



**Muchunu v NRS Sacco Society Ltd (Cause E422 of 2021)  
[2024] KEELRC 13443 (KLR) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13443 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E422 OF 2021  
HS WASILWA, J  
DECEMBER 16, 2024**

**BETWEEN**

**ANN WANGUI MUCHUNU ..... PETITIONER**

**AND**

**NRS SACCO SOCIETY LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant herein Anne Wangui Muchuu filed a memorandum of claim dated 17<sup>th</sup> June 2022 on 20<sup>th</sup> June 2022 through the firm of Mumia & Njiru advocates alleging unfair and unlawful termination. She also alleged discrimination and unfair labour practices by the respondent leading to premature loss of career.
2. She sought for the following prayers:
  - a. A finding that the claimant's termination were procedurally and substantively unfair.
  - b. A finding that the respondent discriminated against the claimant on account of salary disparity.
  - c. Payment of her salary up to the date of revocation of her reinstatement based on old salary of kshs 91,952.00
  - d. Payment of one month salary while on compulsory leave. Payment of 12 months compensation based on the old monthly salary of kshs 91,952
  - e. Payment of her accrued leave payment of kshs 5,000,000 being exemplary damage for discrimination and harassment.
  - f. Issuance of a certificate of service
  - g. Costs of the suit



- h. Any other relief that the court may deem fit to grant.
3. The claimant's case is that she was employed by the respondent on 13/2/2018 as a BDAM vide a contract of even date. Her job description at the time included business development and HR which fell under the administrative part of BDAM. Her initial salary was gross kshs 44,000/- being basic 37,000/- and house allowance 7,000/-. She served on probation for 6 months initially and signed off targets which would form the basis of her probationary appraisal with her supervisor.
  4. The claimant avers that her appraisal was conducted after 6 months on 4/9/2018 by the Education Committee of the Board. Her performance was upraised satisfactory and the board duly noted her underpayment and recommended her salary increase to kshs 68,970/-= basic pay.
  5. In November 2018 her salary came to a gross of kshs 82,764/- backdated to the time of her engagement as was exhibited. Before the probationary approval however by the then CEO, the claimant avers that she was given an opportunity to act as CEO in the absence of the CEO.
  6. At the same time the board held a meeting and approved her to use the stationary vehicle or a cab if she left work late. On 7/5/2019, the claimant was issued with a compulsory leave letter of even date without reason being assigned thereto.
  7. The claimant avers that she later learnt that the reason for the compulsory leave was due to the fact that she had been listed on the CRB. She avers that before her employment there was no requirement that an employee declare previous listing on the Credit Reference Bureau (CRB).
  8. On 10/5/2-19, the claimant responded to the compulsory leave and loans issue. She attached a document showing that she was in an arrangement with her bank to cater for the repayments and that the said lender was a third party who was not privy to her employment but this was ignored.
  9. On 20/5/2019 she was issued with a show cause letter to respond within 72 hours. The show cause letter expected her to respond to an email sent to her on 20/5/2019.
  10. She responded to the show cause letter. Issues raised in the show cause letter related to her refusal to acknowledge receipt of a letter dated 7<sup>th</sup> May 2019, issues of the Sacco's performance as Ag. CEO, Issue of high staff turnover despite staff restructuring, failure to report to the board on time, an issue of attempted fraud of 680,000/-, misuse of Sacco funds and Sacco van on personal issues, alteration of Sacco van ticket amounting to forgery, failure to declare her listing on the CRB and failure to do investigation on newly recruited staff on their confidential matters from their previous employer.
  11. The claimant responded to the show cause letter of 21/5/2019 and requested for extra time to prepare as the issues raised were weighty. She then received a response to her request issued on 24<sup>th</sup> May 2019 requiring her to respond within 72 hours and not 7 days as per her request. The same letter which invited her for a disciplinary hearing on 31/5/2019 at 2p.m. was a pre supposition that her response to the show cause letter would not exonerate her and a premature determination of her guilt since she had not even presented her response to the show cause letter.
  12. On 30/5/2019 she wrote a letter requesting for more time to prepare for the disciplinary hearing since she was unwell. She attached a sick leave from a Government doctor. The respondent ignored her request for more time inspite of the sick off attached.
  13. On 7<sup>th</sup> June 2019 she received a letter in her email communicating a decision by the board to dismiss her from employment. That this was without completing the entire disciplinary process.



