



**Ndambuki v Office Technologies Limited (Cause 475 of 2019)
[2023] KEELRC 544 (KLR) (28 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 544 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 475 OF 2019
J RIKA, J
FEBRUARY 28, 2023**

BETWEEN

FREDRICK NDAMBUKI CLAIMANT

AND

OFFICE TECHNOLOGIES LIMITED RESPONDENT

JUDGMENT

1. The Claimant states that he was employed by the Respondent as a Technician, on February 3, 2004. He was later promoted to the position of Manager, on a monthly salary of Kshs. 145,714. He states that the Respondent issued him a letter to show cause on a number of allegations, on December 7, 2018. He was waiting to respond on December 8, 2018, when the Respondent hurriedly convened a disciplinary hearing on the same date. He was advised by the Human Resource Manager that he must resign, or lose his terminal benefits. He resigned immediately fearing he would lose his terminal benefits.
2. He states that resignation was involuntary and amounted to unfair termination. He had 15 days of pending annual leave, which the Respondent did not pay. He worked 5 excess hours every week, which were not compensated. He prays for Judgment against the Respondent for: damages for wrongful termination; one month's salary in lieu of notice; leave pay; service pay; and grant of certificate of service.
3. The Respondent entered appearance on October 17, 2019, and alleges to have filed a Statement of Response and Documents, on June 23, 2022 about 2½ years from the date the Claim was filed. The Minute Sheet on record, does not capture filing of the Statement of Response, and none is on record, at the time of writing this Judgment.
4. The Claimant gave evidence, as did the Respondent's Human Resource Manager Grace Wanjiru, on November 3, 2022, when the hearing closed.
5. The Claimant restated the contents of his Statement of Claim in his evidence. He relied on 5 documents on record. On cross-examination, he confirmed that he received a letter to show cause on



December 7, 2018. He did not respond. He was not aware of criminal investigations against him. He conceded that he tendered his resignation. He applied for annual leave. Redirected, he told the Court that he was to respond to the letter to show cause on the same day it was issued. He worked overtime. He was owed some annual leave days. He resigned on instructions of the Human Resource Manager Grace Wanjiru. He was not advised of his right to be represented. He was told by Grace Wanjiru to sign the resignation letter, so as to be paid terminal benefits.

6. Grace Wanjiru told the Court that she is the Human Resource Manager, and conversant with the facts in this dispute. She did not have the date when the Respondent filed its Memorandum of Appearance. The allegations against the Claimant were established. There was no disciplinary hearing. The Claimant resigned. He requested for a meeting with Management, during which he tendered his resignation. It was not a disciplinary hearing. The meeting was characterised as being disciplinary in nature, in the minutes recording the meeting. His Co-Employees recorded statements against the Claimant. There was no hearing to ventilate the issues raised. DCI was involved after the Claimant had resigned. He received money from Co-Employees through m-pesa. There was no policy against Employees sending money to each other. Grace Wanjiru denied that she dictated the resignation letter, and compelled the Claimant to resign. The Claimant was in Management, like Grace Wanjiru.

The court finds: -

7. The Claimant was a Manager in charge of Imaging Department. He was at the same level with Grace Wanjiru, Human Resource Manager. It boggles the mind how one Manager, could dictate to another Manager a letter of resignation, and compel the other Manager to resign. The Claimant's explanation of the circumstances surrounding his letter of resignation dated December 7, 2018, is not convincing.
8. He was faced with allegations contained in the letter to show cause, issued to him earlier on the day, December 7, 2018. He explains in his letter of resignation that in view of the allegations against him, he kindly tenders his resignation. He wished all the best to the Respondent in its future endeavours. He signed the letter. This is not the language of someone under compulsion. Nowhere does he suggest in the letter that there was any compulsion, duress, undue influence or other forms of threats or promises to him, from his Co-Manager Grace Wanjiru, or from any other quarter. He does not indicate that he wrote the letter because he was threatened that he would not be paid his terminal benefits, if he failed to sign the resignation letter.
9. Having tendered his resignation, disciplinary proceedings became moot. He terminated his contract, as he was entitled to. He ceased to be an Employee on resignation, and there would be no legal basis, to take him through a disciplinary process, once he resigned.
10. The Respondent was not required to show reason or reasons to justify termination, or demonstrate that procedure was fair, because the Respondent did not initiate termination. The Claimant did. He does not even claim constructive dismissal, but pleads that his contract was unfair terminated.
11. He did not establish that he was owed annual leave days. On redirection, he stated that he was owed 'some leave days.' He was not specific on overtime hours claimed. He did not to show that he was entitled to service pay. All his prayers – damages, notice, leave and service - do not specify any figures to be considered by the Court. Neither his Pleadings nor Evidence, contain specific figures. He was not sure about what he exactly seeks from the Respondent. He is awarded his certificate of service under Section 51 of the *Employment Act*. No order on the costs.

It Is Ordered: -

- a. The Respondent shall release to the Claimant his certificate of service.



b. The rest of the Claim is dismissed, with no order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH
DAY OF FEBRUARY 2023.**

JAMES RIKA

JUDGE

