



**Kizito v Young Women Christian Association of Kenya (Cause
1607 of 2017) [2023] KEELRC 418 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 418 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1607 OF 2017
MN NDUMA, J
FEBRUARY 2, 2023**

BETWEEN

IRENE NALIAKA KIZITO CLAIMANT

AND

YOUNG WOMEN CHRISTIAN ASSOCIATION OF KENYA RESPONDENT

JUDGMENT

1. The claimant filed this suit on August 16, 2017 against the respondent seeking Orders in the following terms:-
 - i. A declaration that the termination of the claimant's employment was unfair, unlawful and wrongful.
 - ii. A declaration that the circumstances surrounding the claimant's termination of employment were discriminatory and in breach of legal provisions.
 - iii. Payment of the sum of Kshs 19,093,028.00 as particularized in paragraph 17 of the Memorandum of Claim.
 - iv. A Certificate of Service.
 - v. The costs of this suit plus interest thereon from the date of filing suit at court rates.
 - vi. Any other relief as this court would deem fair, just and expedient.
2. C.W.1, the claimant testified that she was employed by the respondent in January, 2009 as a Programmes Officer after serving the organization as a volunteer without pay. The claimant testified that she worked for the respondent diligently and continuously until August, 2010 when she was promoted to the position of Director of Programmes and Training.



3. That sometime in the year 2012, the Organisation underwent a transition in management the effect of which left the position of National General Secretary, Deputy National General Secretary, Director of Finance and Chief Accountant vacant.
4. That on or about October, 2012, at the request of the respondent's Board, the claimant assumed acting as the national General Secretary for a period of ten (10) months. During that period, the claimant stated that she served in all the vacant positions and was grossly overworked.
5. That in terms of the Human Resource Manual of the respondent, the claimant was entitled to be paid acting allowance equivalent to the full difference between the salary she earned as the Director of Programmes and Training and the minimum salary of the scale assigned to the high post of the National General Secretary as well as a duty allowance at the rate of 70% of the acting allowance. That the said duty allowance was never paid to the claimant during the Ten (10) months period she acted in the capacity and the claimant prays to be awarded the same.
6. C.W.1 testified further that the position of National General Secretary was subsequently advertised and she applied for the same. C.W.1 underwent the interview successfully and was appointed to the position in August, 2013 on a five (5) year renewable contract.
7. That the contract provided terms and conditions of her appointment key among them being to attend to personnel matters, including organizational structure, appointments, welfare, training, industrial relations, separations and effective management succession planning.
8. C.W.1 testified that she served with zeal, dedication and humility. That she received accolades and achieved various milestones among them the implementation of a new strategic plan 2013. C.W.1 further led the respondent in the review of the organisation's Constitution and Structures, the result of which was improvement in the financial position of the organization, reduction of long outstanding debts and substantial reduction in litigation against the respondent.
9. It was a term of employment and a requirement in law that the respondent maintained a conducive work environment free of prejudice and discrimination and that termination of employment be only according to law.
10. C.W.1 testified that the new Board from April, 2014, appeared to have a different approach to matters of policy and management. On numerous occasions, the National Chairperson stepped into the roles of the National General Secretary and directed staff members on administrative matters. This created difficulties in communication on matters involving the staff and the Chairperson electing to communicate to the claimant through her juniors.
11. C.W.1 testified that this was a deliberate tactic by the National Chairperson to undermine the claimant. The National Chairperson and the National Treasurer became vindictive and subjective especially during the appraisal of the claimant. The insistence by the claimant that the Constitution and organization policies be adhered to strictly was met with hostilities. The chairperson began taking decisions arbitrarily and required the claimant to enforce the decisions and the refusal by the claimant to do so resulted in acrimony by the National Chairperson.
12. Towards the end of 2016, the European Union (EU) approved a funding of Kshs 45,000,000 for implementation of a project whose commencement date was April, 2017. C.W.1 advised the Chairperson of the need to recruit a Programmes Officer to oversee the project. C.W.1 advertised for the position on 20/2/2017. Thereafter the National Chairperson called a staff meeting of juniors and senior staff, separately. C.W.1 was excluded from the 3 hour meeting of staff. There was no feedback on the outcome of the meeting.



