



REPUBLIC OF KENYA



KENYA LAW
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**Oyeyo v Kenya Revenue Authority (Cause E010 of 2021)
[2023] KEELRC 390 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 390 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E010 OF 2021
MN NDUMA, J
FEBRUARY 9, 2023**

BETWEEN

VIVIAN LUKOBA OYEYO CLAIMANT

AND

KENYA REVENUE AUTHORITY RESPONDENT

JUDGMENT

1. The claimant brought this suit vide Memorandum of Claim filed on 7th January, 2021.
2. The claimant was employed by the respondent on 20th March, 2007 under the Customs Border Control Department of the respondent and worked until 16th October, 2020 when her employment was terminated by the respondent. The claimant alleges that the termination was unlawful and unfair and seeks an Order in the following terms:-
 - a. A declaration that the termination of the claimant's employment was unfair and unlawful.
 - b. An Order for reinstatement to her previous position without loss of remuneration,
 - c. In the alternative an Order for compensation,
 - d. Costs and interest.
3. C.W.1, the claimant testified she worked diligently and did not do anything unprocedural. That the accusation of negligence of duty and dishonesty was unfounded as every officer at the border carries out clearance in the manner she did.
4. That the station was understaffed and had to perform more than one role in the clearance process. That she used her best judgment in the circumstances for efficient delivery of services.
8. That she felt discriminated since her case was treated differently yet what she did was normal course of operation and was reasonable in the circumstances.



9. That she was never provided with all the documents relevant to her case before she appeared before the Disciplinary Committee and that her right to fair hearing was violated. That the Chairman of the disciplinary committee was biased and did not give her fair opportunity to explain herself as he constantly cut her shot and did a lot of outbursts while the claimant was talking telling her that she was being dishonest.
5. That the Chairman of the Committee was the Chief Manager, Employees' Relations' contrary to the Respondent's Code of Conduct. That the Chairman had already mis-judged her case.
6. That the respondent did not lose any taxes in the matter.
7. Under cross-examination by M/s Ahmadi for the respondent, C.W.1 stated that she received a Show Cause letter to which she responded. That she appeared before the Disciplinary Committee and was subsequently terminated from employment.
8. C.W.1 stated that she was a Verification Officer and her duties included physical sighting of the Truck. That it was not practical to await the Truck at the Export Gate to avoid delays and so she did not await the arrival of the Truck therefore. That she had worked at Busia for 1 year and 3 months. That the verification officer issues a Certificate of export after the due process is followed in the Simba System. That the clerk reserves a rotation number and notifies the verification officer. That being the officer on duty, she had endorsed the entry at the back and gave to the clerk to allocate rotation number.
10. C.W.1 said that she told the supervisor that she had processed the documents but the Truck had not arrived at the Border.
11. C.W.1 said that it was reported that the Truck driver had dumped the product in Kenya and did not proceed to the border.
12. C.W. 1 stated that she did both roles of Head Verification Officer and Verification Officer.
13. C.W.1 stated that she was issued with a Notice To Show cause and was invited to a disciplinary hearing. C.W.1 stated that she was informed of her rights. That after the hearing, she was given a letter of termination which contained reasons for the termination.
14. C.W.1 stated that she was paid her dues and was given Certificate of Service.
15. C.W.1 added that she appealed the decision to terminate her employment but the appeal was dismissed. C.W.1 stated that she was treated differently, and unfairly. That the people who were in the chain of approvals were not terminated from employment. That she was the only one singled out. That the termination amounted to discrimination.
16. C.W.1 denied that she was negligent or dishonest, that she had done well within the constraints experienced at the border post. The constraints were specifically that she doubled up as Head of Verification Officer and was also Verification Officer. That Duty of the Head was to supervise the Verification Officer. She had no supervisor therefore. The Head of imports did not fault her endorsement as unprocedural as it was a normal manner of doing this at Busia border post. That they had developed an internal excel sheet to ease the verification process due to very high traffic at Busia border. That the excel sheet could be modified or deleted. It was temporary until the Truck arrived at the exit gate and when the Truck exited, that is when the number reserved is then confirmed as a rotation in the outward rotation register. That this did not happen in that particular case. That the Certificate of Export was the ultimate proof of export and none had been issued in this transaction.



