



**Hassani v Kenya Ports Authority (Cause E042 of 2023)  
[2024] KEELRC 2792 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2792 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E042 OF 2023  
M MBARÚ, J  
NOVEMBER 14, 2024**

**BETWEEN**

**JUMA MASUDI HASSANI ..... CLAIMANT**

**AND**

**KENYA PORTS AUTHORITY ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a terminal tractor driver. The respondent agreed to pay the claimant ksh.159, 127 per month.
2. The claim is that the claimant worked until 18 May 2022 when he was suspended and on 1<sup>st</sup> February 2023 his employment was terminated. The claim is that there were no fair reasons to justify termination of employment and the respondent failed to adhere to the disciplinary manual.
3. The claim is that termination of employment was on alleged theft which was malicious and an act of witch hunt.

The claimant is seeking the following terminal dues;

4.
  - a. Notice pay Ksh.159,127;
  - b. 12 months compensation Ksh.1,909,542;
  - c. A certificate of service;
  - d. Costs of the suit.
5. The claimant testified that his employment was terminated contrary to the disciplinary manual and against the principles of natural justice. Before interdiction, he was called for a hearing but the



respondent lacked a valid reason leading to termination of employment and the claims made should be allowed with costs.

6. In response, the respondent argued that the claimant was an employee, and before termination of employment, he was a tractor driver. Like other employees, the claimant was entitled to basic pay, house and transport allowances, and other benefits dependent on the employee's work performance. The claimant's gross salary was not Ksh.159, 127 as alleged, which is a misrepresentation of facts.
7. There were disciplinary proceedings against the claimant following negligence of duty leading to a fatal accident. The claimant was interdicted from duty and invited to a disciplinary hearing in adherence to the human resources manual.
8. The claimant is entitled to a certificate of service for which he should present himself to conclude clearance. There is no proof of the allegations that termination of employment arose out of theft. This is a deliberate misrepresentation of facts. The claim should be dismissed with costs.
9. In evidence, the respondent called Winny Mibei the human resources officer who testified that the claimant was dismissed from employment for negligence of duty and not due to theft as alleged in his claim. The negligence of duty led to a fatal accident and under the human resources manual, such is gross misconduct subject to summary dismissal. The claimant was invited to a disciplinary hearing on 10 November 2022 and he attended.
10. Ms Mibei testified that the claimant was heard by a panel of the disciplinary committee and was allowed to attend with his representative. The accusations made against him were addressed in the notice of interdiction.
11. At the close of the hearing, both parties agreed to file written submissions. Only the respondent complied and filed written submissions.

### **Determination**

12. The claimant's case is that his employment was terminated over alleged theft and that his rights were not secured. He was denied the natural justified and the reasons leading to termination of employment were not valid leading to unfair termination of employment.
13. The respondent's case is that the claimant was negligent of duty leading to a fatal accident. He was interdicted and invited to a disciplinary hearing and for gross misconduct, his employment was terminated.  
  
The respondent filed various work records.
14. Through notice dated 18 May 2022, the respondent interdicted the claimant on the basis that the head of Container Operations through email dated 5 April 2022 forwarded a report dated 31<sup>st</sup> March 2022 that an accident occurred at the terminal involving a tractor operated by the claimant. The accident led to serious injuries to Daniel Maina Njamwea when the tractor was reversed and the casualty from the back. Later, the casualty succumbed to injuries while undergoing treatment.
15. The respondent outlined the various clauses of the human resources policy that the claimant had violated. He was invited to show cause within 72 hours why his employment should not be terminated.
16. On 31<sup>st</sup> May 2022, the claimant filed his response and noted that the accident leading to the fatal accident was because he was working without a stacker. He reversed his tractor without the knowledge that the deceased was behind him. He noted he had two years of experience on the tractor and his case was not that of gross misconduct and requested to attend a hearing to explain his case better.



17. The issue at hand did not relate to theft as the claimant has addressed in his pleadings. It related to negligence of duty leading to a fatal accident.
18. The claimant was invited to a disciplinary hearing as he had requested in his response to the notice to show cause.
19. The case that the claimant did not know the case against him and that he was not issued with a charge sheet is not correct. Having been issued with the notice to show cause, and offering a response thereof, the claimant was well aware of the matters relating to his case. He cannot justify his claim that he was alleged to have engaged in theft whereas his disciplinary hearing related to negligence of duty.
20. Under Section 44 of the *Employment Act*, an employer is allowed to summarily dismiss an employee on short notice for gross misconduct. The safeguard is under Section 41(2) of the Act which requires the employer to issue notice upon the employee to attend and make his representations as held in the case of Kenya Plantation & Agricultural Workers Union v Sotik Tea Highlands Estate [2016] KEELRC 378 (KLR).
21. The employer is also allowed to rely on the human resources manual to outline other grounds beyond the provisions of Section 44(4) of the *Employment Act* which forms grounds for summary dismissal. See Kenya Union of Commercial, Food and Allied Workers v National Social Security Fund [2022] KEELRC 52 (KLR)
22. In the case of Nyawiri v Judicial Service Commission & another [2020] KEELRC 13 (KLR) the court held that under the human resources manual, an employer has the latitude to outline grounds which form part of the grounds for termination of employment of summary dismissal. The *Employment Act* gives the basic minimum and due to the nature of business, the employer is allowed to expand the same.
23. In this case, the respondent applied its human resources manual and found the claimant culpable for negligence of duty which is defined as gross misconduct. There was no theft as alleged by the claimant.
24. At the disciplinary hearing held on 9 and 10 November 2022, the claimant failed to exonerate himself from the allegations of gross negligence of duty which resulted in a fatal accident. He had operated the tractor for over two years and was experienced in his work.
25. The claimant was allowed to file an appeal but no new grounds were established and his summary dismissal was confirmed.
26. The court finds the respondent adhered to its internal disciplinary procedures and the law. There were valid and justified reasons leading to termination of employment. The same related to negligence of duty leading to a fatal accident and not theft as alleged by the claimant.
27. The claim for notice pay and compensation is not available save, upon clearance, the claimant to be issued with his certificate of Service.
28. Accordingly, the claim is dismissed, and costs to the respondent.

**DELIVERED VIA TEAMS VIRTUAL PLATFORM THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024.**

**M. MBARŪ**

**JUDGE**