13. In February, 2017, there was deliberate refusal to facilitate key operational processes of the respondent with signatories refusing to approve payments of publicity materials.
14. On March 2, 2017, a Board meeting was held to discuss C.W.1's performance. C.W.1 was not accorded opportunity to respond to the issues raised. The Treasurer introduced an agenda to remove C.W.1 from being a mandatory signatory of the respondent's bank account. The decision was carried despite advice by the claimant to the contrary since C.W.1 was the Chief Accounting Officer of the respondent.
15. On March 3, 2016, C.W.1 was scheduled to attend an official conference in New York, which travel had already been notified to the Board. C.W.1 requested the Chairperson to execute a letter to facilitate the travel which request was declined. The claimant was advised to fill in an application for leave for the period of the conference. This was in total disregard of the respondent's policies and the approval of the travel by the Board. This was unfair and discriminatory. C.W.1 spend USD 635 which she demanded to be refunded.
16. A Special Board Meeting was held on April 26, 2017 to which the claimant was not notified nor invited. On April 29, 2017, the claimant was invited to a disciplinary meeting scheduled on May 2, 2017. The letter of invitation did not state the grounds of misconduct upon which the meeting was premised.
17. At the meeting C.W.1 was ambushed with allegations and was asked to defend herself. This was unlawful and unprocedural.
18. On May 3, 2017, C.W.1 was called to a meeting called by the Patron and Chairperson of the Human Resource Committee who advised C.W.1 that the meeting was at the insistence of the Patron and the Chairperson of the Board and the purpose of the meeting was to ask C.W.1 to resign from the position of the National General Secretary as it had become difficult for the Board to work with C.W.1. C.W.1 refused to resign. The said persons had been part of the disciplinary committee.
19. On May 8, 2017, C.W.1 received a letter from the National Chairperson terminating the contract of her employment with the respondent.
20. C.W.1 stated that the decision was arbitrary, unlawful and unfair. C.W.1 was yet to receive the findings of the disciplinary committee.
21. On May 9, 2017, C.W.1 received notification of payment of half salary in the account. C.W.1 was asked to attend a comprehensive handing over meeting by a letter dated May 9, 2017. C.W.1 had already handed over on 6th April, 2017 when she was sent on compulsory leave.
22. C.W.1 issued a demand letter through her advocates and on June 14, 2017, C.W.1 was issued with a clearance form which was duly signed by the heads of all departments on July 27, 2017.
23. C.W.1 seeks payment of Kshs 19,093,028 as set out under paragraph 24 of the witness statement including half salary for April, 2017; 5 days salary for May, 2017, 28 days accrued leave, 3 months' pay in lieu of notice, Travel and Telephone allowance, Duty allowance at 70% of acting allowance for 10 months; compensation for the discrimination and unlawful termination and payment for the balance of the contract term. C.W.1 also seeks issuance of Certificate of Service, costs and interest.
24. R.W.1 Milkah A. Akinyi Ochieng relied on a witness statement dated July 23, 2021 as her evidence in chief. R.W.1 also produced exhibits "1' to '3' dated July 3, 2021 in support of the respondent's case.
25. R.W.1 testified that an agreement was entered into between the claimant and the respondent after the filing of the suit, pursuant to which a payment plan of all dues owed to the claimant was agreed upon. That payment was fully done pursuant to the said agreement. That the respondent did not therefore



owe any money to the claimant arising from the termination of her employment by the respondent. The respondent relies on Amended Memorandum of reply dated July 17, 2021.

