



**Njeru v Vision Fund Kenya Limited (Cause 1305 of 2018)  
[2023] KEELRC 1750 (KLR) (14 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1750 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1305 OF 2018**

**J RIKA, J  
JULY 14, 2023**

**BETWEEN**

**CATHERINE MUKAMI NJERU ..... CLAIMANT**

**AND**

**VISION FUND KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim on August 13, 2018.
2. She states that she was employed by the Respondent as an Administrative Assistant, on November 11, 2003. At the time, the Respondent was known as Kadet Limited.
3. She was promoted to the position of Communications and Events Coordinator in 2010. She held this position when her contract was terminated by the Respondent, in 2015.
4. In 2014, the Respondent re-organized its business. The Claimant was advised that her position was no longer strategic to the business, and offered the position of Recovery Officer.
5. She states that she accepted the position on the condition that the Respondent would facilitate her training, to enable her effectively discharge the new role.
6. The Respondent did not do so. Instead, the Respondent required her to sign a performance agreement, which she thought was meant to trap her to fail in the new role, and pave way for termination of her contract. The Respondent was keen to terminate the Claimant's contract on account of redundancy, but did not wish to follow the laid down procedure. Redeployment was redundancy in disguise.
7. The Claimant refused to sign the performance agreement. On July 8, 2015, she was subjected to what she learnt later, was a disciplinary hearing. She was issued a letter of termination dated August 12, 2015. The reason justifying termination was stated to be, insubordination and refusal to cooperate with her Supervisors.



8. She states that she was hounded out of employment; she was not advised of her right of appeal; and her computer with all her employment records, was rendered inaccessible.
9. She prays for Judgment against the Respondent for: -
  - a. Declaration that termination was unfair and unlawful.
  - b. Payment of terminal dues.
  - c. Salary in lieu of notice [one month's cost to the Respondent] - Kshs 102,020.60.
  - d. Severance pay not less than 15 days for each completed year of service.
  - e. An amount equivalent to the Claimant's monthly salary for a period of twelve [12] months, being Kshs 1,224,247.
  - f. Interest.
  - g. Costs.
  - h. Any other suitable relief.
10. It is not clear what the Claimant intends to plead at paragraph 9 [c]. What is one month's cost to the Respondent?
11. The Respondent filed its Statement of Response on March 27, 2019. Its position is that the Claimant was its Employee. She was re-designated, in line with the Respondent's strategic vision. She accepted the new position and was offered training for the role. The CEO, the Claimant's Supervisor, and the Business Development and Integration Manager, offered support to the Claimant in her new role.
12. The Claimant settled in her new role, but completely refused to sign the Respondent's mandatory performance agreement. The Respondent's Management implored the Claimant to sign in vain. She was given a chance in a disciplinary meeting to explain her position. She completely refused to sign, stating that she was not trained for the role.
13. She was offered training opportunities with a training plan. The training dates and staff responsible for training, were communicated to the Claimant. She was given an opportunity to visit Nairobi Branch over a week for on-job training.
14. Termination was for gross misconduct. Her refusal to sign the performance agreement amounted to insubordination. The Respondent acted in accordance with the Employment Act and its Human Resource Manual.
15. The Respondent denied that re-designation of the Claimant's role was disguised redundancy.
16. The Respondent prays the Court to dismiss the Claim with costs.
17. The Claimant filed a Reply to the Statement of Response, on October 15, 2019. She denies that she was offered training. There was no disciplinary hearing, but a routine consultative meeting. There was a training time-table shown to the Claimant, but training did not materialize. The assignment at Nairobi was not a training exercise. It was a loan recovery exercise, where the Claimant was instructed to join other Employees.
18. The Claimant gave evidence and rested her case, on November 8, 2022. Director of Operations Reuben Mwaura, People and Culture Director Joyce Ogutu, Project Manager Caroline Kariuki, gave evidence on November 8, 2022, while former CEO of the Respondent Phillip Ochola, closed the hearing on



February 23, 2023. The Claim was last mentioned on April 18, 2023, when the Parties confirmed filing and exchange of their Submissions.

