



**Karanja v ALS Limited (Cause 580 of 2019)
[2023] KEELRC 1445 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1445 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 580 OF 2019**

B ONGAYA, J

JUNE 16, 2023

BETWEEN

JAMES KARANJA CLAIMANT

AND

ALS LIMITED RESPONDENT

JUDGMENT

1. The claimant was employed by the respondent as an Aircraft Technician in 2012 earning a consolidated salary of Kshs 140, 000.00 per month. The parties are in agreement that they were in a contract of service as such.
2. The parties are not in dispute that the claimant's employment was terminated by the letter of summary dismissal dated February 16, 2018 on account of gross negligence relating to aircraft Reg No 5Y-BVO. The letter referred to the notice to show cause issued to the claimant on February 5, 2018, his response received on February 9, 2018 and the subsequent disciplinary meeting that took place on February 12, 2018. The reason for termination was failing to ensure that the right Engine Outboard Igniter had been put back on 5Y-BVO on Friday February 2, 2018 as the Aircraft Technician assigned to the aircraft and, as a result the aircraft could not make power and in the worst case scenario, the aircraft could have caught fire. The letter stated that the claimant had failed to exonerate from the responsibility of overseeing the task assigned to him as the Aircraft Technician to its satisfactory completion and as laid down in the procedures. Further, he had failed to put "area disturbed tag" on the engine where the igniter plug was removed because it was an on-going job as stipulated under the procedures. He was therefore dismissed without notice or payment in lieu of notice effective February 19, 2018 for gross negligence per section 44(4) (g) of the *Employment Act, 2007*. He would be paid for all days worked and 21.36 leave days less due deductions giving a net payment of Kshs 153, 587.61. He was given a right of appeal to the Chief Executive Officer Shakeel Khan in event of dissatisfaction and within 5 days of the decision. The claimant received the letter on February 21, 2018 by signing in acknowledgement. The claimant appears to have appealed but the appeal hearing appears not to have taken place after



the claimant made certain demands such as being provided the CCTV recordings for the events of the material afternoon the alleged negligence had taken place.

3. The claimant filed a statement of claim on September 2, 2019 through M/s Chebet & Munyaka Advocates LLP. The claimant's case is that the dismissal was unfair and unlawful because the Base Maintenance Manager suspended him without informing him the reason; the Human Resource Manual Provides that only a Head of Department can suspend an employee and the Base Maintenance Manager was not such Head of Department; the reasons for suspension were given only at the time of issue of the notice to show cause; the investigation report was not shared with him; he wanted to know if the Engineer who worked on the engine after him had been questioned; the disciplinary committee was not impartial; because the Base Maintenance Manager who had irregularly suspended him was a panellist; and he was not involved in the investigations. After termination, the claimant states that he was not paid terminal dues including salary for the days worked. The claimant claimed and prayed for:
 - a. A declaration that the dismissal of the claimant was wrongful, unfair and against the Employment Act, 2007, rules of natural justice and, without justifiable cause.
 - b. An order for the respondent to pay the claimant his terminal dues amounting to Kshs 2, 524, 594.15 comprising:
 - i. Salary upto February 19, 2018 Kshs 95, 000.00.
 - ii. Leave earned Kshs 125, 034.15.
 - iii. Service pay at 15 days for each completed year of service Kshs 484, 560.00.
 - iv. One-month salary in lieu of the notice Kshs 140, 000.00.
 - v. 12-months' salaries compensation for unlawful termination Kshs 1, 680, 000.00.
 - c. Interest on (b) at Court rates.
 - d. Certificate of service to issue.
 - e. Costs of the suit plus interest at court rates.
 - f. Such other or further relief the Honourable Court may deem just to grant.
4. The respondent entered appearance on October 9, 2019 through Kisilu, Wandati & Company Advocates and filed the memorandum of response on October 9, 2019. The respondent admitted employing the claimant and admitted the summary dismissal as pleaded for the claimant. The respondent stated that the claimant was summarily dismissed on account of leaving out the igniter per the letter of summary dismissal and which amounted to gross negligence of duty. The claimant knew the reasons for the suspension and he confirmed his comfort in attending the disciplinary hearing on February 12, 2018. He was afforded due process of a notice to show cause, replying and attending the hearing and the respondent's case was that rules of natural justice had been observed. There was no written report and the reason for termination was genuine as valid. It was stated that he had not completed the work assigned by reason of the igniter having been removed but not returned and failing to put disturbed area tag as required. The Base Maintenance Manager was the claimant's Head of Department and had verbally informed him the reasons for suspension on February 12, 2018. The Manager was directly involved in the matter and he attended the disciplinary hearing. The respondent further pleaded as follows:
 - a. Service pay not due as the claimant was a member of the NSSF. The Court agrees to that pleading as consistent with section 35 of the Employment Act and will not return to that issue.



- b. One-month salary not available as summary dismissal was valid. The Court agrees the pleading to be consistent with section 44 of the Act and the Court will not return to that issue.
 - c. The summary dismissal was per due process and the reason was valid. The Court agrees with that pleading. In particular, the Court finds as follows.
5. The claimant while alleging that the Base Maintenance Manager was not his Head of Department, he has not given evidence of his otherwise Head of Department. Thus it appears that the Manager had the authority to suspend the claimant. In any event, the correspondence by email after the summary dismissal shows the claimant submitted to the disciplinary hearing thereby he is deemed to have waived any irregularity in the suspension process. The Court further considers that suspension was a preliminary process with full payment. Further evidence is that the claimant received the notice to show cause, he replied, attended the disciplinary hearing and then, the summary dismissal issued.
6. The Court finds section 41 of the Act on notice and hearing was complied with and it cannot be said that the respondent adopted an unfair procedure.
7. As for reasons for termination it has been shown for the respondent that the claimant removed the igniter, he moved on to other work without putting the disturbed area tag, and never revisited to check on the completion of the work. While he had reason to leave the igniter not returned for the washing to be safely undertaken, the claimant offered no explanation why he failed to put the tag and revisit the work later. Further, he says the igniter was left out with full knowledge of both crew chiefs Njenga and Treva, but he does not state that the two had the responsibility and capacity to return the igniter, a proper duty for the claimant's job description and capacity.
8. The Court therefore finds that the reason for termination was valid as existing as at time of summary dismissal per section 43 of the Act and it related to the claimant's contact, capacity, compatibility and the respondent's operational requirements as per section 45 of the Act. It was a fair reason. Thus compensation and notice pay as claimed are found not due.
9. The claims on certificate of service, service pay, leave pay and salary pay were dropped as already satisfied. These appear to have been satisfied after filing of the suit. In that consideration, each party will bear own costs of the suit.

In conclusion judgment is hereby entered for the respondent against the claimant for:

- a. the dismissal of the suit; and
- b. each party to bear own costs of the suit.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 16TH JUNE, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

