



**Walela v Kenya Women Microfinance Bank PLC (Cause E576 of 2022)  
[2024] KEELRC 2789 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2789 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E576 OF 2022  
L NDOLO, J  
NOVEMBER 14, 2024**

**BETWEEN**  
**BENSON KISIANG'ANI WALELA ..... CLAIMANT**  
**AND**  
**KENYA WOMEN MICROFINANCE BANK PLC ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This dispute was triggered by the Respondent's letter dated 22<sup>nd</sup> September 2021, addressed to the Claimant as follows:

“Dear Benson Kisiang’ani

RE: TERMINATION OF SERVICES

We refer to the above.

We make reference to the Disciplinary Committee proceedings held on 21<sup>st</sup> September, 2021 regarding gross misconduct and absconding duty. Please note that you need to clear on these outstanding issues.

Consequently, we hereby formally advise you that we have terminated your services for gross misconduct and absconding duty with effect from 4<sup>th</sup> October 2021. However, as stipulated in the contractual terms, we will pay you one month's salary in lieu of notice.

You are requested to ensure that you have handed over all the institution's property that are in your possession to your supervisor, including office equipment, employment card, office keys etc.



Your terminal dues will be calculated and paid to you from the Head Office on 4<sup>th</sup> December 2021 upon clearance from your Region/Department.

Please ensure that you clear with your supervisor before you leave KWFT.

We wish you well in your future endeavours.

Yours faithfully,

(signed)

CAROLINE MUNGAI

GENERAL MANAGER, HUMAN RESOURCE

2. Subsequent to this letter, the Claimant filed a Memorandum of Claim dated 1<sup>st</sup> August 2022, to which the Respondent responded by a Memorandum of Response dated 8<sup>th</sup> December 2022.
3. The dispute went to full trial where the Claimant testified on his own behalf and the Respondent called its General Manager-Human Resources, Caroline Wanjiku Mungai. Thereafter, the parties filed written submissions.

### **The Claimant's Case**

4. The Claimant was first employed by the Respondent on 18<sup>th</sup> March 2008, as a Business Development Officer. He rose through the ranks to the position of Product Manager-Energy, earning a monthly salary of Kshs. 87,400 as at the time of dismissal in 2021.
5. The Claimant's case is that his dismissal was wrongful and unfair. Regarding his absence from duty, the Claimant explains that he applied for and was granted 5 days leave, running from 2<sup>nd</sup> to 6<sup>th</sup> August 2021, to go and bury his guardian (grandmother).
6. The Claimant was to report back to work on 8<sup>th</sup> August 2021. He however states that the burial of his grandmother was pushed to 14<sup>th</sup> August 2021. As a result, he chose to report back to work for one week and take time off again on 12<sup>th</sup> August 2021 and report back on 16<sup>th</sup> August 2021, which deadline he was unable to keep due to what he refers to as unexpected eventualities.
7. At this time, the Claimant was on field work in the Central Rift Valley Region. He avers that on 16<sup>th</sup> August 2021, his Manager cancelled his field activities and recalled him back to the Head Office. He adds that he travelled to Nakuru to pick his belongings from the hotel into which he had been previously booked. He spent the night in Nakuru and reported to the Regional Office on 17<sup>th</sup> August 2021, where he claims to have met the Credit Risk Manager and the Assistant Finance Manager.
8. According to the Claimant, he reported on duty on 18<sup>th</sup> August 2021 and continued with his normal routine until 24<sup>th</sup> August 2021, when he received a show cause memo, to which he responded on the same day. There was further exchange of email communication between the Claimant and his supervisors and on 9<sup>th</sup> September 2021, he was issued with a show cause letter by the Human Resource Department, to which he also responded.
9. By letter dated 13<sup>th</sup> September 2021, the Claimant was invited to a disciplinary meeting. He claims that he was not afforded a fair hearing because his intended witness was prevented from attending the disciplinary meeting, by being sent away on official duty. The Claimant also takes issue with the composition of the disciplinary panel, which he accuses of being biased against him.
10. The Claimant tabulates his claim as follows:



- a. 12 months' salary in compensation.....Kshs. 1,048,800
- b. Gratuity for 36 months.....786,600
- c. Payment in lieu of notice.....87,400
- d. Lunch allowance for 66 months.....554,400
- e. Leave allowance for 26.5 days.....34,259
- f. Salary for the remainder of contract (19 months).....1,660,000
- g. Shares.....367,071
- h. Certificate of service
  - i. Costs plus interest

