



**Indogo v Ankole Grill Limited (Cause 294 of 2019)
[2023] KEELRC 620 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 620 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 294 OF 2019
L NDOLO, J
MARCH 16, 2023**

BETWEEN

JOHN PAUL INDOGO CLAIMANT

AND

ANKOLE GRILL LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant, John Paul Indogo was an employee of the Respondent, Ankole Grill Limited, working in the position of Head Chef. Indogo brought this claim following his dismissal on 29th March 2019.
2. The claim is contained in a Memorandum of Claim dated 3rd May 2019 and filed in court on 7th May 2019. The Respondent filed a Statement of Response on 6th September 2019, to which the Claimant responded on 19th November 2019.
3. At the trial, the Claimant testified on his own behalf and the Respondent called its Operations Manager, Mary Njeri Kimani. Both parties also filed written submissions.

The Claimant's Case

4. The Claimant states that he was employed by the Respondent on 1st May 2017, in the position of Head Chef. He earned a monthly salary of Kshs. 150,000.
5. On 25th March 2019, the Claimant was issued with a letter suspending him from duty pending a show cause hearing on 28th March 2019. The letter accused the Claimant of using abusive language and misrepresenting the Company. He was subsequently dismissed by letter dated 29th March 2019.
6. The Claimant terms the dismissal as wrongful and unfair on the following grounds:



- a. No valid reasons were given for the termination despite the fact that the Claimant had diligently dedicated his service to the Respondent;
 - b. The Respondent purported to terminate the Claimant's employment on grounds of alleged verbal abuses directed at his superiors while at the show cause hearing he was accused of using abusive language against junior staff;
 - c. Particulars of the alleged abusive utterances were not provided to the Claimant;
 - d. The Claimant had no record of any form of indiscipline and no staff member had complained against him for using abusive language towards them;
 - e. The Respondent declined, neglected and/or refused to indicate who the alleged accusers were, despite the Claimant's request to be furnished with this information;
 - f. In the absence of information on his accusers and particulars of the accusations against him, the Claimant was not afforded an opportunity to adequately prepare his defence;
 - g. The Respondent purported to terminate the Claimant's employment on grounds of alleged misrepresentation of the Respondent and disobeying the Managing Director's directives on the Respondent's meat suppliers. No evidence was availed to indicate what procedures the Claimant had breached;
 - h. The Respondent alleged that the Claimant had changed the suppliers/ingredients without prior consultation with the Respondent's Managing Director. The Claimant indicated at the show cause hearing that no communication had been made to him regarding the suppliers. Specifically, he stated that he did not know that Gourmet was the official supplier of minced meat. According to the Claimant, Gourmet was an option to go to when Gale did not have minced meat;
 - i. The supply of minced meat on a daily basis was approved by the General Manager and the Directors of the Respondent who then made the payments. It was therefore not possible for the Claimant to make any changes in the suppliers of minced meat or any other product supplied to the Respondent;
 - j. The Claimant further indicated at the show cause hearing that after blind tasting, the Respondent did not indicate that he needed to make orders for pork sausages and bacon from Osiligi;
 - k. The Respondent also purported to terminate the Claimant's employment on alleged violation of section 19 of the Company's Rules and Regulations regarding misrepresentation of the Company, which section does not exist;
 - l. The purported termination was in clear violation of Kenyan labour laws and in particular, the [Employment Act](#).
7. The Claimant seeks the following remedies:
- a. 3 months' salary in lieu of notice.....Kshs. 450,000
 - b. 12 months' salary in compensation.....1,800,000
 - c. In the alternative, an order of reinstatement without loss of benefits
 - d. Certificate of service



- e. Costs plus interest

The Respondent's Case

8. In its Statement of Response dated 30th August 2019 and filed in court on 6th September 2019, the Respondent admits having employed the Claimant on 1st May 2017, in the position of Head Chef earning a monthly salary of Kshs. 150,000.
9. The Respondent avers that the Claimant's employment was riddled with poor performance, misconduct and inefficiency, which eventually resulted to the termination of his employment. The Respondent gives the following details in this regard:
 - a. On 19th September 2018, the Claimant was issued with a notice of disciplinary proceedings on allegations of loss and misappropriation. The notice was due to the fact that the Respondent had discovered that the Claimant had, on 3rd August 2018, submitted a loss/wastage report which was inaccurate, untrue and misleading;
 - b. On 21st September 2018, the Claimant submitted a handwritten letter admitting fault and requesting the Respondent to forgive him while undertaking not to commit any other act of gross misconduct;
 - c. On 20th December 2018, the Claimant was issued with a warning letter on account of subordinate negligence while on duty by failing to strictly abide with the terms of his job description and duties.
10. The Respondent admits having issued the Claimant with a show cause letter dated 25th March 2019, which letter also placed the Claimant on suspension. The Respondent states that the show cause letter was preceded by verbal communication of the specifics of the complaints and charges that the Claimant would face.
11. The Respondent states that the show cause letter informed the Claimant as follows:
 - a. That there were allegations against him for use of abusive language and misrepresentation of the Company, which allegations amounted to gross misconduct;
 - b. That a disciplinary hearing had been set for 28th March 2019 at 11.00 am so as to give him an opportunity to make any representation on the allegations against him;
 - c. That he was notified that he would be placed on suspension until he was either cleared at the hearing or appropriate corrective action taken;
 - d. That he was further directed to submit his written representation before the close of business on 27th March 2019;
 - e. That he had a right to be accompanied at the disciplinary hearing by a representative of his choice, who would be required to submit his/her written representations, if any, alongside his own;
 - f. That if he was cleared of any wrongdoing during the hearing, the entire suspension would be converted to leave and if the hearing established that his actions were inappropriate, some or all of the suspension may be converted to unpaid disciplinary suspension. It was further stated that additional disciplinary measures would be imposed up to and including termination.



