



**Namae v Edulink International College Nairobi (Cause 30 of 2017)
[2023] KEELRC 689 (KLR) (17 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 689 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 30 OF 2017
J RIKA, J
MARCH 17, 2023**

BETWEEN

PAMELA NAMAЕ CLAIMANT

AND

EDULINK INTERNATIONAL COLLEGE NAIROBI RESPONDENT

JUDGMENT

1. The Claimant was employed by the Respondent on 1st October 2015, as an Academic Registrar.
2. On 31st August 2016, she was told by the Respondent not to report to work, from the month of September 2016.
3. Her last salary was Kshs 190,000 monthly. There was no warning, notice or opportunity to defend herself, before termination. She was not given reasons to justify termination.
4. She prays the Court to grant Judgment as follows: -
 - a. Declaration that termination was unlawful and unfair.
 - b. Notice of 2 months at Kshs 380,000.
 - c. Unfair termination [?] 31 months at Kshs 5,890,000.
 - d. Airtime allowance [35] months at Kshs 105,000.
 - e. Relocation allowance at Kshs 50,000.
 - f. Air ticket at Kshs 27,000.
 - g. Telephone allowance [41] months at Kshs 123,000.Total... Kshs 6,575,000.



- h. General damages.
 - i. Certificate of Service.
 - j. Costs.
 - k. Interest.
 - l. Any other suitable relief.
5. The Respondent filed its Statement of Response on 2nd February 2017. It is conceded that the Claimant was employed by the Respondent as pleaded, and on an all-inclusive salary of Kshs 190,000 monthly.
 6. The Claimant had poor disciplinary and performance record. She disrespected colleagues. She constantly used her phone during working hours. She was warned about these infractions, and her reply was simply, 'noted.' She was issued a contract, acknowledged receipt, but declined to sign it. The Respondent called her to a meeting, captured in minutes marked 'EDU2.' She blatantly refused to execute the contract. She was employed effective from 15th March 2016 after she completed probation. Termination was on 29th August 2016.
 7. She was offered terminal dues, including Kshs 229,400 representing 1 year of service. She declined payment. The Respondent instructed her to collect terminal dues totalling Kshs 293,935. The Respondent made the offer in good faith. She was offered her Certificate of Service through her Advocates. The settlement cheque and Certificate of Service were not collected as advised. The Respondent prays the Court to uphold termination, and dismiss the Claim, with costs to the Respondent.
 8. The Claimant gave evidence and rested her case, on 22nd February 2022. Head of Operations Sudhir Gupta gave evidence on the same date. Executive Director Simo Dubajic gave evidence on 23rd November 2022, closing the Respondent's case. The matter was last mentioned in 17th February 2023, when Parties confirmed filing and exchange of their Submissions.
 9. The Claimant adopted her Witness Statement as her evidence-in-chief and documents, exhibited as 1-7. She explained that she was called by the Respondent to sign another contract, while she had a subsisting one. She declined. Cross-examined, she expounded that she had a running contract dated 28th August 2015. After probation, she was confirmed. Paragraph 2 of the letter of offer says that the Claimant would be offered a contract, upon confirmation. To her, the offer was a running contract. The confirmation letter is dated 15th March 2016. Paragraph 4 refers to a contract of employment, which would be forwarded to the Claimant. On 28th August 2016, the Claimant was presented with a contract. She did not execute it. Redirected, she told the Court that from the date of offer to termination, she was receiving salary.
 10. Gupta adopted her Witness Statement and documents filed by the Respondent in her evidence-in-chief. The Claimant was issued a letter of offer. Once she signed, she was placed on 6 months' probation. Once confirmed, she would be issued a contract. All Employees went through this procedure. Employees must have contracts. The Claimant did not sign her contract. Gupta worked with the Claimant. The Claimant was diligent from the time she received the offer. She changed later. Staff were not comfortable with her. She was reporting to the Director. She was the front face of the Respondent. She was advised by the Director to mend. Gupta also talked to her. She was frequently on phone for long, which was a waste of the Respondent's resources. The Respondent did not issue her a letter of warning. Redirected, Gupta told the Court that the Respondent begun operations on 1st January 2015. Degree programme was to start in September 2015. Letter of offer issued for this period.



Contract of employment was supposed to be the final document. The Claimant was not ready to sign the contract.

11. Dubajic similarly adopted his Witness Statement and documents filed by the Respondent. Cross-examined, he told the Court that it was his evidence that Claimant's colleagues, complained about the Claimant. The complaints were not recorded. Dubajic held meetings with the Claimant. She did not change. She declined to sign the contract. She left employment. There was no termination. The Claimant exhibited very bad manners. Dubajic did not recall, if the Respondent issued a warning letter to the Claimant. She had loans before joining the Respondent, which the Respondent paid for her. Redirected, Dubajic told the Court that it was the Respondent's policy to issue contracts to Employees. The Claimant refused completely to sign hers. She gave no reason, except that she was consulting her Lawyers. She did not revert to the Respondent. She was granted money by the Respondent, to assist her in clearing her loan, prior to her relocation. She was extorting money from the Respondent, by refusing to sign the contract.
12. The issues are whether the Claimant's contract was terminated by the Respondent unfairly or at all; and whether she merits the prayers pleaded.