17. C.W. 1 denied endorsing the entry documents to allow a fraudulent issuance of a Certificate of Export. That being the Head of Verification, she could have issued the Certificate of Export if she had any intention to defraud but she did not.
18. C.W.1 stated that she was unable to properly defend herself because she had not been provided with the transaction documents to mount her defence. That she was never provided with a statement from the clerk she was accused of misleading. She was not given the minutes of the disciplinary hearing to prepare her appeal. That she had fully exonerated herself from any negligence or fraudulent intention. That she had served the respondent for a period of 14 years and had a clean record with no previous warning or a reprimand. That she had started as a graduate trainee and had risen to supervisor level. That she had served at different stations including Nairobi, Mombasa, JKIA, Malaba and Busia. That until she was issued with the notice to show cause, she had not been briefed that there was something wrong with that particular transaction.
19. C.W.2 Joel Michael Okwisya, testified in support of the claimant's case. He stated that he was a Clerical Officer at Busia and a colleague of the claimant. That he was now a business man upon leaving the respondent in the year 2020.
20. C.W.2 explained the export procedure at the Busia Border that when an agent arrives at the border, he goes to the clearance officer's desk and hands over Customs documents to the clerk. The clerk receives the documents and stamps them. The documents are then given back to the clearing agent who puts coupon papers in between the documents, then hands them over to the Customs Officer in charge of the gate. The officer verifies the documents and signs it to signify that the documents are okay. The Customs Officer hands over the documents to the clerical officer. The clerk reserves a rotation on the document and reserves the same on the excel sheet. The coupon paper is then removed and the documents are split. The clerk retains the original document and four (4) copies are given to the custom officer. The custom officer serves as a Supervisor. The officer awaits for the consignment (Motor Vehicle) to arrive then does the last procedure of verification which includes confirmation of the number plate of the Truck; the container Registration number; if everything is in order and corresponds with the documents. The officer then hands over the documents to the Ugandan counterpart. This is a common border post.
21. C.W.2 stated that he was not involved in the disciplinary case of the claimant and did not play any part in the transaction. That he was not a witness in her internal case. That he had recorded a statement from the Investigator who visited the post. C.W.2 stated that the Excel sheet was an idea the employees at Busia border post developed as young officers in 2019 January. This was an innovation which they found to be working well in that it was easier to trace details of a document and looking for rotation number without physically going to the registry. That the Excel Sheet made their work easy. That the physical register at the gate was difficult to rotate and stamp. That they used the excel sheet. That after the shift the information was transferred to the main office and written on the physical register (rotation register). That the physical register was the final official document they relied on. That he had served the respondent for 4 years. That they learnt on the job and were not specifically trained by Kenya Revenue Authority (KRA) on their duties.
22. Under cross-examination, C.W.2 emphasized that he was not involved in this particular transaction but was able to confirm the mode of operation at Busia Station which the claimant had apparently followed in this particular case. C.W.2 stated that he left Kenya Revenue Authority due to disciplinary process related to this case. That he had been made to record a statement during investigations indicating that he had received this particular entry as the clerk, when in fact he had not participated in that clearance.



