



**Barasa v Giza Systems Integration Kenya Limited t/a Giza Systems Smart Solutions
(Cause 97 of 2019) [2023] KEELRC 231 (KLR) (27 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 231 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 97 OF 2019
SC RUTTO, J
JANUARY 27, 2023**

BETWEEN

MARTIN L. BARASA CLAIMANT

AND

**GIZA SYSTEMS INTEGRATION KENYA LIMITED T/A GIZA SYSTEMS
SMART SOLUTIONS RESPONDENT**

JUDGMENT

1. The suit was instituted through a statement of claim dated February 18, 2019 and which was later amended on March 13, 2019. The claimant avers that he was employed by the respondent as a Project Manager on July 1, 2016. That he worked tirelessly and diligently in promoting the business and interests of the respondent. He avers that on December 17, 2018, he was informed by the respondent's human resource manager that the top management had made up their minds to terminate his services. That he was issued with a letter of termination on December 20, 2018.
2. The claimant has termed the said termination as unlawful and unfair hence seeks an order of reinstatement and in the alternative, the sum of Kshs 5,535,524.80 being severance pay, compensatory damages equivalent to 12 months of his gross salary, balance in lieu of leave and general damages.
3. The respondent opposed the Claim through its Reply dated March 29, 2019. It avers that on December 17, 2018, the claimant was issued with a notice to show cause due to non-performance. That on December 20, 2018, he appeared and was briefed on the process of the notice of termination and informed of the purpose of the meeting. That the claimant admitted that his performance was below standard and accepted the termination. That the respondent calculated the claimant's terminal benefits and in turn, he signed a Deed of Release, Discharge and Indemnity undertaking that he had no claim against the respondent. On account of the foregoing, the respondent has asked the Court dismiss the claim with costs.



4. The matter proceeded for hearing on July 18, 2022 and each side presented oral evidence in support of their respective cases.

Claimant's case

5. At the commencement of the hearing, the claimant adopted his witness statement as well as his bundle of documents to constitute his evidence in chief. It was his evidence that on December 13, 2018, he was summoned to appear before the Human Resource Manager through an officer by the name Ms. Daisy. That he was not informed of the reason for the meeting and he requested for another day.
6. That the meeting took place on December 17, 2018 in the office of the Human Resource Manager, Ms Nadja Khan. That he was told that the reason for the meeting was termination of his services due to his performance. That at the meeting, he was informed that the management had made up their minds to terminate his services with immediate effect.
7. The claimant attributed his termination to his refusal to assist his immediate supervisor Mr Asharaf Hisham with his professional certificate and who he alleges, was working in the country illegally.
8. He further stated that on December 4, 2017, the respondent carried out a job evaluation and he scored 84% hence he believes he was doing his job tirelessly and diligently. That further, he had a clean personal employment record with his employer and that the respondent's actions have caused him grave harm.

Respondent's case

9. The respondent called oral evidence through, its Regional Marketing Manager, Ms Najda Khan who also adopted her witness statement and the respondent's bundle of documents to constitute her evidence in chief. It was Ms Khan's testimony that on December 17, 2017, the respondent issued the claimant with a notice to show cause due to non-performance. That the claimant was requested to present himself on December 20, 2018 to show cause why management should not terminate him.
10. That on the said date, the claimant was briefed on the process of termination and informed of the purpose of the meeting. That the basis of the show cause was solely with regards to non-performance. That the claimant was allowed to appoint someone or a witness if he wished to do so and he confirmed that he did not have one, hence he waived his right to that extent.
11. Ms. Khan further testified that the claimant was given an opportunity to defend himself on the issue of non-performance. That he admitted that his performance was below standard hence had no reason to defend himself and accepted the termination.
12. That subsequently, the claimant's letter of termination was drafted on December 20, 2019 through which he was informed that his employment with the respondent had been terminated. That the claimant was also advised through the said letter to liaise with his immediate supervisor and finalize his handover by December 31, 2018, which was his last day of duty.
13. That on December 21, 2018, the claimant executed a Deed of Release, Discharge and Indemnity, which confirmed that as at the date of execution, the respondent had already paid him two months salary in lieu of notice of termination.
14. That the claimant was informed of his rights and given a fair hearing. According to Ms Khan, the claim is malicious, spiteful and purely based on the claimant's poor reading and understanding of labour laws in relations to termination and payment of terminal benefits.



Submissions

15. The claimant submitted that the decision to terminate him had already been arrived at prior to the notice to show cause and hearing. That the hearing was an effort to sanitize the process. It was his further submission that he had already been adjudged by the same panel he was appearing before. In support of his submissions, the claimant placed reliance on the authorities of *Kenfreight (EA) Limited v Benson K Nguti* (2019) eKLR and *Paul Katuku Muthengi v SMEP Microfinance Bank Limited* (2021) eKLR. It was the claimant's further submission that the reasons for his termination were not supported by any documentary evidence and that there are no minutes and prior communication evidencing his non-performance.
16. On its part, the respondent argued that the claimant signed a Deed of Release, Discharge & Indemnity thorough which he agreed and confirmed that the payment of monies itemised in the Deed was in full and final settlement of any claims and demands of whatsoever kind and nature which he might have against the employer. That as such this Court is duty bound to give effect to the Deed settlement and cannot entertain the suit. That the claimant has not pleaded anywhere in the amended Claim, witness statement and or any pleadings filed in Court that he signed the agreement under duress, coercion or misrepresentation nor has he pleaded and or given particulars thereof.
17. In addition, the respondent submitted that in strict compliance with the Deed, it paid the claimant Kshs.920,235/=. To support its arguments, the respondent invited the Court to consider the determinations in *Coastal Bottlers Limited v Kimathi Mithika* Civil Appeal No 21 of 2017, *Ephraim Gaitbo Githongori v Timaflor Limited* Cause No 52 of 2018, *Gilbert Mugambi v Michimikuru Tea Factory Limited* Cause No 20 of 2017 and *John Karanja Muiruri v Njuca Consolidated Company Limited* Cause No 204 of 2017.
18. The respondent further submitted that without prejudice, the termination of the claimant was legal, fair and conducted according to law and in particular the *Employment Act*. That he was issued with a notice to show cause, given time to appear and be represented with a witness of his choice and indeed, appeared before a disciplinary panel where he was heard. That the claimant did not challenge the core issue of non-performance and to the contrary he accepted and agreed that his performance was below standard.

