



**Mbithi v Nova Communications and Consultants Limited (Employment and Labour Relations Cause 527 of 2018) [2023] KEELRC 1783 (KLR) (24 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1783 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 527 OF 2018**

**B ONGAYA, J  
JULY 24, 2023**

**BETWEEN**

**LORNAH ESHIMULI MBITHI ..... CLAIMANT**

**AND**

**NOVA COMMUNICATIONS AND CONSULTANTS LIMITED .. RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on April 12, 2018 through Omenta & Company Advocates. She claimed and prayed for:
  - a. A declaration that her termination of employment by the respondent was unfair and contrary to labour laws.
  - b. General damages in compensation for the unfair termination.
  - c. Leave, sick, overtime and off for 4 years' allowance to be tabulated by the Court.
  - d. Special damages for 41 months in savings, NHIF, and NSSF plus one month in lieu of notice Kshs 48,000.00.
  - e. Certificate of service be issued in 7 days.
  - f. Costs of the claim.
  
2. The claimant has pleaded her case as follows. She was employed by the respondent company orally from October 2014 as a cashier. Her monthly payment was Kshs 9,050.00 paid by cheque which she deposited at her Cooperative Bank Account after deduction of NHIF, NSSF and savings but which were not remitted by the respondent. On March 3, 2018 she reported at work and it was alleged that the previous day she had failed to surrender the respondent's Kshs 110, 000.00 on the previous day. The claimant and a co-worker one Priscah Akinyi were accused of theft of that money. On March 4,



2018 a disciplinary meeting was convened and in a written confession the claimant and Priscah Akinyi were forced to admit to the alleged theft in writing. The meeting was attended by police officers in plain clothes and prior agenda had not been communicated. The termination was therefore unfair and wrongful.

3. The respondent appointed Njoroge O Kimani and Company Advocates to act in the suit. It appears no statement was filed for the respondent and who did not participate in the case.
4. The claimant adopted her witness statement for her testimony and relied upon the documents on record. The Court has considered all the material on record and returns as follows.
5. The 1<sup>st</sup> issue is whether the claimant has established that the respondent was her employer. The respondent is a limited company and for the claimant to establish the oral employment she must show the responsible officer or director of the respondent who may have employed her orally on behalf of the Company. That has not been done at all by way of pleading and evidence. In her witness statement the claimant stated that the respondent is owned by Mr Julius Manyeki who is the respondent and her former employer. By that statement the Court finds that in absence of official search at companies' registry to confirm the respondent exists and that the director is the said Julius Manyeki, there would be no reason to implicate the respondent as the claimant's employer as alleged. She also states that she worked as a cashier at Oil Libya Lang'ata premises of her employer but again, she provides no evidence to link the respondent to the Oil Libya Lang'ata premises. While producing her Cooperative Bank Statement, there is nothing to show that the deposited cheques were drawn by the respondent and with respect to the claimant's salaries and the amount deposited is not the alleged Kshs 9, 050.00 monthly salary but it is in other varying amounts. The Court therefore returns that the claimant has failed to show that she worked for and was employed by the respondent. The suit must fail on that account.
6. To answer the 2<sup>nd</sup> issue, in any event the claimant has pleaded that she signed confessing about the alleged theft but without pleading particulars and showing force exerted in that respect. Whomsoever was her employer, the Court returns that she appears to have written and signed admitting the alleged theft of Kshs 110,000.00 so that she is found to have 100% contributed to her dismissal.
7. To answer the 3<sup>rd</sup> issue, for the stated findings the suit will be dismissed as the claims and prayers are unjustified.

In conclusion the suit is hereby dismissed with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS MONDAY 24<sup>TH</sup> JULY, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

