



**Momanyi v Kenya National Chamber of Commerce (Cause
1272 of 2018) [2023] KEELRC 166 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 166 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1272 OF 2018
J RIKA, J
JANUARY 31, 2023**

BETWEEN

SAMUEL MOMANYI CLAIMANT

AND

KENYA NATIONAL CHAMBER OF COMMERCE RESPONDENT

RULING

1. The claimant filed his statement of claim on 31st July 2018. He states that he was employed by the respondent as ICT Manager, on a 3-year term contract, on 1February 9, 2018.
2. He was to serve probation of 3 months. This ended on May 19, 2018, when he states he was constructively confirmed.
3. He was informed by the respondent on March 8, 2018 that there was concern on him, about possible conflict of interest. He was suspended for 3 weeks to allow for investigations. He wrote explaining himself, and suspension was lifted with an apology, on March 23, 2018. He reported to work on March 26, 2018.
4. On May 22, 2018, the respondent issued the claimant a letter of summary dismissal, alleging there was an issue concerning the claimant's integrity which had arisen. The reason was not explained to the claimant. There was no notice. The reasons stated in the letter were the same as given in the letter of suspension. There was no hearing. Termination was premeditated.
5. He claims compensation in the sum of Kshs. 5,400,000 being the salary for 36 months left in his contract. He asks the court to declare that termination was unfair, and that he is granted costs, interest and any other suitable relief.
6. The respondent filed its statement of response and a counterclaim, dated August 28, 2018. Its position is that the claimant was irregularly hired, in a conspiracy involving the claimant and respondent's



then CEO, Angela Ndambuki. The position of ICT Manager was never advertised. The respondent required an ict consultant. The contract of employment alleged to have been executed by the parties was an illegal contract. The position of ICT Manager did not exist. The respondent's board did not give its approval. All benefits under the contract were fraudulent

7. The claimant was suspended to allow for investigations. it is not aware on the claimant's exoneration and apology received from the respondent on suspension. Independent Assessors engaged by the respondent found out that the claimant had connived with the CEO. The CEO prevailed upon an Independent Firm, not to subject the claimant to a competency test. The claimant was given a chance to explain himself, and admitted to allegations of conflict of interest.
8. Based on its allegation of fraud on the part of the claimant, the respondent counterclaims general damages, costs, interest and any other suitable relief. The claimant filed response to the counterclaim on July 2, 2019. He restates that he was regularly employed, and was not involved in any conspiracy with the CEO.
9. Hearing proceeded on July 29, 2022, in the absence of the respondent. there is an affidavit of service filed by process-server Nelson Ageke Adero, sworn on May 20, 2022, showing that service was made upon EKN LLP Advocates. Mention Notices preceding and ensuing the hearing date, are similarly shown to have been served upon the Law Firm of EKN LLP.
10. In the process of preparing the Judgment, the Court has come across a notice of change of Advocates dated November 27, 2020, filed by Kihara Njuguna & Company Advocates for the respondent. It is not clear if this change was communicated to the claimant's Advocates. Its presence on record, compels the court to halt preparation and delivery of Judgment, and bring the notice to the attention of the claimant's Advocates. It would be imprudent to proceed with writing and delivery of Judgment, only to be encountered with an application seeking reopening of proceedings, on the ground stated above.

It Is Ordered

- a. Preparation and delivery of judgment is deferred pending clarification on representation of the respondent.
- b. Mention on February 21, 2023.
- c. The claimant shall serve the notice upon both EKN LLP Advocates and Kihara Njuguna & Company.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 31ST DAY OF JANUARY 2023.

James Rika

Judge

