



**Mugo v Chase Bank (Kenya) Limited (Cause 730 of 2015)
[2024] KEELRC 2813 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2813 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 730 OF 2015
K OCHARO, J
NOVEMBER 14, 2024**

BETWEEN

PETER MURIMI MUGO CLAIMANT

AND

CHASE BANK (KENYA) LIMITED RESPONDENT

JUDGMENT

Introduction

1. Through a Memorandum of Claim dated 13th April 2015, the Claimant sued the Respondent seeking, the following reliefs;
 - a. A declaration that his employment was unfairly and unlawfully terminated by the Respondent;
 - b. Salary for September, October, November and December 2014 Kshs 252,000.00;
 - c. House allowance for the entire period of employment Kshs. 226,350.00;
 - d. Compensation for wrongful and unfair termination 756,000.00;
 - e. To issue the Claimant with a Certificate of Service
 - f. To pay to the Claimant punitive damages; and
 - g. Costs of the cause.
2. Via the Memorandum of reply dated 29th February 2016, the Respondent denied the Claimant's claim alleging that his employment was not terminated by the Respondent but instead he voluntarily resigned.



Claimant's case

3. The Respondent employed the Claimant on a permanent and pensionable basis as a Relationship Officer from 15 October 2012, via the employment contract dated 3 October 2012.
4. At the time of termination, the Claimant earned a basic monthly salary of Kshs. 63,000/=. However, the Respondent did not provide accommodation to the Claimant or pay him a house allowance.
5. The Claimant was accused of having opened 3 bank accounts and processed loans for three different persons and therefore caused a possible loss to the Respondent.
6. The Claimant avers that he received a suspension and show cause letter from the Respondent on 14 August 2014. He further states that he responded to the letter, but this elicited no response from the Respondent. The Claimant inquired about the status of the matter via email on 6 December 2014. Hellen Okello acknowledged the said email on 7 December 2014.
7. On 9th December 2014, the Claimant received an email from Paul Kuria of Talent & Organisation Development, on behalf of the Respondent, inquiring about the Claimant's availability for a meeting to discuss the issue.
8. On 16th December 2014 the Claimant met Respondent's officers who gave him a termination letter dated 26th August 2014.
9. The Claimant avers that he was not granted a disciplinary hearing before his termination.
10. He was, therefore, unfairly terminated and his terminal dues were not paid.

Respondent's case

11. The Respondent employed the Claimant via the employment contract dated 3rd October 2012 as a Relationship Officer-Personal Banking, earning a salary of Kshs.63,000.00 at the time of employment. The Salary was consolidated to include house allowance. The Claimant's contract was confirmed on 1st August 2013 after his probation period.
12. It was further stated that there was fraudulent processing of loan facilities at the Respondent's SME Village Market Branch, the Claimant's station. This prompted preliminary investigations on the matter. Thereafter, the Claimant was issued with a notice to show cause and suspension letter on 14th August 2014. This letter also stated that the Claimant would be informed of a final decision once investigations were concluded.
13. The investigations revealed that the Claimant had;
 - i. opened a fraudulent Account number 0032091327001 purportedly to be for Winfred Mbula Mue and processed a loan facility of Kes.1,200,000 through the said account thereby causing the Respondent to incur a possible loss of the said amount of Kes.1,200,000.
 - ii. opened a fraudulent account number 0032088799001 purported to be for Gedion Titus Kipkoech Ngeno and processed a loan facility of Kes.1,280,000 through the said account thereby causing the Respondent to incur a possible loss of the said amount of Kes.1,280,000.
 - iii. opened a fraudulent account number 0032088974001 purported to be for Tania Mutindi Kakuti and processed a loan facility of Kes.1,400,000 through the said account thereby causing the Respondent to incur a possible loss of the said amount of Kes.1,400,000.



14. The Claimant Responded to the show cause letter but before the Respondent could relay the finding of the investigations to the Claimant, the Claimant resigned via the letter dated 26th August 2014. The Respondent denies issuing the Claimant with a letter of termination dated 26th August 2014.
15. The Respondent accepted the Claimant's resignation letter via a letter dated 26th August 2014 and advised him on his dues and that he was required to clear/hand over before the issuance of the Certificate of Service.
16. The Respondent states that the email correspondences tendered by the Claimant relate to the clearance process mentioned in the letter dated 26th August 2014.
17. The Claimant was not unfairly and unlawfully terminated and is therefore not entitled to the reliefs sought.

