



**Mweu v G4S Kenya Limited (Cause 298 of 2018)
[2023] KEELRC 1514 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 298 OF 2018**

B ONGAYA, J

JUNE 16, 2023

BETWEEN

MICHAEL MUTISYA MWEU CLAIMANT

AND

G4S KENYA LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the statement of claim on 27.03.2018 through Omondi Ogotu & Associates. He pleaded as follows. The respondent employed him on 23.08.2004 as supervisor on permanent terms of service at consolidated monthly salary of Kshs 75, 000.00. He alleged the employment was terminable with a three months' notice but in his evidence admitted that the agreed period was a month's notice. By agreement dated 06.12.2007 he was promoted to Contract Manager based at Daadab Refugee Camp. He met his targets per appraisal reports. By letter dated 03.02.2011 he was promoted to Employee Survey Co-ordinator for year 2011.
2. The claimant further pleaded as follows. By letter dated 21.08.2017 he was suspended from Daddab Branch Office about concerns of accounting of cash and alteration of dates on receipts. He was suspended from duty and to avail himself at the Head Office on 29.08.2017 for a hearing at 11.00am. By letter dated 29.08.2017 the suspension was extended for 2 days pending hearing rescheduled to 01.09.2017 at 10.00am at Head Office. The letter alleged to attach amended charges (not exhibited for the claimant) and he was asked to reply by 30.08.2017. The meeting to be held on 01.09.2017 found him with no fault but all along the period allowed to prepare a defence had been short per clauses 10.1 and 12.1 and 12.4 of the respondent's Human Resource Manual. No notice to show cause was served. He attended a disciplinary hearing and 8 charges were levelled and the meeting was adjourned to 25.09.2017 and no notice to show cause was served. By letter dated 25.09.2017 the respondent referred to disciplinary hearing of 25.09.2017 and extended the suspension for another 2 weeks for the hearing to be held on 21.09.2017. By letter dated 06.10.2017 the respondent recalled the claimant back to work effective 09.10.2017. He was to be assigned duties at Head Office as the report on disciplinary



process was being undertaken. By undated notice the claimant was summoned to a disciplinary enquiry or hearing to be held on 10.11.2017 at 10.30am. The purpose was to establish the facts regarding the allegation that between 15.11.2016 to 14.07.2017 the claimant made fraudulent transactions on company accounting forms contrary to clause 5.4 of the disciplinary code by making alterations on a official receipt relating to dog medication by inserting Kshs 1, 500.00; and misappropriation of funds and forgery of receipts of Kshs 25, 000.00. The notice explained his rights including being informed the nature of offence or transgression; having inquiry or hearing take place timeously; adequate time to prepare being at least 2 working days; and being allowed one representative from the company and for the claimant to ensure the representative is present at the hearing. The claimant was subsequently dismissed by the letter of summary dismissal dated 13.11.2017 upon the two grounds in the notice. He would be paid days worked up to 13.11.2023; leave earned and not taken; less monies owed to the company.