14. The claimant avers that this was an SGM of the respondent on 8/6/2019 and the board that sent her home was also sent packing and she contends that the board was in a hurry to dismiss her lest she discloses their misdeeds at the SGM. On 10/6/2019 she appealed the dismissal to the new Board. The new board sought advice from their advocate who advised them to reinstate the claimant's employment as what was done to her was illegal and unlawful.
15. On 1/7/2019 she was advised to reapply for her job and give a detailed report of what transpired between her and the previous board. She re applied as directed on 5/7/2019 for the BDAM position. Her appeal was denied. She was however appointed on 23/7/2019 to the position of BDMA subject to 6 months probation. Her salary was reduced to 48,000. On 31/7/2019 her appointment was again revoked.
16. The claimant avers that the former board sought to discipline her for her standing against corruption.
17. The respondents opposed the claimants claim. They filed their response dated 10<sup>th</sup> July 2023 through their counsels CSA advocates LLP. They aver that they treated the claimant with utmost professionalism and fairness. They also aver that during the claimant's tenure as Ag CEO, the respondent's performance deteriorated and the respondent lost her clientele and economic portfolio.
18. The respondent admitted placing her on compulsory leave and also that the claimant failed to provide a certificate for CRB during her employment. They aver that they issued the claimant with a show cause letter which she failed to explain to satisfactorily leading to her being invited for disciplinary hearing.
19. That the claimant also failed to attend the disciplinary hearing which was held and a decision made to terminate her on 7/6/2019. The respondent aver that the claim is not merited and should be dismissed.
20. The parties filed their submissions and on the claimants submissions she reiterated the evidence as submitted before court. The respondents on their part submitted that they had valid reason to terminate their service of the claimant and that they followed due process.
21. I have examined all the evidence and submissions of the parties herein.
22. From the evidence submitted by the claimant, she was barely out of probation when she was appointed the respondent's Ag CEO. Due to the fact that she was still new in the job things moved very fast and then she was sent on compulsory leave.
23. She was issued with a show cause letter and asked to respond. She requested for more time to respond but her request was met with a notice of disciplinary hearing.
24. The implication of this chronology of events is that the claimant was denied ample time to explain herself as provided under the *Fair Administrative Action Act*. The fact that her request for more time to respond was met with an invitation for a disciplinary hearing is an indication that the respondent had a predetermined position on her guilt and that they were not interested in considering her response to the show cause letter before subjecting her to a hearing process.
25. Furthermore, the claimant also requested for more time to appear for the disciplinary hearing as she was unwell. Her request was also rejected and she was instead dismissed without a hearing. The claimant was indeed subjected to a flawed disciplinary process and denied a chance to defend herself. There was no opportunity given to her to establish the existence of valid reason to warrant her dismissal. Section 45(2) of the employment at 2007 states as follows:
  - (2) A termination of employment by an employer is unfair if the employer fails to prove—
    - a. that the reason for the termination is valid;



- b. that the reason for the termination is a fair reason——
  - i. related to the employees conduct, capacity or compatibility; or
  - ii. (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.

26. In the circumstances, of this case the respondent did not establish a case against the claimant and they also denied her an opportunity to defend herself.
27. It is my finding that the claimant was dismissed unfairly and unjustifiably and therefore her dismissal was not warranted.
28. Having established that the claimant was unfairly dismissed, what remedies is she entitled to.
29. Given the unfair termination meted against the claimant without any disciplinary hearing, I find 10 months' salary as compensation adequate which I accordingly grant at:
- 1. 10 x Kshs 91,951.
  - 2. I also award the claimant 1 months' salary in lieu of notice =Kshs 91,951/-
  - 3. 1 month salary while on compulsory leave not paid kshs 91,951/-
  - 4. The claimant be issued with certificate of service.  
Total awarded Kshs1,103,412 less statutory deductions.
  - 5. The respondent will pay costs of this suit plus interest at Court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 16<sup>TH</sup> DAY OF DECEMBER, 2024.**

**HELLEN WASILWA**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**HELLEN WASILWA**

**JUDGE**