Claimant's submissions

18. The Claimant identified the following issues for determination, thus; Whether the Claimant was terminated unfairly, wrongfully, and/or resigned; Whether the Claimant was paid a house allowance during his employment with the Respondent; Whether the Claimant is entitled to a salary for the period of September, October, November, and December 2014; and What remedies is the Claimant entitled to.
19. On the first issue, the Claimant submitted that the termination of an employment contract is said to be fair and procedural only if due process was observed and there existed a justifiable reason for reaching the decision.
20. The Claimant was placed under an investigatory suspension. Against what it had indicated to him, the Respondent didn't communicate to him the outcome of the investigations. Surprisingly, on the 15th December 2014, when he attended the Respondent's offices, he was served with a termination letter dated 26th August 2014 duly signed by the Head of Branches, and G.M Talent & Organization Development.
21. The Respondent denied having issued the termination letter, thus alleging forgery on the part of the Claimant. The Claimant submitted that if indeed there was forgery as alleged, the Respondent could have reported the matter to the police as forgery is a criminal act punishable by the law.
22. It was submitted further that where a party alleges forgery against the other, it must plead with particularity the fraud and strictly prove the same. To support this point, he relied on the case of Donald Omuyaku Okimani v Luanda Revival Worship Centre (2021) eKLR which quoted with approval the case of Kinyanjui Kamau v George Kamau (2015) eKLR where the Court held that;

“It is trite that any allegation of fraud must be pleaded and strictly proved. See *Ndolo v Ndolo*(2008) 1KLR (G&F) 742 wherein the court stated that “... we start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove the forgery and the burden to prove the allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in civil cases, namely; proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...” In case where fraud is alleged it is not enough to simply infer fraud from facts.”



23. This Court should find that the alleged forgery was never pleaded and proved to the required standards, and find that the Claimant's employment was terminated under the above-stated letter.
24. Section 41 of the *Employment Act* provides for a procedure that must be strictly followed by any employer intending to terminate an employee's employment. The procedure requires that the employee be notified of the charges against him, and be allowed to defend himself or herself against the charges before the employer takes a final decision on the matter. To buttress this submission reliance was placed on the case of Anthony Mkala Chitavi vs Malindi Water & Sewerage Company Ltd (2013) eKLR. There was no disciplinary hearing that was conducted against him. The termination was procedurally unfair. To support this point, the holding in National Bank of Kenya vs Samuel Nguru Mutonya [2017] eKLR, was cited.
25. The Claimant submitted that contrary to the Respondent's assertion, he never resigned from employment. Further, even if there was a resignation, it was not accepted by the Respondent.
26. On the second issue, the Claimant submitted that it is not disputed that the amount, KSHS. 63,000 that he was earning monthly was his basic salary within the meaning of Section 2 of the *Employment Act*. Basic salary as defined is never inclusive of allowances. The Respondent's assertion that the amount was a consolidated salary lacks foundation, therefore. Further, the contract of employment didn't provide for a consolidated salary.
27. Section 31 of the *Employment Act*, bestows upon an employee the right to be accorded reasonable accommodation by the Employer or payment in lieu. Where the contract of employment doesn't provide for a consolidated salary, therefore inclusive of house allowance, the employee is in a suit entitled to the remedy of payment of the unpaid house allowance. To buttress this submission, The Claimant relied on the case of Kevin Gikonyo v Chase Bank (K) Ltd, cause no. 729 of 2015, and the case of Ayanna Yonemura vs Liwa Kenya Trust (2014) eKLR and Kedhikia Workers vs B.O.G Maseno School for the Deaf (2013) eKLR.
28. On the third issue, the Claimant submitted that the suspension from employment was administrative. As such, he remained an employee of the Respondent during the period of suspension. The Respondent didn't have any justifiable reason to withhold his salary. To buttress this, he relied on the case of Transports Workers Union Vs African Safari Diani Adventure (2013) eKLR, where the court stated;

“Unless there is a contractual or statutory basis for withholding salary during a period of suspension, it is not open to an employer to suspend an employee without pay. The legal obligation at common law on an employer is to pay wages not to provide work. Unless it is varied by statute or contract, the obligation continues even during the suspension.”
29. On the fourth issue and from the foregoing, the Claimant submitted that he is entitled to the prayers as sought.