12. The Respondent avers that the Claimant did not submit any written submissions on the allegations levelled against him, did not call any representatives nor submit their written submissions. Nonetheless, the disciplinary hearing took place on 28th March 2019, with the Claimant in attendance.
13. The Respondent states that the Claimant declined a request to have the disciplinary proceedings recorded.
14. Regarding the charge of use of abusive language, the Respondent states that some statements were recited and the Claimant responded that he could not recall uttering abusive words to staff.
15. On the charge of misrepresentation of the Company, the Claimant was asked to explain why he had changed suppliers of prime cut meats from Gourmet to Gale. The Claimant is said to have responded that there had been no communication on the specific supplier.
16. The Claimant was further accused of falsely informing representatives of Osiligi Limited that their pork products were deemed to be substandard and had not passed the blind tasting process.
17. In addition, the Claimant is said to have created a separate departmental WhatsApp group to discuss the Respondent's operations, in which he omitted the General Manager.
18. The Respondent states that the Claimant failed to tender any proper and sufficient explanation of his actions and consequently, the allegations against him were deemed to have been sufficiently proved leading to the decision to summarily dismiss him by letter dated 29th March 2019.
19. The Respondent further states that the Claimant was paid his terminal dues amounting to Kshs. 147,142.70 which he duly acknowledged and thus discharged the Respondent from any further claims.
20. The Respondent's case is that it had valid reasons for dismissing the Claimant and that in executing the dismissal, it followed due procedure.

Findings and Determination

21. There are two (2) issues for determination in this case:
 - a. Whether the Claimant's dismissal was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Dismissal

22. The Claimant was summarily dismissed by letter dated 29th March 2019 stating as follows:

“Dear John,

Re: Summary Dismissal

We refer to our letter dated 25th March 2019.

You were required to attend a disciplinary hearing on 28th March 2019 at 1.00 am at Ankole Grill Ltd, Ground Floor on Senteu Plaza to make representations on the allegations made against you with regards to Use of abusive language and Misrepresentation of the company.

During the hearing you were given an opportunity to make representations on the allegations made against you. We have given consideration to the representations which you made at the hearing and circumstances of this matter and we are of the view that the allegations against you have been sufficiently proven.



In view of the above, you are hereby informed of the termination of your contract of employment with immediate effect.

You will be paid the following: -

1. Salary for 1st March 2019 to 28th March 2019.
2. Accrued leave days.
3. Any other entitlements under the contract.
4. Less any amount owed to the company.

Your certificate of service is attached.

Sincerely,

(signed)

Mr. Jon Wagner.

Managing Director.”

23. The dismissal letter lays two charges against the Claimant to wit; use of abusive language and misrepresentation of the Company.
24. This letter was preceded by another one dated 25th March 2019 under reference ‘Disciplinary Proceedings on Allegations of Use of Abusive Language and Misrepresentation of the Company’. The preceding letter served as both an instruction to the Claimant to make written representations by 27th March 2019 and an invitation to a disciplinary hearing on 28th March 2019.
25. It would appear that by the time the letter of 25th March 2019 was written a decision had been made that the Claimant’s case would be escalated to a personal hearing. This begs the question as to the purpose of the anticipated representations by the Claimant.
26. As held by Mbaru J in *Peter Kamwi v Standard Group Limited* [2016] eKLR where a show cause letter has been issued to an employee, the employee must answer to the show cause and if their response is not satisfactory, then the employee is subjected to a personal hearing. The summary procedure adopted by the Respondent in this case is not known in law.
27. Significantly, the Respondent stated in its letter of 25th March 2019, that the ‘written submissions will form the basis of your disciplinary hearing’.
28. Many things were wrong with the procedure adopted by the Respondent; first, the Claimant was not allowed adequate opportunity to respond to the accusations levelled against him; second he was not given a chance to face his accusers and third, he was not furnished with particulars of the accusations.
29. In *Andrew K. Tanui v Postal Corporation of Kenya v* [2019] eKLR Rika J stated the following:

“...An employer should not merely recite the grounds listed in a letter to show cause and then ask the employee if there is anything to add or subtract; the employer must make an effort to explain the charges to the employee at the hearing, call evidence in showing the truthfulness of those allegations, and if there are witnesses, allow the Claimant the opportunity to question the Employer’s witnesses. Evidence contained in documents must be produced.”



30. The Respondent's witness, Mary Njeri Kimani conceded that none of the two charges levelled against the Claimant were accompanied by any details. She further testified that the Claimant's request for specifics and identity of the complainants was not granted.
31. The only conclusion to make in the circumstances is that none of the allegations made against the Claimant were proved to the standard required by Section 43 of the Employment Act.
32. The dismissal was therefore wrongful and unfair and the Claimant is entitled to compensation.

Remedies

33. Pursuant to the foregoing, I award the Claimant four (4) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's length of service, his employment record and the Respondent's unlawful conduct in bringing the employment to an end.
34. I further award the Claimant one (1) month's salary in lieu of notice.
35. In the ultimate, I enter judgment in favour of the Claimant as follows:
 - a. 4 months' salary in compensation.....Kshs. 600,000
 - b. 1 month's salary in lieu of notice.....150,000Total.....750,000
36. This amount will attract interest at court rates from the date of judgment until payment in full.
37. The Claimant is also entitled to a certificate of service plus costs of the case.
38. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF MARCH 2023

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JUDGE

Appearance:

Mr. Nyakundi for the Claimant

Ms. Muthoni h/b for Mr. Kimathi the Respondent

