



**Omullo v Rama Homes Limited (Cause 89 of 2020)
[2023] KEELRC 819 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 819 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 89 OF 2020
MN NDUMA, J
MARCH 23, 2023**

BETWEEN

MERCY OMONDI OMULLO CLAIMANT

AND

RAMA HOMES LIMITED RESPONDENT

JUDGMENT

1. The suit was commenced by Statement of Claim on February 14, 2020 seeking the following reliefs:-
 - a. A declaration that the Respondent's conduct towards the Claimant amounts to violation of her constitutional rights and labour rights.
 - b. A finding that the Claimant was unlawfully and unfairly terminated.
 - c. An award of Kshs 1,105,856.52 worked out as follows:-
12 months compensation @ Kshs 95,856.52.
 - d. Costs of this suit.
 - e. Any other relief that the Court will deem fit to grant.
2. C W 1 testified that that he was employed by the respondent vide letter of offer dated March 12, 2019. The claimant was placed on 3 months' probation until June 17, 2019. The Gross monthly salary was Kshs 92,154.71.
3. C W 1 testified that after 3 months period she was neither appraised nor confirmed but continued to serve without blemish until November 11, 2019 when the Assistant General Manager inhumanely kicked her out of the office after she had declined to sign a warning letter without being given opportunity to consider the allegations made therein.



4. The Assistant General Manager thereafter asked the claimant to hand over office files and keys and leave. The claimant left as instructed.
5. C W 1 stated that she was not given opportunity to be heard before she was unceremoniously kicked out of office like trash. C W 1 stated that the respondent had invalid reason to summarily dismiss her from work. C W 1 stated that her efforts to speak to the Chairman of respondent to intercede were in vain. The claimant prays for the reliefs sought. The claimant worked as Human Resource Manager.
6. The respondent (R W 1) testified that he was the ICT Manager of the respondent. That the claimant was employed by the respondent on April 15, 2019 as a Human Resource Manager. That claimant was placed on 3 months' probation. That the claimant had issues while she worked and was given oral and written warnings.
7. That on November 10, 2019, the claimant failed to report to work without any explanation and/or permission. That the claimant reported to work on November 11, 2019 and failed to explain her absence the previous day and eventually walked out of the company premises contrary to terms of employment contract.
8. That the claimant's employment was terminated vide a letter dated November 13, 2019 due to gross misconduct.
9. That the claimant's final dues were properly calculated and paid without any complaint.
10. Under cross-examination R W 1 stated that the claimant absented self from work without explanation and was unreachable on telephone. That the claimant was also insubordinate. That she was not given a show cause letter and was not invited to a hearing. R W 1 did not have the breakdown of the dues paid.
11. The parties filed written submissions and the issues for determination are:-
 - a Whether the termination of employment of the claimant was for a valid reason and if the respondent followed a fair procedure in terminating the employment of the claimant.
 - b Whether the claimant is entitled to the reliefs sought.
12. C W 1, the claimant testified that she was unceremoniously dismissed from employment upon refusing to sign a warning letter without being given opportunity to explain herself.
13. The claimant had according to R W 1 absented herself from work for one day without explanation.
14. From the facts not in dispute, the respondent failed to accord the claimant a hearing in terms of Section 41 of the *Employment Act*, to explain why she was absent from work for one day. The respondent did not give the claimant any notice, nor was the claimant given any chance to explain herself.
15. The respondent in the circumstances of the case had no valid reason to terminate the employment of the claimant summarily without according her a fair hearing. The respondent violated Sections 41, 43 and 45 of the *Employment Act* and the Court finds that the termination was unlawful and unfair. The claimant is entitled to compensation in terms of Section 49(1)(c) and (4) of the *Employment Act*, 2007.
16. The claimant was paid terminal benefits in the sum of Kshs 172,022. R.W.1 did not explain to the Court the breakdown of the said payment.
17. The claimant earned a gross monthly salary of Kshs 92,154.71. The claimant only seeks compensation for the unlawful dismissal, meaning that she was satisfied that her terminal benefits were fully paid upon termination.



18. The claimant held a senior position of Human Resource Manager and the respondent had a duty to treat her with respect and uphold her dignity, first as a human being, an employee and lastly as a Senior Manager.
19. The manner in which the Assistant General Manager Mr. Adrash treated the claimant was devoid of respect and deprived the claimant of her dignity. The Manager ought to have calmly, and within the company procedure allowed the claimant to explain why she was unable to attend work for one day. That is all the claimant had requested of him before he unceremoniously kicked her out of office. The claimant suffered loss and damage. She lost prospects of career growth and development. She was treated inhumanly. The respondent paid her terminal benefits to its credit. The Court finds that the claimant did not contribute to the unlawful termination having not been given opportunity to explain her one day absence from work.
20. The Court relies on the case of *Alphonse Maghanga Mwachanya -vs- Operation 680 Limited* [2013] eKLR to find that the termination was unlawful and unfair.
21. The Court also relies on the case of *Nicholas Muasya Kyule vs FarmChem Limited*. Industrial Cause No, 1992 of 2011 (2012) LLR 235(ICK to find that an employer must follow due process in disciplining an employee failing which the termination is devoid of any validity. The claimant was not compensated for the loss of her employment.
22. Considering all the above circumstances, including that the claimant had diligently served the respondent in a senior position for a period of eight (8) months, the Court awards the claimant the equivalent of three (3) months' salary in compensation for the inhumane, unfair and unlawful termination of her employment in the sum of Kshs (92, 154.71 x 3) = 276,464.13.
23. In the final analysis, judgment is entered in favour of the claimant against the respondent in the sum of Kshs 276,464.13. The award is payable with interest at Court rates from date of judgment till payment in full. The respondent to meet the costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 23RD DAY OF MARCH, 2023.

MATHEWS N NDUMA

JUDGE

Appearances

Mr Njiru for claimant

M/s Onyiego for Respondent

Ekale – Court Assistant