The Court Finds: -

13. The Claimant was issued by the Respondent, a written offer of employment, dated 28th August 2015.
14. The terms are clearly stated in the letter of offer. She was employed as an Academic Registrar. She was to report to Campus Director/ Principal. The contract was for a period of 3 years. Probation was for 4 months. Commencement was on 15th September 2015. Her salary was Kshs 150,000 monthly. She was entitled to other benefits which are specified in the letter of offer. Further, she would be eligible for salary increment up to a maximum of 10% of her gross monthly salary, after confirmation. The Claimant was advised that her employment was contingent upon verification of her identity, experiences and references. She was to sign and return the letter of offer, within 7 days, as evidence of her acceptance. She signed her letter of offer on 2nd September 2015.
15. Prior to accepting the offer, the Claimant had on 1st September 2015, written an e-mail to the Respondent, seeking certain clarifications. She stated that she was giving the offer serious thought, mindful of the seniority of the position. She asked for review of the salary by 25%; inclusion of her 2 Children in the medical cover; transport allowance; and sought advice on termination of her existing employment, which required her to give 2 months' termination notice; and gave an indication that she intended to start working on 1st October 2015.
16. The Respondent promptly responded the same date, 1st September 2015. It informed the Claimant that it was a start-up, working on strict budget; her gross monthly salary was restated at Kshs 180,000; there was an additional Kshs 10,000 as transport allowance; she was advised that upon successful completion of probation, her salary would be increased by 10%, to Kshs 198,000 monthly; medical policy covered Employees only, but the Claimant was free to place her Children under the cover, at her own expense; the Respondent was willing to assist the Claimant with a loan, to meet her expenses; and could similarly be accorded loan facility to be deducted from annual bonus, to enable her pay notice to her then Employer in Uganda.
17. There were no further preliminaries, and the Claimant accepted the offer as indicated above, on the 2nd September 2015.
18. She successfully completed probation, and on 15th March 2016, was issued a letter of confirmation. She was advised, as in the letter, that she had been employed as an Academic Registrar for a period of 3 years.



- The effective date was 1st April 2016. She was advised that the terms and conditions communicated in the letter of offer remained unchanged. She was advised that a contract of employment would be forwarded to her, specifying the terms and conditions.
19. It is this final product that the Claimant, for her own undisclosed reasons, declined to execute.
 20. The Respondent then issued a Notice of Termination with Immediate Effect upon the Claimant, which is dated 29th August 2016. The letter states, “ it is at the discretion of Management, that a decision has been reached, that your services be terminated with immediate effect...”
 21. This letter confirms, contrary to the evidence of Executive Director, that indeed, termination was at the instance of the Respondent. The position that the Claimant left employment of her own volition, and that there was no termination by the Respondent, is disproved by the Notice of Termination dated 25th August 2016.
 22. Was termination unfair?
 23. Although various reasons are given by the Respondent through its Witnesses as justification for termination, the Notice of Termination is confined to explaining that it was in the discretion of Management to terminate the Claimant’s contract.
 24. The Notice does not state anything about the Claimant’s refusal to sign her contract. It does not state anything about the long calls the Claimant used to make at the office, wasting the Respondent’s resourcing. It does not mention that the Claimant’s superiors and juniors complained about her conduct. These cannot have been valid reasons to justify termination. They were never stated to be the reasons justifying termination in the letter of termination. The refusal or failure by the Claimant to sign another contract document, was similarly not given in the Notice of Termination, as the reason for termination. It was however stated by the Witnesses for the Respondent that the Claimant refused to sign the contract unreasonably. This refusal is recorded in the minutes of the meeting held with the Executive Director and Executive Administrator, on 26th August 2016.
 25. Was refusal to sign the contract a valid reason, to justify termination?
 26. The letter of offer dated 28th August 2015 was on its own, a complete contract of employment, bearing all the features of a contract of employment, prescribed under Sections 9 and 10 of the [Employment Act](#), 2007. The name of the document is irrelevant, when determining if it is a binding contract.
 27. It had all the essentialia negotii, of a binding contract of employment. The Claimant’s designation was given. Reporting lines were indicated. The period was indicated to be 3 years, with probation of 4 months. The commencement date was specified, as was the payable monthly salary and benefits. It was formally valid, the Claimant having appended her signature in acceptance, as required under the [Employment Act](#).
 28. The Claimant made enquiry about the terms and conditions on offer, in her letter to the Respondent dated 1st September 2015. She was given a reply the same date, and signed the letter offer on 2nd September 2015, accepting the contract. There was an offer and acceptance. There was common intention to create binding relations for the next 3 years. The Respondent promised to pay the Claimant a specified amount as salary, in exchange of her services. Parties had the legal capacity to contract. There was mutual consent. The contract was perfected. The Claimant completed probation and was confirmed. All the features of a binding contract of employment were in the letter of offer.
 29. For purposes of Sections 9 and 10 of the [Employment Act](#), nothing remained to be done, to have a binding and enforceable contract of employment.