Respondent's submissions

30. The Respondent identified the following issues for determination, thus; whether the Claimant was terminated unfairly, wrongfully, and/ or resigned; and whether the Claimant is entitled to the reliefs sought.
31. On the first issue, the Respondent submitted that the Claimant voluntarily resigned from his employment and was not dismissed from employment by the Respondent.



32. The Respondent adhered to the tenets of procedural fairness. It issued the Claimant with a show cause and suspension letter dated 14th August 2014. In the letter, the charges against the Claimant were expressly brought out. The suspension was rightfully handed down to pave the way for the investigations of the accusations against the Claimant. It didn't amount to the termination of his employment. To fortify this submission reliance was placed on the case of *Bartholomew Wanyama v Moses Gitari & 2 Others* [2011] eKLR.
33. The Respondent was following the due process of the law before the Claimant submitted his resignation letter dated 26th August 2014. Having resigned and therefore caused the employer-employee relationship to come to an end, it could not proceed with the process and or terminate his employment. To support this, support was drawn from the decision in the case of *William Kariuki v. Kenya Civil Aviation* [2008] eKLR where the court opined that:
- “the plaintiff having resigned from the defendant's employment and the defendant having accepted that resignation which fact was being acknowledged in the letter complained of, the relationship of employer/employee had been thereby severed. As such the plaintiff having ceased being an employee of the defendant from 31.3.2005 he was incapable of being dismissed.”
34. Further, during cross-examination, the Claimant confirmed that he did not file any pleadings refuting the authenticity of the resignation letter nor did he lodge any criminal complaint of alleged forgery in respect of the above resignation letter. He further confirmed that notice pay was remitted in September 2014.
35. On the second issue, the Respondent submitted that the Claimant is not entitled to salary for September, October, November, and December 2014 because he resigned on 26th August 2014.
36. On housing allowance, the Respondent submitted that regarding the Claimant's employment contract dated 3rd October 2012, the absence of an express house allowance clause in the employment contract implies that the parties mutually agreed upon a compensation structure that did not include a separate house allowance but rather an all-inclusive salary. To think otherwise shall be tantamount to rewriting a contract for the parties. To buttress this, she relied on the case of *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR, and the case of *National Bank of Kenya Ltd v Pipe Plastic Samkolit (K) Ltd & another* [2001] eKLR, where the Court of Appeal stated that:
- “It was clear beyond para-adventure that save for those special cases where equity might be prepared to relieve a party from a bad bargain, it is ordinarily no part of equity's function to allow a party to escape from a bad bargain.”
37. On compensation for unfair termination, the Respondent submitted that the Claimant voluntarily resigned and was not terminated. The relief cannot be available to him.
38. On the claim for a certificate of service, the Respondent submitted that it is available for collection by the Claimant.
39. On the claim for punitive damages, the Respondent submitted that the Claimant had neither made nor submitted a case for punitive damages.
40. Lastly on costs, the Respondent submitted that it had discharged its burden in proving that the Claimant voluntarily resigned and should therefore be awarded costs of the suit.

Issues for Determination.



- i. How did the separation in employment between the Claimant and the Respondent occur?
- ii. If the answer to [i] above is through termination of employment by the Respondent, was the termination fair and unlawful?
- iii. Whether the Claimant is entitled to the reliefs sought.

How did the separation in employment between the Claimant and the Respondent occur?

41. The Claimant asserted that the Respondent terminated his employment by a letter dated 26th August 2014, though the same wasn't issued to him until 15th December 2014. The Respondent on the other hand contended that the Claimant resigned from his employment voluntarily through his letter dated 26th August 2014. This is a matter where this Court has to believe the version of one party as opposed to the other.
42. I note the resignation letter dated 26th August 2014, it read in part;
RE: Resignation

“This is in relation to my employment status with your organization.

I would hereby like to tender my resignation notice today.