Analysis and determination

19. Upon evaluation of the issues arising from the pleadings, the testimonies before Court and the submissions on record, the following questions stand out for resolution:
 - a. Whether the Deed of Release, Discharge and Indemnity executed by the parties absolved the respondent from further liability and action arising from the termination;
 - b. Whether the claimant's termination from employment was unfair and unlawful;
 - c. Is the claimant entitled to the reliefs sought?

Import of the deed of release,⁴ discharge and indemnity

20. It was the respondent's case that the claimant signed a Deed of Release, Discharge and Indemnity through which he agreed and confirmed that the money he had received was in full and final settlement of any claims of whatever kind and nature which he might have in relation to his employment.



21. In support of its argument, the respondent exhibited the said Deed of Release, which is dated December 21, 2018. It reads in part:

“This Deed witnesseth that I Martine Barasa, holder of Kenya national identification card number....and of post office box....Nairobi....do hereby release, indemnity and discharge Giza Systems(K) Limited of Post Office Box...Nairobi...from all manner of actions, causes of action, claims or demands against the employer for or by reason of or in any way connected with my employment with the employer or the determination thereof.

In consideration of which the employer as at the date of executing this deed, already paid me the following cheque number xxxx...

And which the former employee hereby acknowledges receipt.... I agree and confirm that the above payments are in full and final settlement of any claims or demands of whatsoever kind and nature, which I may have against the employer for or reasons of or in any way connected with, my employment with the employer or the determination thereof....”

22. The claimant admitted under cross examination, that he signed the Deed of Release and that he was paid the amount listed therein. He added that he was forced to sign the said Deed of Release or else he was not going to be paid.

23. The claimant’s assertions notwithstanding, it is notable that he never stated in his pleadings, let alone suggest that he was forced to sign the said Deed of Release. Indeed, upon service by the respondent’s Response to the Claim, the claimant did not file a Reply to rebut the assertions by the respondent to that extent. As it were, he only raised the issue under cross examination hence his averment that he was forced to sign the Deed of Release, comes across as an afterthought. In any event, such a plea would have been accompanied by particulars.

24. As was held in the case of *Wenslaus Oduki Odinga v Kenyatta National Hospital Board* [2013] eKLR:

“Apart from the general claim of duress, the Claimant did not adduce any particulars. An employee alleging duress or inducement to sign a document in a non-custodial environment must provide details of such duress or inducement. It is not enough to say “I was forced or I was confused.” The Claimant failed to provide any such details and his claim that he was forced to sign the admission is therefore rejected. This in effect means that the Respondent had a substantive justification for terminating the Claimant’s employment.”

25. In the circumstances, I am persuaded that the claimant signed the Deed of Release voluntarily with full knowledge of all the material information and the import of the document. Being in the position of a Project Manager, the claimant was well aware and had full knowledge of the document he was appending his signature to. In effect, he discharged the respondent from any claim, causes of action, claims or demands connected with his employment. To this end, I am enjoined to consider and give effect to the said Deed of Release executed by the parties.

26. My determination is guided by the decision of the Court of Appeal in *Coastal Bottlers v Kimathi Mithika* [2018] eKLR, where it was held that the settlement agreement was a binding contract between the parties and all the Court was required to do was to give effect to the intention of the parties as discerned from the settlement agreement.



27. The Court went on to cite with approval its decision in *Trinity Prime Investment Limited v Lion of Kenya Insurance Company Limited* [2015] eKLR where it was held that:

“The execution of the discharge voucher, we agree with the learned judge, constituted a complete contract. Even if payment by it was less than the total loss sum, the appellant accepted it because he wanted payment quickly and execution of the voucher was free of misrepresentation, fraud or other. The appellant was thus fully discharged.”

28. The above precedents are binding on this Court and I am enjoined to apply the same. In this regard, the Deed of Release executed between the claimant and the respondent constituted a binding contract between the parties and had the effect of discharging the respondent from all manner of actions, causes of action, claims or demands connected to his employment.

29. In absence of any vitiating element, the claimant was therefore estopped from bring a suit in connection with the said employment seeking further reliefs.

30. On this score, I will follow the determination of the Court of Appeal in *Coastal Bottlers v Kimathi Mithika* [supra], where it was held that:

“Giving effect to the parties’ intention meant that the ELRC could not entertain the suit filed by the respondent. This is because the respondent had waived his rights to make any further claim in relation to his relationship with the appellant.”

31. In light of the above holding, the Court finds that the Deed of Release dated December 21, 2018 was binding on the parties and had the effect of discharging the respondent from any action connected to his employment. Having so found, it is not logical to examine consider the fairness of the claimant’s termination.

32. In conclusion, I dismiss the suit in its entirety with an order that each party bears its own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JANUARY, 2023.

STELLA RUTTO

JUDGE

Appearance:

For the Claimant Ms. Mburia

For the Respondent Mr. Juma

Court Assistant Abdimalik Hussein

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 15th March 2020 and subsequent directions of 21st 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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

