



**Rono v Kenyatta International Convention Centre (Cause 8 of 2020)
[2024] KEELRC 2804 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2804 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 8 OF 2020
L NDOLO, J
NOVEMBER 14, 2024**

BETWEEN

EVELYN CHEPKOECH RONO CLAIMANT

AND

KENYATTA INTERNATIONAL CONVENTION CENTRE RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed her Statement of Claim dated 10th January 2020, alleging wrongful dismissal by the Respondent. In response, the Respondent filed a Reply dated 1st September 2021, to which the Claimant responded on 7th January 2022.
2. The matter went to full trial where the Claimant testified on her own behalf and the Respondent called its Principal Human Resources Officer, Christine Mutanu Maluki. Thereafter, the parties filed final submissions.

The Claimant's Case

3. The Claimant was employed by the Respondent on 27th November 2008, as a Credit Controller. She rose through the ranks and on 25th January 2016, she was appointed to the position of Assistant Supply Chain Manager.
4. On 29th August 2019, the Claimant was issued with a show cause letter on allegations of leaking confidential information to third parties. She responded on 2nd September 2019, denying the allegations and by letter dated 6th September 2019, she was invited to appear before the Human Resource Advisory Committee on 17th September 2019.



5. By her letter dated 13th September 2019, the Claimant asked to be supplied with information regarding the confidential information she was accused of disclosing, the recipient of the information, the date and means of disclosure. The Claimant states that her request did not elicit any response from the Respondent.
6. The Claimant appeared before the Human Resources Advisory Committee on 17th September 201, as scheduled and on 18th September 2019, she was summarily dismissed. She appealed to the Board of Directors but her dismissal was upheld.
7. The Claimant challenges the dismissal which she terms as wrongful, stating that it is not based on logical proof. She further claims that she was not availed a fair disciplinary procedure. The Claimant cites the following particulars of unfairness:
 - a. The allegations did not constitute a ground for summary dismissal;
 - b. The charges levelled against the Claimant were strange to her;
 - c. Jane Frances Mutio Mutisya, Gerald Kirimi and Rosemary Muthua were conflicted and impartial members of the Human Resources Advisory Committee;
 - d. The CEO and the person to whom the alleged confidential information was leaked were not availed as witnesses for cross examination by the Claimant;
 - e. The Respondent refused to provide the Claimant with the information, materials and evidence relied upon in taking disciplinary action against her;
 - f. No thorough investigations were undertaken by the Respondent before taking disciplinary action against the Claimant;
 - g. The Respondent discriminated against the Claimant by failing to apply other interventions in resolving the case.
8. The Claimant seeks the following remedies:
 - a. A declaration that her summary dismissal was wrongful;
 - b. An order for reinstatement without loss of benefits or in the alternative Kshs. 1,578,000 being 12 months' salary in compensation;
 - c. Kshs. 1,301,500 being the difference in pay between Jon Grade KICC 3 and KICC 4 from May 2018 to November 2019;
 - d. Kshs. 657,500 for 136 accrued leave days;
 - e. Kshs. 131,500 in lieu of notice;
 - f. Certificate of service;
 - g. Costs plus interest.

The Respondent's Case

9. In its Reply dated 1st September 2021, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim. The Respondent however denies the allegation that the Claimant was wrongfully and unfairly dismissed.



10. The Respondent counters the Claimant's averment that she requested for and was denied documents relevant in preparation of her defence. The Respondent claims that all relevant documents were within the Claimant's knowledge.
11. The Respondent asserts that the Claimant disclosed confidential information, an offence constituting gross misconduct, contrary to Section 44 of the *Employment Act* and Clause 11.7.1.1 of the Respondent's Human Resources Policy.
12. The Respondent further asserts that the Claimant was informed of the allegations against her, vide letter dated 29th August 2019, to which she duly responded. She also attended a disciplinary hearing on 17th September 2019, where she made oral representations. The Respondent denies the Claimant's allegation that some members of the Human Resources Advisory Committee were conflicted.

Findings and Determination

13. There are two (2) issues 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

14. The Claimant was dismissed by letter dated 18th September 2019 stating thus:

“Re: Summary Dismissal From Employment

The above matter refers.

Further to a disciplinary meeting held on 17th September 2019, with the Human Resources Management Advisory Committee, and your response to show cause letter on unauthorised disclosure of the Corporations' confidential documents duly dated 2nd September 2019.

The committee deliberated on your response and regrets to inform you that your defence was not satisfactory and resolved to summarily dismiss you from employment with immediate effect.