My gratitude for the opportunities offered to myself by your organization while in your service.”
43. The letter was hand written. The Claimant didn't assert that the handwriting obtaining on the letter isn't his. He didn't deny the signature thereon. I have carefully considered the signature on the letter and that the termination letter dated 26th August 2014, I have no doubt, it was by the Claimant.
44. In my view, the Claimant wasn't candid on the resignation letter. He blew hot and cold at the same time. At one point, he asserted that the letter was not presented to the Respondent, at another he contended that the Respondent didn't accept the resignation. This didn't aid his case, it only brought him out as an evasive and untrustworthy witness.
45. By its letter dated 26th August 2014, the Respondent wrote the Claimant stating that it had accepted his resignation. With great respect, the Claimant cunningly attempted to run away from the acceptance by stating that he didn't execute the letter. He offered to resign, the Respondent accepted the offer, period. There wasn't any legal requirement that he signed the acceptance in order for the same to be valid.
46. By reason of the foregoing premises, I conclude that the Claimant voluntarily resigned from his employment. Further, his employment wasn't terminated by the Respondent as he alleged.
47. Having found as I have hereinabove, it becomes unnecessary for this Court to consider the second identified issue.

Whether the Claimant is entitled to the reliefs sought Salary for the period of September, October, November and December 2014 Kshs 252,000.00

48. Having found that the Claimant resigned from employment on 26th August 2014, there cannot be any basis to award the Claimant any relief under this head.



House allowance for the entire period of employment Kshs. 226,350.00

49. Section 31 of the [Employment Act](#), 2007, in the interpretation of this Court bestows upon employees a statutory right to reasonable accommodation by the employer. Therefore, a corresponding obligation is created on the employer to provide the accommodation or in the alternative provide house allowance to enable the employee[s] secure accommodation. Where there is controversy as regards the discharge of this obligation by the employer, it thus behoves the employer to prove either that it provided accommodation to the employee or that the salary it paid the employee was inclusive of a house allowance.
50. Where the employer alleges that what the employee was earning was a consolidated salary, therefore, inclusive of a house allowance, there must be clear material from where this can be discerned. The contract of employment must explicitly speak to this. The Court of Appeal in [Grain Pro Kenya Inc. Ltd vs- Andrew Waitbaka Kiragu -Appeal No. 228 of 2017](#) stated on this that:-

“Looking at the letter of appointment which is the subject contract against the above provision of the law and while conscious that it is not within the scope of the courts to re-write a contract but merely interpret , we find the contract of employment didn’t indicate whether the sum of USD 600 included house allowance and specifically provided that the Respondent was to be paid “other benefits as required by law”. The Judge interpreted that contract although she did not specifically mention this particular clause to mean that the Appellant was liable to pay the respondent house allowance. We cannot fault the Judge for that interpretation because house allowance is a benefit that is required under the [Employment Act](#) and the contract did not provide that house allowance was consolidated in the basic wage. Counsel for the invited us to look at the letter of appointment as the pay slip does not constitute a contract. It is merely issued by the employer the employee has no part in its preparation or even a place to sign for it. For avoidance of doubt we clarify

51. I am convinced that the Respondent failed to demonstrate that at all material times, it discharged the statutory obligation under Section 31 of the [Employment Act](#). Consequently, I hold that the Claimant is entitled to be paid the amount that he could have earned were the Respondent paying him a house allowance.

Compensation for wrongful and unfair termination 756,000.00

52. The Claimant’s claim for unfair termination collapsed. He cannot be availed any relief like that contemplated under Section 49[1][c], that is allied or tied to a claim for unfair termination. As such, I decline the relief sought under this head.

Certificate of Service

53. Per section 51 of the [Employment Act](#), 2007, a certificate of service is issuable to a discharged employee as of right. Further, the Respondent admitted that it is bound to issue the same.

Punitive damages

54. Entitlement to punitive damages was not demonstrated evidentiary.



Costs of the cause

55. As costs follow the event, the Claimant shall be entitled to costs of the suit only to the extent of his success in this matter. Therefore, computation of party and party costs shall be anchored on the sum awarded hereinbelow.
56. In the upshot, Judgment is hereby entered for the Claimant for;
- a. Compensation for unpaid house allowance, KShs. 226, 350.
 - b. A certificate of service to be issued within 30 days of this Judgement.
 - c. Interest on a] above at court rates from the date of this Judgment till full payment.
 - d. Costs of the suit.

READ SIGNED AND DELIVERED THIS 14TH DAY OF NOVEMBER 2024.

OCHARO KEBIRA

JUDGE

In the presence of

..... For the Claimant

..... for the Respondent.

