



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Jelegat v Jumuika Sacco Society Ltd (Cause 6 of 2021)
[2023] KEELRC 508 (KLR) (1 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 508 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 6 OF 2021
S RADIDO, J
MARCH 1, 2023**

BETWEEN

NANCY JELEGAT CLAIMANT

AND

JUMUIKA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. Nancy Jelegat (the claimant) was employed as an assistant accountant by Jumuika Sacco Society Ltd (the respondent) in 2013.
2. The claimant rose through the ranks to Internal Auditor and acting Chief Executive Officer.
3. On or around 25 January 2021, the respondent suspended the claimant and on 9 February 2021, she was invited to attend a disciplinary hearing.
4. The claimant did not attend the hearing and the respondent terminated her employment on 15 February 2021.
5. The claimant sued the respondent on 9 June 2021, alleging unfair termination of employment and breach of contract.
6. The respondent filed a response on 8 September 2021, and the cause was heard on 28 November 2022 and 24 January 2023. The claimant and the respondent's Chief Executive Officer testified.
7. The claimant filed her submissions on 2 February 2023, and the respondent on 22 February 2023.
8. The court has considered the pleadings, evidence and submissions.



Unfair Termination of Employment

Procedural fairness

9. Sections 35(1) and 41 of the [Employment Act](#), 2007 provide the primary procedural protections before an employee is dismissed.
10. The claimant applied for emergency leave commencing around 17 December 2020. The respondent approved the leave and the claimant was expected to resume on 11 January 2021.
11. However, on 5 January 2021, the claimant applied for extension of the leave by 15 days. The extension was not approved and the respondent's Chief Executive Officer sent to the claimant an email on 13 January 2021, informing her that the request had been denied (the email talked of prior discussions).
12. The Chief Executive Officer instructed the claimant to report back to work by 14 January 2021, to prepare returns due to the Sacco Societies Regulatory Authority (SASSRA) by 15 January 2021.
13. The claimant responded on 14 January 2021, expressing her displeasure with the turn of events and denying that there had been prior discussions.
14. The respondent thereafter issued to the claimant a show-cause letter dated 16 January 2021, and the allegations were failure to report back to work on 11 January 2021 after lapse of approved leave, failure to hand-over log-in credentials on 15 January 2021, and failure to conduct bank reconciliations.
15. The claimant was requested to respond on or before 18 January 2021.
16. The claimant responded on 16 January 2021, and on 25 January 2021, she was suspended indefinitely.
17. On 9 February 2021, the respondent invited the claimant to attend a disciplinary hearing scheduled for 12 February 2021.
18. The claimant was informed of the right to be accompanied by a colleague. The claimant's advocate replied to the email, and indicated that the claimant would not attend the hearing because she was undergoing an antenatal program.
19. On 11 February 2021, the respondent sent a reminder to the claimant to attend the hearing (she did not).
20. In court, the claimant asserted that she was not afforded a fair process because she was not heard and that the notice to attend the disciplinary hearing was short considering that she was unwell.
21. The claimant was issued a show-cause which she responded to. She was then invited to attend an oral hearing. The invitation was sent on 9 February 2021 and the hearing was set for 12 February 2021.
22. The claimant was already familiar with the allegations to confront and she had made a written response on 16 January 2021, about 3 weeks earlier.
23. The claimant did not attend the oral hearing. She contended that she was ill, and she produced copies of antenatal clinic or medical notes/laboratory request form from a doctor.
24. The medical note/request form is dated 12 February 2021.
25. On 10 February 2021, before responding to the show-cause, the claimant had moved the Magistrates Court to challenge the suspension, but she withdrew the cause.



26. The court has considered the circumstances surrounding the disciplinary process. The respondent informed the claimant of the allegations to confront and afforded her an opportunity to make written representations.
27. Thereafter, the respondent invited the claimant to attend an oral hearing. The claimant did not attend allegedly because of ill health.
28. The medical notes produced to support the ill-health appear to have been issued on the day scheduled for hearing. Some of the medical documents are not dated.
29. While requesting for the extension of her emergency leave, the claimant did not mention the fact of ill-health or pregnancy. Such a disclosure, in the view of the court would have served as corroboration of the ill-health assertion.
30. The court finds that the respondent was in substantial compliance with the requirements of procedural fairness.