26. From the outset, the court is satisfied that there was an agreement between the claimant and the respondent for payment of terminal benefits comprising of:-
- (a) 3 month's salary in lieu of notice Kshs 1,185,000
 - (b) 5 days salary for the month of May, 2017 Kshs 75,961
 - (c) 28 accrued leave days - Kshs 395,000

Total Kshs 1,655,961.00.

This agreement was entered into after the filing of the suit. The court is satisfied that the aforesaid sum was paid over time in instalments and the respondent does not owe the claimant those items. Furthermore, the respondent provided a Certificate of Service to the claimant and so this item in the suit is spent.

27. R.W.1 Milkah Ochieng, the Human Resource Manager of the respondent adopted a witness statement dated July 23, 2021 as her evidence in chief and produced bundle of documents in support of the Respondent's case.
28. R.W.1 testified that the claimant had reached a final agreement with the respondent on her terminal benefits and the agreement having been fully honoured by the Respondent, the claimant is estopped from making any further claims as against the respondent.
29. R.W.1 states that C.W.1 was appointed in the acting position of National General Secretary in the year 2012 and that she acted in that position for a period of six (6) months and not ten (10) months as C.W.1 alleges.
30. That there is no proof that C.W.1 ever assumed the role of Deputy General Secretary, Director of Finance and Chief Accountant. That the respondent had a Chief Accountant in place during that period who reported to the claimant and there were other officers in charge of various departments, who were reporting to C.W.1.
31. That C.W.1 was paid acting allowance while she acted National General Secretary as reflected in the payslip. That C.W.1 was never assigned any extra responsibilities officially and did not assume any such extra duties as alleged or at all and was therefore not entitled to any duty allowance. R.W.1 states that there were no issues of misunderstanding on the interpretation of the roles of the National Board and the National General Secretary as was set out in the Respondent's Constitution. That the Board understood well Corporate Governance as most members were serving other reputable institutions as Directors.
32. That the claimant wanted to run affairs of the respondent single handed without consulting the National Board and when questioned by the Board why she had made decisions without consulting, she would accuse the Board members of incompetence and lack of knowledge on issues of corporate governance. The claimant did not implement any resolution of the Board she did not support or approve of. This made it difficult for the Board to operate.
33. That the claimant frustrated the Board's effort to appraise her performance and she would submit her appraisal forms one year or a few months after the deadline which ordinarily fell in December. For example the appraisal form for 2015 was presented to the Board in December, 2016 whereas one for the year 2016 was presented in February, 2017.



34. That generally, the performance of the claimant was not up to the task. She would not prepare financial reports in time and would always call junior officers to the Board meeting to answer questions and present financial report to the Board. The claimant failed to carry out her duties as the Secretary to the Board and used junior officers in that regard.
35. That the employees decided in February 2017 to approach the National Chairperson to intervene due to the frustrations to their work caused by C.W.1.
36. R.W.1 denies that the Chairperson directed employees on Administrative matters. That C.W.1 went to New York on a trip that was not official and without approval by the Board and that is why the Chairperson declined to approve it and advised the claimant to apply for leave.
37. That the appraisal of the claimant was done fairly and objectively and was discussed in a Board meeting of March 2, 2017. That the presence of the claimant was not required in that meeting since the meeting was discussing her performance.
38. That C.W.1 ran the advert for the Head of Programmes without consulting the Chairperson and having not consulted the National Council of Churches of Kenya (NCCCK) programmes expert on the job description and give feed back to the Chairperson by March 6, 2017.
39. The Chairperson asked the claimant to re-advertise on March 31, 2017 upon raising these concerns. That C.W.1 declined to re-advertise stating she would conclude the process with Human Resource Committee and Management.
40. That the Board decided to send the claimant on compulsory leave following this matter. The Chairperson wrote to the claimant on the matter on April 1, 2017 raising issues of insubordination and gross misconduct and was sent on compulsory leave.
41. That C.W.1 refused to go on compulsory leave and filled an annual leave application which the Chairperson declined to sign. R.W.1 stated that this was further proof of insubordination. That C.W.1 called for a Special Board Meeting to discuss the disciplinary matter but she had no such mandate.
42. On April 27, 2017, a Special National Board Meeting was convened to discuss the reasons for sending the claimant on compulsory leave and after deliberations a Disciplinary Committee was constituted.
43. By a letter dated April 29, 2017, C.W.1 was invited to attend a disciplinary meeting on May 2, 2017 at 11.00 a.m. with reference to accusations in the letter of April 1, 2017. That the Disciplinary Committee was chaired by the Patron Dr. Pamela Kola and comprised of other persons who were not members of the Board.
44. The Committee found the claimant guilty of insubordination. The claimant was not remorseful at all but tried to justify her acts and was disrespectful to the members of the National Board Disciplinary Committee.
45. On May 5, 2017, the Chairperson acted on the decision by the Board's Disciplinary Committee and terminated the services of the claimant and she was informed accordingly.
46. The decision of the Committee was sanctioned and ratified by the full Board as per the extracts of the meeting of the Board held on April 25, 2017.
47. R.W.1 stated that the termination was done in accordance with the law and the respondent's Human Resource Manual and the *Constitution*.
48. R.W.1 testified that C.W.1 refused to hand over until much later when the advocates intervened.



