a case of lawful termination of employment and hold as such.
25. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination of employment, she becomes disentitled to the relief sought.
26. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 27TH DAY OF NOVEMBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Mutongoi for the Claimant union.

Mr. Omondi holding brief for Felix Otieno instructed by Felix Otieno & Company Advocates for the Respondent.

