



**Gitugo v CIC General Insurance Limited (Cause 54 of 2019)  
[2023] KEELRC 801 (KLR) (27 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 801 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 54 OF 2019  
M MBARŪ, J  
MARCH 27, 2023**

**BETWEEN**

**DUNCAN GITUGO ..... CLAIMANT**

**AND**

**CIC GENERAL INSURANCE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This file was placed together with ELRC Cause No 53 of 2019 – James Collins Mburu v CIC General Insurance Limited for hearing on the basis that both are closely related and the witnesses are the same save for different claimant. For ease of reference and adjudication, each is treated differently save for this background and the same response by the same respondent.
2. The claimant is a male adult. The respondent is a limited liability company primarily carrying out insurance business in Kenya.
3. On April 29, 2014 the respondent employed the claimant as the assistant claims analyst under a written contract and which employment was also regulated under the respondent’s human resource policy.
4. On September 28, 2018 a claim by an insured was reported to the respondent through an agent in relation to motor vehicle xxxx which claim was received by the claimant and processed per the practice and policy and then forwarded to the relevant department for processing and investigations.
5. On October 19, 2018 the claimant was served with a show cause notice why disciplinary action should not be taken over alleged fraud and knowingly circumventing motor vehicle assessment procedures with intent to defraud the respondent.
6. On October 23, 2018 the claimant replied to the issued notice and denied the allegations made against him and on October 31, 2018 he was sent on compulsory leave to allow for investigations.



7. On November 26, 2018 the claimant was issued with notice of summary dismissal despite not having been issued with any investigations report which resulted into lapse of due process and unfair termination of employment. The termination letter was circulated to various persons leading to defamation that the claimant was involved in a fraud syndicate and which has damaged his reputation, standing in society and has suffered loss and damage and holds the respondent liable in damages.
8. The claimant is seeking judgement against the respondent in the following terms;
  - a. A declaration that employment terminated unfairly;
  - b. A declaration that the statutory requirements for summary dismissal were not adhere to;
  - c. Payment of terminal dues;
  - d. Payment of all commissions and bonuses due to the claimant arising from Sacco business;
  - e. 12 months compensation for unlawful termination of employment;
  - f. Certificate of Service be issued;
  - g. Damages for defamations; and
  - h. Costs of the suit.
9. The claimant testified to support his case that while on his annual leave he was summoned back to work to answer to allegations of fraud and was questioned why he had processed a motor vehicle claim. He was issued with a show cause notice on October 19, 2018 and he gave his replies. The main issue for the claimant was why he had used a colleague's computer to assign an assessment and why he circumvented motor vehicle claim processing procedures. The claimant explained that his computer was not working and he had reported the matter but had not been addressed. With regard to circumventing procedures, the claimant submitted that the respondent had no written procedures on how to process claims.
10. The claimant was recalled back to work after 4 days and invited to a disciplinary hearing over alleged fraud motor vehicle procedures. At this time the results of the investigations had not been issued, the claimant requested for the report and despite being advised to bring another employee of his choice at the hearing, none could agree to be associated with him in a case of alleged fraud syndicate. None agreed to attend.
11. The claimant appointed an assessor to assess the motor vehicle and the respondent made payments for the vehicle but the respondent issued him with notice terminating his employment despite the Insurance Regulatory Authority (IRA) investigating the matter and found the claim was genuine and the respondent paid.
12. The claimant testified that since his employment was terminated he is unable to secure new employment due to the damage caused by the notice terminating employment which was circulated and due to the nature of sensitivity of such matter in the insurance sector, any case of alleged fraud is taken very seriously and hence no other insurance would employ him. There was defamatory matter by circulating the letter of termination the respondent also refused to issue the claimant with a Certificate of Service and this has caused damage and loss and the orders sought should issue.

The claimant also testified that he was denied a right of appeal.
13. The claimant called James Collins Mburu who was his witness who testified that the claimant colleague was his colleague and he was in charge of UN Sacco and together they were issued with the same notice



- to show cause on October 19, 2019 on the grounds of alleged fraud by circumventing motor vehicle processing procedures.
14. Mr Mburu testified that his role was to report the claim to the claims department under the claimant and upon his response on the show cause notice, he was invited to the disciplinary panel but no other employee was willing to accompany him due to the nature of allegations made against him, the of fraud. No investigations report was shared until the respondent filed the response in court.
  15. Other employees involved in the matter were issued with notices but termination of employment only affected him and the claimant.
  16. Upon cross-examination, the witness testified that the motor vehicle claim related to his uncle but there was no conflict of interest since the claimant was processed as required and it was investigated and paid. the claimant admitted that he previously worked with Nelcon, an agency that presented the claim and he was a founder director but this was meant to start up the business he was not involved in its management but there was no policy with regard to having relatives covered and t bring business to the respondent. The respondent and Nelcon agency are different and unrelated because the respondent is a group while the other is an agency and would place business with the respondent and required a reference from the respondent.
  19. The claimant also called Diana Kuria who was working with the claimant as a claims assistant and who testified that she has since left the respondent's employment and when she heard that the claimant was alleged to have been involved in fraud she was shocked because she knew him as a diligent and honest person. She saw the letter terminating employment being circulated in social circles and called the claimant and told him about it. This damaged the claimant's reputation.
  20. As noted above, save for different claims, proceedings under ELRC Cause No 53 of 2019 are replicated herein on the basis that the response was the same; the witness adopted the same evidence. Save the claimant was earning a gross salary of ksh 108, 538.45 which is due in notice pay and compensation for 3 months all at Ksh 325, 615.35.
  21. A certificate of service shall issue pursuant to Section 51 of the *Act*.
  22. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;
    - a. A declaration that employment terminated unlawfully and unfairly;
    - b. Compensation awarded at ksh 325,615.35;
    - c. Notice pay ksh 108,535.45;
    - d. Certificate of Service shall issue; and
    - e. Costs of the suit.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 27<sup>TH</sup> DAY OF MARCH, 2023.**

**M. MBARŪ JUDGE**

In the presence of:

Court Assistant: Japhet Muthaine