49. R.W.1 denied that the meeting of May 31, 2017 was meant to coerce C.W.1 to resign but was a genuine attempt to resolve the impasse amicably. That the claimant is not entitled to the reliefs sought. That C.W.1 was issued a Certificate of Service on August 30, 2017 but was yet to collect it.
50. That the matter having been compromised by an out of court settlement agreement, after the filing of the suit, the same be dismissed with costs.
51. The parties filed written submissions and list of Authorities. The issues for determination are:-
- (i) Whether the employment of the claimant was terminated for a valid reason following a fair procedure.
 - (ii) Whether the suit filed by the claimant was compromised by an out of Court settlement.
 - (iii) Whether the claimant is entitled to any of the reliefs sought.

Determination

52. There is not before court a comprehensive agreement executed by both parties in full and final settlement of the dispute pending before court in ELRC Cause No. 16 of 2017. Whereas, the parties agreed to settle some of the terminal benefits claimed in the suit, the parties did not fully compromise the suit as filed and the payment was not said to be in full and final settlement barring the claimant from further pursuing the unpaid items in the suit.
53. Accordingly and in answer to issue (b) above, the Court finds that the settlement by the parties was only limited to the specific items paid by the respondent including:-
- (a) Five (5) days salary for the month of May, 2017.
 - (b) 28 untaken leave days and
 - (c) Payment in lieu of three months' notice.
54. The court further finds that the claimant did not adduce tangible evidence to demonstrate that she was entitled to payment of:-
- (i) Travel allowance.
 - (ii) Telephone allowance and
 - (iii) Duty allowance at 70% of acting allowance for 10 months.
- On these particular items, the court is satisfied the claimant was fully remunerated by the payment of acting allowance during the period she acted as the National General Secretary of the respondent. This claim has no merit therefore and is dismissed.
55. The payment for half salary for the month of April, 2017, in the sum of Kshs 197,500 is dependent on the finding by the Court whether the termination of the claimant for insubordination and misconduct was for a valid reason. The claimant received half pay whilst she was placed on compulsory leave. The claim for compensation is hinged on that specific finding also.
56. The claimant adduced evidence alleging systemic usurpation of her roles by the National Chairperson which resulted to continuous acrimony, harassment, discrimination and total undermining of the claimant's role as the National General Secretary of the respondent. The claimant narrated how the disciplinary action against her was stage managed and orchestrated by the Chairperson and that the alleged hearing by the Board was a sham and a foregone conclusion to rubberstamp her ouster by the