### **The Respondent's Case**

11. In its Memorandum of Response dated 8<sup>th</sup> December 2022, the Respondent admits the Claimant's employment history, as pleaded in the Memorandum of Claim. The Respondent states that the Claimant served on renewable fixed term contracts, with the last contract having been issued on 22<sup>nd</sup> April 2020.
12. Regarding the events leading to the Claimant's dismissal, the Respondent states that it had planned field activities, involving the Claimant's Department, in the Central Rift Valley Region, to run between 5<sup>th</sup> August 2021 and 20<sup>th</sup> August 2021.
13. On 31<sup>st</sup> July 2021, the Claimant requested for and was granted four off days, following the death of his guardian (grandmother). The Claimant was allowed to be away on 2<sup>nd</sup>, 3<sup>rd</sup>, 12<sup>th</sup> and 13<sup>th</sup> August 2021 and was expected to report back to the field on 16<sup>th</sup> August 2021.
14. It is pleaded that the Claimant's Manager sent him a text on 16<sup>th</sup> August 2021, inquiring whether he had reported back to work, to which the Claimant responded in the negative, indicating that he would back that afternoon. After several back and forth communications via text, the Manager asked the Claimant to report back to the Head Office.
15. The Claimant is said to have reported to the Head Office on 18<sup>th</sup> August 2021, without offering an explanation as to why he had failed to report earlier as instructed. The Respondent accuses the Claimant of spending the night at Nuru Palace Hotel, a company contracted facility in Nakuru, on 16<sup>th</sup> August 2021 and 17<sup>th</sup> August 2021, without permission.
16. The Respondent avers that the Claimant did not report to work from 1<sup>st</sup> September 2021 to 5<sup>th</sup> September 2021. He is said to have reported on 6<sup>th</sup> September 2021, when he was issued with a show cause letter to which he responded on 7<sup>th</sup> September 2021.
17. He was issued with a further show cause letter dated 9<sup>th</sup> September 2021, citing gross misconduct and absconding duty, to which he did not respond. By letter dated 13<sup>th</sup> September 2021, the Claimant was invited to a disciplinary meeting scheduled for 21<sup>st</sup> September 2021.
18. At the disciplinary meeting, the Claimant is said to have expressed remorse, requesting for time to refund the out of pocket allowances and hotel charges for days when he was not at work in the field. The disciplinary committee recommended the Claimant's dismissal plus a surcharge for Kshs. 3,200 being out of pocket allowances and Kshs. 2,500 being unauthorised hotel accommodation.



19. The Claimant was issued with a dismissal letter dated 29<sup>th</sup> September 2021, which required him to hand over to his supervisor. The Claimant was informed that his terminal dues would be processed and paid to him upon clearance by his Department. The Respondent avers that the Claimant failed to sign the clearance form to facilitate payment of his final dues.
20. The Respondent's case is that the Claimant's dismissal was lawful and fair. It is pleaded that the Claimant's tenure was checkered with disciplinary issues, including absconding duty in the month of February 2021 and August 2021.

### **Findings and Determination**

21. There are two (2) for determination in this case:
  - a. Whether the Claimant's dismissal was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Dismissal**

22. The dismissal letter dated 22<sup>nd</sup> September 2021, cites absconding of duty as the reason for dismissal. The Claimant admitted having extended his authorised absence, prompting his Manager to cancel his field work and recall him to the Head Office. The question for determination is whether this constituted a valid reason for dismissal.
23. In determining whether a disciplinary action taken by an employer against an employee is reasonable and proportional, the Court does not substitute the employer's decision with its own. In other words, the Court does not ask what action it would have taken had it been in the employer's position. All the Court asks is whether the action taken by the employer is one that an ordinary employer would have reasonably taken.
24. This is what is commonly referred to as the 'reasonable responses test' whose beacons were established by Lord Denning in *British Leyland v Swift* (1981) IRLR 91 as follows:

“The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employer may not have dismissed him.”
25. It is not in contest that the Claimant extended his off days without prior authorisation and when called upon to explain himself, he did not offer any credible reason for his absence. In the circumstances, I find and hold that the Respondent had a valid reason for dismissing the Claimant, as contemplated under Section 43 of the *Employment Act*.
26. The next question is whether in effecting the dismissal, the Respondent observed due process as set out in Section 41 of the Act. There is evidence on record that the Claimant was issued with two show cause letters and was also invited to a disciplinary hearing which he duly attended. The Court is therefore satisfied that he was availed a fair hearing as required by law.



27. The claims for compensation, notice pay and salary for remainder of the contract are therefore without basis and are disallowed.
28. No evidence was led to support the claims for gratuity, lunch allowance, leave allowance and shares, which therefore fail.
29. Finally, the Claimant's entire claim fails and is dismissed with an order that each party will bear their own costs.
30. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Sikuta for the Claimant

Mr. Njiru for the Respondent