30. The contract was solidified on 1st April 2016, when the Claimant completed probation and was confirmed as the Academic Registrar.
31. The letter of confirmation informed the Claimant that terms and conditions in the letter of offer remained unchanged.
32. It therefore becomes hard to understand why there was so much push and pull between the Claimant and the Respondent, on signing another contract, leading to termination of the Claimant's employment.
33. The contract had been offered, negotiated, clarified, crystallised, signed and sealed. The terms and conditions were known. The commencement and expiry dates were known.
34. The Claimant asked for more time to understand the new document which was issued on 26th August 2016. 3 days later on 29th August 2016, the Claimant told the Respondent she did not understand the new contract document, did not sign the document, and the contract was therefore terminated by the Respondent, on the ground that the Respondent had the discretion to terminate.
35. The main reason for the decision, which as observed was unstated in the notice of termination, was that the Claimant refused to sign the fresh document. A draft of this fresh document was not exhibited before the Court. The Parties did not suggest to the Court whether there were fresh terms and conditions of employment introduced in the new documents. The letter of confirmation indicated that the Respondent would specify all terms and conditions in a future documents. The intended specification would not be a fresh contract, rescinding what was already concluded between the Parties.
36. In the view of the Court termination on account of the Claimant's failure to understand and sign the new document, cannot have been a valid reason. It was not necessary to push the Claimant against the wall, to execute a new document, only 4 months after confirming her, and advising that, "terms and conditions of your letter of offer remains unchanged."
37. There was no valid reason or reasons, to justify termination. The proceedings of 26th August 2016 and 29th August 2016 at the Respondent's Director's Office, were not disciplinary in nature. On both occasions, it was about the Claimant being asked to sign the new document, and about her protestation against the requirement. It was not a disciplinary hearing. The Notice of Termination dated 29th August 2016, was clear that termination, was with immediate effect. There was no reference to the minimum statutory standards of fairness under Sections 41, 43 and 45 of the *Employment Act*.
38. Termination was unfair.
39. The Claimant worked from 1st October 2015 to 31st August 2016, according to her own Pleadings. This amounts to 11 months. Her contract was for a period of 36 months. She had 25 months left in her contract. She cannot be blamed for the circumstances leading to termination of her contract. The Parties had executed a complete and binding contract of employment. The Court agrees with the Claimant that she had a running contract, when the Respondent insisted she executes a fresh contract. It is not clear why it was necessary to execute a fresh document, or why failure to execute, while the terms and conditions initially agreed to remained the same, would lead to termination of employment.
40. The Claimant does not merit salary for the balance of her contract period, which she pleads as 'unfair termination' at Kshs 5,890,000. She did not render any service for 25 months or 31 months as claimed, to justify anticipatory salary.
41. She was offered relocation allowance at Kshs 50,000 and air ticket at Kshs 27,000 in the Calculation of Final Dues made by the Respondent. The Court does not see why she pleads what is not disputed.



She pleads notice of 2 months, which does not have support in her contract of employment. She was correctly offered 1-month salary in lieu of notice at Kshs 190,000.

42. She did not establish the prayers for airtime allowance of 31 months and telephone allowance of 41 months. She worked for 11 months, and did not make official calls for 35 months or 41 months, to merit airtime and telephone allowances. These items are rejected.
43. The Claimant is at liberty to collect the terminal dues as had been offered by the Respondent, at Kshs 293,935. She is at liberty to collect her Certificate of Service. She ought not to have brought claims which the Respondent offered to settle, as disputed items, to be resolved by the Court.
44. The Court is satisfied that the Respondent terminated the Claimant's contract unfairly, without regard to Sections 41, 43 and 45 of the *Employment Act*. She is granted equivalent of 5 ½ months' salary in compensation for unfair termination at Kshs 1,045,000.
45. No order on the costs.
46. Interest allowed at court rate from the date of Judgment, till payment in full.

It Is Ordered:-

- a. Termination was unfair.
- b. The Respondent shall pay to the Claimant equivalent of 5½ months' salary in compensation for unfair termination at Kshs 1,045,000.
- c. No order on the costs.
- d. Interest allowed at court rate, from the date of Judgment till payment is made in full.

Dated, signed and released to the Parties electronically at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 17th day of March 2023.

James Rika

Judge