- Chairperson who fought the claimant from day one of her appointment until she was finally ousted vide a letter of termination by the Chairperson.
57. The Chairperson had recorded and filed a witness statement dated April 23, 2018. The Chairperson was however not called to testify and refute the unlawful and unfair actions perpetrated by her systemic and persistent actions to undermine the office held by the claimant which actions culminated in the alleged unlawful and unfair ouster of the claimant by the Chairperson from the employment of the respondent.
 58. The respondent did not provide a proper justification as to why the Chairperson failed to come to court to face her accuser. Most of the evidence adduced by the claimant could not be sufficiently refuted by R.W.1 who did not play any or any significant role in that protracted conflict between the claimant and the Chairperson. The evidence by R.W.1 was largely hearsay and unsupported.
 59. The conclusion by the court is that the testimony by the claimant of the unlawful and unfair undermining and eventual ouster is not contradicted by any tangible evidence. The narrative by the claimant is credible and cogent seen in light of the documentation produced by both parties in this matter.
 60. Accordingly, the Court finds that the claimant has proved on a balance of probability that the termination of her employment was not for a valid reason and the respondent did not follow a fair procedure in terminating the employment of the claimant.
 61. Accordingly, the respondent did not only violate its own Human Resource Manual, and its Constitution in the ouster of the claimant, but also violated sections 41, 43, and 45 of the [Employment Act](#).
 62. That the termination of the employment of the claimant was therefore unlawful and unfair and the claimant is entitled to compensation in that regard in terms of section 49(1) (c) and 4.
 63. The claim of discrimination has not been proved to warrant a separate consideration of an award of general damages in that respect.
 64. In respect of compensation, the claimant was a Chief Executive of an international organization and suffered immense loss and damage by fact of the unfair and premature ouster from her position. The financial loss suffered from the unserved term is immense. This termination also dented her record and prospects of attaining a similarly rewarding position. The claimant had grown from the position of a volunteer in January, 2009 through various promotions to the position of the head of the organization. The termination seen in this light was a gross dent on her career. She was a good and able worker and in the absence of any evidence from the Chairperson who single-handedly orchestrated the ouster of the claimant from the organization the court finds that the claimant did not contribute to her ouster in any significant or material way. The claimant had to come to court to receive her terminal benefits and after several years. The claimant no doubt suffered immense hardship whilst awaiting to be paid in instalments spread over time and even suffering the experience of unpaid cheque.
 65. The claimant was not compensated for the loss she suffered including loss in status and personal dignity, psychological pain and trauma.
 66. The court relies on similar cases of [Peter Otabong Ekisa v County Government of Busia](#) [2017] eKLR, [Galgalo Jarso Jillo v Agricultural Finance Corporation](#) [2021] eKLR, [Kenya Broadcasting Corporation v Geoffrey Wakio](#) [2019] eKLR in which the Court of Appeal upheld the decision of Employment and Labour Relations Court to award 12 months' salary in compensation for the unlawful and unfair termination.



67. Furthermore, the court notes that the claimant had served the respondent from 2009 up to May 8, 2017, a period of about eight (8) years and was on a five (5) years renewable contract commencing from August, 2013 and therefore was due to expire in August, 2018.
68. The court awards the claimant the equivalent of six (6) months' salary in compensation for the unlawful and unfair termination in the sum of Kshs. 2,370,000.
69. The court also awards the claimant unpaid half salary for the month of April, 2017 in the sum of Kshs 197,500.
70. In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows:-
- (a) Kshs 2,370,000 in compensation.
 - (b) Kshs 197,500 being unpaid half salary for the month of April, 2017.
Total award 2,567,500.
 - (c) Interest at court rates from date of judgment till payment in full.
 - (e) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (*VIRTUALLY*) THIS 2ND DAY OF FEBRUARY, 2023.

MATHEWS NDERI NDUMA

JUDGE

APPEARANCE

Mr. Igeria Ngugi for claimant (Mr. Mbaji Advocate)

Mr. Omolo for Respondent

Mr. Ekale – Court Assistant