3. The claimant's further case is pleaded as follows. It was unfair labour practice to suspend him, suspend the charges, recall him to work, resurrect the charges, and dismiss him over the same charges. He claimed and prayed for reinstatement or 12-months' salaries in compensation, 3 months' payment in lieu of termination notice, costs, and any other just relief as found appropriate.
4. The respondent filed the statement of response on 06.06.2018 through Hamilton Harrison & Mathews Advocates. The respondent pleaded as follows. The claimant was an employee of Armor Group Kenya Limited which was acquired by the respondent in 2008. The claimant indeed worked for the respondent from 05.04.2005 to 13.11.2017. The appraisals were undertaken as pleaded for the claimant. The allegations leading to the claimant's summary dismissal were unearthed during an audit of financial activities in Daadab where the claimant was based. A whistle blower platform known as Speak Out conveyed allegations of misuse of funds by the claimant as Contract Manager, Dadaab. Employees including the claimant were interviewed and the findings were the two reasons for summary dismissal. The correspondence on suspension as pleaded for the claimant is admitted. The hearing of 01.09.2017 was adjourned as panel could not reach a decision but that did not mean the claimant was innocent. Thus suspension was extended for further hearing on 21.09.2017. The letter had an error referring to hearing 25.09.2017 but correct date of hearing should have been 01.09.2017. The charges were never suspended but the hearings had been adjourned for various reasons. Recalling him from suspension did not imply innocence. The suit be dismissed with costs as the termination was not unfair.
5. The claimant testified to support his case and the respondent witness No. 1 (RW1) was David Kaniaru the Compliance Officer and No. 2 (RW2) being Ann Gitonga, the Human Resource Business Partner.
6. The 1st issue is whether the procedure leading to the summary dismissal was fair. The Court finds that while the respondent kept on adjourning the disciplinary hearing, it appears that the claimant was on full pay and the suspension was subsequently lifted. What was the implication of lifting the suspension? The reason for suspension was to pave way for investigations. Lifting the suspension therefore meant that the investigations had been completed. The lifting of the suspension and assignment of duty by the letter dated 06.10.2017 would only suggest that the investigations were completed and the claimant found not culpable. It was incoherent and unbelievable that after imposing the suspension, the same would be lifted without finalising the investigations and the claimant being found innocent as a justification of lifting the suspension. The reason given was that the suspension was lifted pending the analysis of the investigation report and which the Court finds, as urged for the claimant, amounted to unfair procedure and thus unfair labour practices. It cannot therefore be said that in the circumstances, the imposition of the notice for a hearing on 10.11.2017 cured that incoherent and unfair procedure that tormented the claimant in the circumstances.



Measured against the section 45 of the Employment Act, it cannot be said that the respondent adopted a fair procedure.

7. The 2nd issue is whether the reasons for termination were unfair. The Court finds they were unfair. On the altered receipt for dog medicine 3.4.5 of the investigation report returns that the drugs were Kshs 300.00 and labour was Kshs 1, 500.00 making Kshs 1, 800.00. The report shows the claimant explained the same as labour charges of Kshs 1, 500.00 for dressing the dog. Further, the Head of Dog unit Sibby clarified on the matter that she authorised for treatment though she did not know how much the doctor charged for dressing the dog. In his testimony the claimant confirmed Sibby authorised the treatment of the dog and the Pharmacist is the one who treated the dog because at the time all doctors were on strike – and that the dogs used to be treated by doctors who also attended to humans and who were on strike. The Court finds no reason to doubt the claimant especially in his testimony, RW1 who investigated the matter testified, “I did not interview from Habib Pharmacy. I never sought to confirm the receipt was genuine.” As relates the other receipts for Kshs 25, 000.00 the claimant stated they were with respect to transport services. On his part RW1 testified thus, “I never cared to visit the bus company.” In re-examination RW1 stated, “I did not visit bus company because Dadaab was very volatile. So, there was little interaction with outside world due to security threats. We were housed in the secure complex.” Now, the pertinent issue is how, as at summary dismissal, it can be said that the very serious allegation of forgery levelled against the claimant had been established as existing and genuine per section 43 of the Act. The Court finds the respondent has failed to show the reasons for termination indeed existed as at time of summary dismissal.
8. The Court has found that as urged for the claimant, the summary dismissal was unfair both in procedure and merits. As submitted for the respondent three years have since lapsed from November 2017 when the claimant was summarily dismissed. Section 12(3) (vii) limits availability of an order for reinstatement to 3 years from the date of termination. The Court returns that the remedy of termination is time barred, in the circumstances. The Court has considered the long period of time the claimant had served with a clean record. He desired to continue in employment. The aggravating factor was that the respondent punished the claimant despite its own disciplinary panel having previously been in doubt and the claimant having been made to trust that he was innocent as manifested in the lifting of the suspension. The Court finds that an award of 9 months’ salaries and then one month in lieu of termination notice per contract as just, making Kshs 1, 126, 657.50.
9. The claimant has significantly succeeded and the respondent to pay costs of the suit.
In conclusion judgment is hereby entered for the claimant against the respondent for:
 - a. The declaration the summary dismissal was unprocedural, unfair and unlawful as was unconstitutional as an unfair labour practice.
 - b. The respondent to pay the claimant Kshs 1, 126, 657.50 (less PAYE) by 01.08.2022 failing interest to run thereon at court rates from the date of this judgment till full payment.
 - c. The respondent to pay the claimant’s costs of the suit.
 - d. The prayer for an order of reinstatement was time barred and not available.

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

BYRAM ONGAYA

PRINCIPAL JUDGE

