



**Arati & another v Achievo Limited (Cause 1349 of 2017)  
[2023] KEELRC 1284 (KLR) (31 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1284 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1349 OF 2017**

**J RIKA, J**

**MAY 31, 2023**

**BETWEEN**

**MOSES ORWONGO ARATI ..... 1<sup>ST</sup> CLAIMANT**

**EDWIN MUNENE MUTUA ..... 2<sup>ND</sup> CLAIMANT**

**AND**

**ACHIEVO LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The 2 claims herein were consolidated through an order of the Court, recorded on January 17, 2019.
2. Both Statements of claim were filed on July 18, 2017.
3. The claimants were heard and rested their respective cases, on December 14, 2021.
4. The respondent did not attend Court during the hearing. Parties were directed to file and exchange their Submissions, and the claims fixed for mention on March 9, 2022.
5. Unfortunately, the Cause List indicated that the consolidated claims were due for hearing on March 9, 2022, and in the absence of the parties, the court entered an order for dismissal of the claims.
6. This position was corrected upon the application of the claimants, through a Ruling dated November 30, 2022.
7. The claims were last mentioned on February 22, 2023, when the claimants confirmed filing and service of their Submissions and the Mention Notice upon the respondent. The respondent did not appear in Court on any occasion despite being notified.
8. 1<sup>st</sup> claimant states and testified that he was employed by the respondent as Dispatch Reliever, in February 2014. He was promoted to the position of Loss Control Manager, on or about February 10, 2015. He was issued a letter to show cause why he should not be disciplined, over allegations of



- negligence. The letter is dated June 5, 2017. He was dismissed on June 6, 2017. His last salary was Kshs. 31,003. He states that dismissal was unfair.
9. He exhibited his identity card; letters of appointment issued on various dates; contract of service; letter to show cause; certificate of service; pay slip for January 2017; and demand letter.
  10. He prays for Judgment against the respondent for: -
    - a. 15 days worked preceding termination at Kshs. 15,501.
    - b. Welfare contribution at Kshs. 10,800.
    - c. 19.2 days of annual leave at Kshs. 19,894.
    - d. Public holidays for the entire period of employment at Kshs. 73,890.
    - e. Overtime at Kshs. 210,600.
    - f. Service at Kshs. 43,663.
    - g. 12 months' gross salary in compensation for unfair termination at Kshs. 372,036.  
Total...Kshs. 743,384.
    - h. Costs.
    - i. Interest.
  11. The 2<sup>nd</sup> claimant states he was employed by the respondent on September 30, 2016, as a Double Checker. He was similarly charged with the offence of negligence. He was issued a letter to show cause, dated June 5, 2017. He was dismissed on June 6, 2017. He states, and told the court that he was not granted an opportunity to defend himself. His last salary was Kshs. 22,736 monthly.
  12. He exhibited his identity card; letter of appointment; letter to show cause; certificate of service; pay slip for April 2017; and demand letter.
  13. He prays for Judgment for: -
    - a. Salary for 15 days worked preceding termination, at Kshs. 11,368.
    - b. 15.5 days of annual leave at Kshs. 11,747.
    - c. Public holidays worked for the entire period of employment at Kshs. 9,670.
    - d. Service at Kshs. 6,593.
    - e. 12 month's salary in compensation for unfair termination at Kshs. 272,832.  
Total ... Kshs. 341,964.
    - f. Costs.
    - g. Interest.
  14. The respondent filed statements of response in the respective claims, on August 2, 2017.
  15. The respondent concedes to have employed the 1<sup>st</sup> claimant. It is true that he was issued a letter to show cause by the respondent. The letter issued pursuant to the Code of Conduct and Company Rules, to which the claimant was signatory. He refused to reply to the letter to show cause, and instead opted to resign. He was invited to attend disciplinary hearing. The charges were detailed. He failed to update



departmental registers; he failed to curb on fraudulent cashiers; he failed to use receiving registers; he was lax in operations; and failed in management of staff. He was invited to disciplinary hearing. He failed to turn up.

16. He is therefore not entitled to salary for days worked, compensation, and notice, having left employment voluntarily. He always took his annual leave or was paid in lieu of leave. Holiday pay was always included in the net pay. His terminal dues inclusive of overtime were computed. He declined to collect the same. He was registered with the N.S.S.F and not eligible for service pay. The respondent prays that the 1<sup>st</sup> claimant's claim is dismissed with costs.
17. The same line of Response is adopted by the respondent with respect to the 2<sup>nd</sup> claimant. He resigned upon being invited by notice to attend disciplinary hearing. He did not answer the letter to show cause or appear at the disciplinary hearing. He was involved in similar acts of negligence. His prayers are faulted by the respondent, on the same grounds stated with respect to the 1<sup>st</sup> claimant. The respondent prays the court to dismiss the 2<sup>nd</sup> claimant's case with costs.

### **The Court Finds**

18. The claimants both state that they received letters to show cause from the respondent. They did not respond. There are no letters from the claimants, responding to the letters to show cause, written by the claimants. The 1<sup>st</sup> claimant stated that he responded to the letter to show cause the following day. He did not exhibit his response.
19. The 1<sup>st</sup> claimant stated that there was a disciplinary hearing. The respondent exhibited invitation letters to the disciplinary hearing. The claimants did not attend hearing
20. The Court is not able to agree with them that there was no opportunity to be heard. They did not answer to any of the allegations, when issued letters to show cause, and when invited to the disciplinary hearing.
21. Their pay slips show holiday allowances paid. They were subscribed to N.S.S.F and not eligible for service pay. They did not in their evidence, establish the excess hours worked. Having left employment on 5<sup>th</sup> June 2017, they did not explain why they pray for 15 days' salary, for work done preceding termination. They did not establish the prayer for welfare contributions. They did not make the Court understand in their evidence, their tabulation of annual leave days. The 1<sup>st</sup> claimant for instance, pleads annual leave days at 19.25 years and 19.2 days, at paragraph 7 [iii] of his Statement of claim. The 2<sup>nd</sup> claimant pleads 15.5 days, but like the 1<sup>st</sup> claimant, does not say over what period these days became due. It is neither in the Pleadings, nor the Evidence of the claimants.
22. The claims are not adequately supported by the Pleadings, Evidence and Submissions of the claimants. There is evidence that they were offered opportunity to answer the allegations against them. There is no record of their respective answers. The respondent states that they left employment on their own will, after they were invited to the disciplinary hearing. They have not exhibited letters of termination, just Certificates of Service issued by the respondent, indicating that they left employment on June 5, 2017. They have not established, in accordance with section 47[5] of the [Employment Act](#), that their contracts were terminated at all by the respondent, or unfairly terminated.

### **It Is Ordered**

- a. The consolidated claims are declined.
- b. No order on the costs.



DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31<sup>ST</sup> DAY OF MAY 2023.

JAMES RIKA

JUDGE