The reason for your dismissal is unauthorised disclosure of the Corporation's confidential documents which is a contravention of the *Employment Act* Section 44 and Human Resources Policy clause 11.7.1.1.

Your terminal dues (if any) shall be paid to you subject to satisfactory clearance with the corporation. A clearance form is hereby attached for your use accordingly.

Yours faithfully

(signed)

Nana W. Gecaga

Chief Executive Officer”

15. The dismissal letter accuses the Claimant of unauthorised disclosure of confidential information being, a commitment letter from the Ministry of Tourism confirming availability of Kshs. 80 Million for project works and draft minutes of the Tender Opening Committee.



16. According to the evidence on record, the subject letter was given to the Claimant by the Chief Executive Officer. The Claimant denied disclosing the letter to any third party. She testified that she filed it in the relevant procurement file, which was accessible to other employees in the Department. In addition, the Claimant told the Court that she was not a member of the Tender Opening Committee, whose minutes are said to have been disclosed to a third party.
17. In her submissions dated 23rd September 2024, the Claimant referred to the persuasive decision in *McKinley v B.C. Tel.* (2001) 2 S.C.R. 161 where the Canadian Supreme Court stated as follows:

“Whether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee’s dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee’s obligations to his or her employer.”
18. In the present case, no evidence was led to prove that the Claimant had disclosed either the commitment letter from the Ministry of Tourism or the minutes of the Tender Opening Committee. Her averment that the letter was accessible to other employees within the Respondent’s establishment and that she had no access to the minutes was not dislodged.
19. Moreover, the Respondent appears to have based its decision on inconclusive investigations by the Directorate of Criminal Investigations. The Respondent’s witness, Christine Mutanu Maluki told the Court that the Disciplinary Committee used a letter from the Directorate of Criminal Investigations to link the Claimant to the alleged disclosure of confidential information.
20. In its decision in *Milkah Khakayi Kulati v Sandstorm (Africa) Limited* [2014] eKLR this Court held that an employer who decides to subject an employee to disciplinary proceedings cannot be allowed to abdicate its responsibility by pointing to investigations by an external agency. The Respondent fell into this error and therefore failed to discharge its burden of proving a valid reason for dismissing the Claimant, as required under Section 43 of the *Employment Act*.
21. With respect to the disciplinary procedure adopted by the Respondent, the Claimant complained that she was not allowed an opportunity to cross examine the Chief Executive Officer, who was her accuser. She further took issue with the composition of the Disciplinary Committee, pointing to the presence of employees who had been involved in investigations by the Directorate of Criminal Investigations.
22. The issues raised by the Claimant in this regard, which the Respondent appears to have ignored, were serious and left unattended had the potential to dent the credibility of the disciplinary proceedings. More significantly, the Respondent chose not to respond to the Claimant’s request for particulars of the allegations.
23. On the whole, I find and hold that the conduct of the Respondent, during the disciplinary proceedings, fell below the threshold of procedural fairness established by Section 41 of the *Employment Act*.
24. Finally, I return a verdict that the Claimant’s dismissal was wrongful and unfair, and she is entitled to compensation.



Remedies

25. The Claimant seeks reinstatement as a primary remedy. However, in view of the time lapse post separation, this would not be an appropriate remedy. Instead, I award the Claimant twelve (12) months' salary in compensation.
26. In arriving at this award, I have considered the Claimant's long service and the finding that she did not contribute to the dismissal. I have further taken into account the disclosure by the Claimant that she has been unable to secure alternative employment. In addition, I have considered the mishandling of the Claimant's case by the Respondent, with particular focus on the failure to respond to the Claimant's inquiries in the course of the disciplinary process.
27. I also award the Claimant one (1) month's salary in lieu of notice.
28. The Claimant did not adduce evidence to support her claim for leave pay for 136 days. However, in her testimony before the Court, the Respondent's witness admitted that the Claimant is entitled to 62 days' leave pay. I will therefore allow this claim to the extent of the admission.
29. The claim for salary difference was not proved and is disallowed.
30. In the ultimate, I enter judgment in favour of the Claimant as follows:
 - a. 12 months' salary in compensation.....Kshs. 1,578,000
 - b. 1 month's salary in lieu of notice.....131,500
 - c. Leave pay for 62 days (131,500/30*62).....271,767Total.....1,981,267
31. This amount will be subject to statutory deductions and will attract interest at court rates from the date of judgment until payment in full.
32. The Claimant is also entitled to a certificate of service plus costs of the case.
33. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024.

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JUDGE

Appearance:

Mr. Gachuba for the Claimant

Ms. Akuno for the Respondent