Substantive Fairness

31. The respondent gave three reasons for terminating the claimant's employment.
32. By virtue of sections 43 and 45 of the *Employment Act*, 2007, these were the reasons the respondent was expected to prove.
33. The claimant applied for leave which the respondent approved. The claimant was expected to resume work on 11 January 2021. She did not.
34. Instead, the claimant applied for extension of the leave but did not give any reason in the letter requesting for extension of the leave.
35. The respondent did not approve the extension and the claimant was instructed to report back. Again she did not.
36. The claimant did not place before the court any medical evidence that by 11 January 2021, she had any medical or pregnancy situation which made it difficult for her to resume work after the rejection of the request to extend leave.
37. Failure to attend work at the designated time and place is one of the reasons which warrants summary dismissal under section 44(4) of the *Employment Act*, 2007.
38. The claimant did not in the instant case demonstrate that she had lawful cause not to resume work after the lapse of the emergency leave.
39. The respondent had also instructed the claimant to hand over certain log-in credentials to enable the preparation and submission of SASRA returns by the monthly due date of 15 January 2021. It was also alleged that she was negligent in performance of duties.
40. The respondent did not prove these allegations.
41. On the ground of failure to resume duty after leave, the court finds the respondent had a valid reason to terminate the contract.



Breach of Contract

Savings balance

42. The claimant did not provide an evidential foundation to this head of the claim and relief is denied.

Salary Arrears

43. The claimant contended that she was owed salary arrears for January and March 2020, totalling Kshs 84,000/-. The respondent did not produce pay records to rebut the claim and the claim is allowed.

Salary in Lieu of Notice

44. With the conclusion that the respondent was in substantial compliance with procedural fairness requirements, and that there was a valid reason for the termination, the court declines to allow this relief.

Acting Allowance

45. The claimant claimed Kshs 214,062/- on account of acting allowance for the period she acted as Senior Accountant from 1 December 2019 to July 2020.

46. The claimant was confirmed as an Internal Auditor on 26 September 2019 and on 29 November 2019, she was deployed to the senior accountant's office.

47. The deployment letter informed the claimant that her remuneration would be looked into once the business environment improved.

48. The court has looked at the respondent's human resource policy and procedures manual. It provides for redeployment but does not indicate whether a redeployment comes with an acting allowance.

49. Although clause 21 of the manual contemplates acting appointments with an acting allowance and clause 46 provides for an acting allowance, the claimant did not place before the court any document that apart from the redeployment, she was appointed to act or that the salary grade for the Internal Auditor and Senior Accountant were different.

Leave

50. On account of leave, the claimant prayed for Kshs 96,320/-.

51. The leave records produced in court show that the claimant had a leave balance of 57.98 days and that she took 15 days leave.

52. By the time of separation, the claimant had 42.98 accrued leave days.

53. The respondent did not challenge the claimant's computations, and the court will allow this head of the claim.

Pension

54. The claimant further alleged breach of contract on the ground that the respondent did not remit Kshs 57,010/- towards the pension fund.

55. A copy of the claimant's pay slip indicated pension deductions towards a provident fund.

56. The head of the claim was not denied and is allowed.



Discrimination

57. The claimant did not prove that her deployment from Internal Auditor to Senior Accountant was discriminative either in terms of rank or remuneration.

Certificate of Service

58. A certificate of service is a statutory entitlement and the respondent should issue one to the claimant.

Conclusion and Orders

59. The Court finds and declares:

- (i) The termination of the claimant's employment was fair.
- (ii) The respondent was in breach of contract with respect to salary arrears and leave.

60. The claimant is awarded:

- (i) Salary arrears Kshs 84,000/-
 - (ii) Accrued leave Kshs 96,320/-
- TOTAL Kshs 180,320/-

61. The respondent to issue a Certificate of Service within 21 days.

62. The other heads of reliefs are dismissed/declined.

63. The claimant has only succeeded partially. She did not file submissions within the agreed timelines.

64. Therefore, each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF MARCH 2023.

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For claimant Ngala Awino & Co. Advocates

For respondent Kipkosgei & Co. Advocates

Court Assistant Chrispo Aura