- C.W.2 emphasized that the information in the excel sheet is temporary and is only confirmed when the truck arrives.
23. C.W.2 stated that what he told the Court was the truth and the information contained in the statement taken by investigation officers comprised of information recorded by the officers and he was only asked to sign it without having read it first.
 24. R.W.1 Dominic Mugendi testified that he worked in the respondent as an investigator. That he investigated this matter and prepared the report before Court. R.W.1 testified that they had received intelligence that some oil marketers were colluding with customs officers to facilitate dumping of Transit consignment into the country. That upon investigations, they found that the claimant had endorsed documents for a consignment that had not arrived at Busia Custom's yard as is required by the procedure manual for Busia One Stop Border Post.
 25. That the claimant had instructed the customs clerk on duty one Joel Okwisya to issue an outward rotation number for that consignment despite the fact that the consignment had not arrived at the station and it had not been physically verified as required by the procedure manual. The report is dated 27th November, 2019. The Procedure Manual for the Busia One Stop Border post was produced before Court. R.W.1 stated part 6.2 of the manual was not followed in respect of clearing Transit goods and Exports. That Clause 6.2.1 require goods to arrive at the border for clearance process to commence.
 26. That clause 6.2.4 provide that clearing agent is to show the verification officer the goods for verification purposes. That the verification officer is to confirm the authenticity of the seals and whether they are intact and the integrity of the consignment if confirmed, the verification officer then sights the cargo and means of transport if there is no evidence of tampering. That the officer confirms the registration number of the motor vehicle and that of the container. The officer then endorses the examination accounts on the reverse of the entry.
 27. R.W.1 produced the recorded statement of the claimant during the investigation.
 28. Under cross-examination, R.W.1 confirmed that the fuel consignment in respect of which documentation was endorsed by the claimant was dumped in Western region. R.W.1 emphasized that the motor vehicle must arrive at the yard for the clearance process to commence. R.W.1 confirmed that the claimant at the time was the Head Verification Officer and Verification Officer also. That the claimant performed both roles due to shortage of staff. R.W.1 confirmed that the claimant used an excel sheet for clearance purposes and the outward register was not used by the claimant.
 29. R.W.2 Grace Mwangi testified that she was the Manager, Human Resource of the respondent and was involved in the disciplinary process of the claimant. R.W.2 testified that they received investigation report dated 7th November, 2019. That they decided to issue Notice To Show Cause dated 15th September, 2020 which was received on 16th September, 2020. That the claimant filed a reply on 23rd September, 2020 and attended a hearing on 6th October, 2020. That the claimant defended herself and was found guilty and her employment was terminated by a letter dated 16th October, 2020.
 30. R.W.2 stated that the claimant did not have previous disciplinary record and that she did not request for an appeal's record before appealing the decision. That the appeal was dismissed. That the claim has no merit and it be dismissed.
 31. The parties filed written submissions restating their respective cases and provided list of authorities in support of their cases. The issues for determination are:-
 - i. Whether the respondent had a valid reason to terminate the employment of the claimant and if so, whether the respondent followed a fair procedure in effecting the termination.



- (ii) Whether the claimant is entitled to the reliefs sought.
32. The Court has carefully considered the testimony by C.W.1 and C.W.2 vis a vis the testimony of R.W.1. It is apparent that the officers at Busia Border Post had developed a tool to ease the clearance process at the Border. However, the Excel tool developed by staff at the post, though well intended did not conform strictly to the dictates of the Customs Procedure Manual for Western Region Border Stop which provided in part 6.2 and in particular 6.2.1 and 6.2.4 that the procedure for clearing transit goods and Exports was to commence upon arrival of the motor vehicle bearing the consignment at the border post, yard.
33. It is not in dispute that the claimant had commenced the verification process of the Truck and Consignment in question without sighting the Truck and the Consignment at the Border. There is sufficient evidence that the consignment did not arrive at Busia Border Post at all but instead the fuel was dumped at unknown destination before the Truck arrived at the Border.
34. R.W.1 told the Court that intelligence reports had been received, that there was collusion between Exporters and some custom officers at the Western Border station resulting in production of fraudulent export documents faking an actual Export, whereas the cargo was dumped within Kenya.
35. Whereas there is no sufficient evidence to prove that the claimant was part of that syndicate, the respondent has established on a balance of probabilities that the endorsement by the claimant of this particular customs clearance documents without sighting the Truck and the consignment was in the very least negligent conduct which could not be condoned by the respondent.
36. The Court is satisfied that the respondent had a valid reason therefore to terminate the employment of the claimant. The Court has considered the case of Antony Mkala Chitevi –vs- Malindi Water and Sewerage Company Limited – Industrial Court Cause No. 64 of 2012 and the case of *Kipkebe Limited –vs- Peterson Ondieki Tai* (2016) eKLR.
37. The respondent has discharged its onus therefore in terms of Sections 43, 44, 45 and 47 of the *Employment Act*, 2007.
38. The Court is also satisfied that the respondent satisfied the requirements of Sections 41 and 45 in arriving at the decision to terminate the employment of the claimant in that the claimant was served with a notice to show cause to which she responded. She was subjected to a disciplinary hearing where she was provided with opportunity to defend herself. That the claimant was provided with reasons why her employment was terminated.
39. The claimant was also accorded opportunity to appeal the decision to terminate her employment which appeal was also dismissed.
40. In the final analysis, the Court finds that the suit lacks merit and is dismissed. The respondent confirmed that the claimant had served the respondent well for a period of 14 years with a clean record.
41. Accordingly, the Court considers this an appropriate case for each party to bear the costs of the suit.

DATED AND DELIVERED AT NAIROBI(VIRTUALLY) THIS 9TH DAY OF FEBRUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

Appearances

Mr. Odhiambo for claimant



M/s Lydia Ng'ang'a for Respondent

Ekale: Court Assistant