19. The Claimant adopted her Witness Statement and Documents on record, marked exhibits 1-28, in her evidence.
20. Cross-examined, she told the Court that she worked for 12 years. She had worked for 11 years by the time she was re-deployed. She was not qualified for the new role. She needed sufficient training. The Respondent offered to train her, but did not train her. There was a 30-minute meeting, not training. She was given a walk-through the job description, not a training. The basic requirement for the role was a commercial degree and practical experience. She did not have these.
21. She visited the Executive Branch for 1 week, to see how debt collection is done. It was of her own volition. 1 week was insufficient. She needed training before she could start her work as a Recovery Officer. Induction is not training. She held a diploma in administration. She was willing to work as Recovery Officer. She was being assigned a role she could not perform. She made her position clear: she was not going to sign the performance agreement. To do so, was the same thing as tying a noose around her neck.
22. She was called for a meeting by her Supervisor, through short message service. She was not told it was a disciplinary meeting. She was paid notice and pending leave days. She has not exhibited her pay slip. She had been asked to show cause in 2011. She had received a memo on poor performance back in 2007, which was withdrawn.
23. Redirected, the Claimant told the Court that she was advised by the Respondent that her role was no longer required. She needed a basic degree in business studies to discharge the new role. She gave the Respondent the option of declaring her position redundant. The CEO asked her to make this request in writing. She did not. There was no further communication. She did not have disciplinary issues. The incidents from the past had been dealt with and closed, back then. She took redeployment as a setup for failure.
24. Reuben Mwaura adopted his Witness Statement and 6 Documents filed by the Respondent, marked exhibits 1-6, in his evidence.
25. On cross-examination, he told the Court that his role is to ensure business strategy is executed, and to oversee budget. He joined the Respondent in 2010. He came to know the Claimant for 3 years. She was redeployed on business re-organization. Her role of Communications and Events Coordinator was declared not strategic to the Respondent. She was assigned a new role. It was not the first time she was being reassigned to a different role. She was flexible and agile. She had a diploma in information science and data management. She fitted the new role. She was not compelled to sign performance agreement, and was not being set up for failure and termination. She had been seconded to governance role. She was suited for the role. Mwaura was present at the disciplinary hearing. She was provided the opportunity to defend. She was not prevented from recording the proceedings. Mwaura did not recall if the Claimant brought Witnesses.
26. Redirected, Mwaura told the Court that the disciplinary procedure is provided for in the Human Resource Manual. The Claimant was conversant with it. The Respondent had 140 Employees. There would be no reason to single out the Claimant for unfair treatment. There were 6 months from the date she was redeployed, to the date of termination.
27. Joyce Ogutu likewise adopted her Witness Statement on record. She knew the Claimant for a few months, June-August 2015. The Claimant was assigned the role of Recovery Officer. She was given brief training at the Head Office and at Eastlands. Coaching was to remind her about her role. Training



- was mainly on-the-job. That is how the Respondent conducts training. She had been redeployed before, very successfully before. She was familiar with the running of the Respondent. She was qualified, although she did not have the paper qualification.
28. Training at Eastlands involved going through the credit manual. It was necessary to take her through this training. She was called to the disciplinary hearing on phone, with a follow-up through short message service. Her Supervisor called her and texted. She was informed it was a disciplinary hearing. Ogotu recorded the meeting. The Claimant was given an opportunity to defend herself. Ogotu did not recall if she called Witnesses. She did not recall if the Claimant was supplied with the minutes. She was capable of discharging her role. Performance agreement was not a way of getting rid of the Claimant. She was experienced and qualified to discharge the new role.
  29. Redirected, Ogotu explained that loan recovery involved data analysis. The Respondent collects information for clients who need funds. It processes and follows up on recovery. The Claimant was joining a team of other Employees who were in recovery. She was taken through training for 1 week. Employees are taken through on-the-job training. The Claimant was difficult, raising issues at every turn, between redeployment and termination. No one set her up for failure. She had been redeployed before.
  30. Caroline Kariuki adopted her Witness Statement. She was Project Manager 2014-2015. She joined the Respondent as a Credit Intern, and was familiar with the Claimant.
  31. Kariuki told the Court on cross-examination that the Claimant went to her Branch, for training. Kariuki accompanied the Claimant to the field. She wanted her to understand how loan recovery works. 70% loan recovery training is hands-on, 20 % is coaching and 10% formal training. Kariuki did not give these percentages in her Witness Statement. The Claimant was taken through credit management. She also accompanied loan recovery personnel to the field. She was well-grounded for the role. The role involves analysing and coordinating. She would have learnt the rest on-the-job. Kariuki was the Eastlands Branch Manager.
  32. Redirected, she told the Court that there were 8 Credit Officers at her Branch, when the Claimant reported. The Claimant was taken through the role. She was sent to the Branch by the Head Office. Recovery Officers support the Branches in recovery of loans over 90 days.
  33. Former CEO Phillip Ochola adopted his Witness Statement as his evidence. The Claimant's contract was not unfairly terminated. She refused to be redeployed, in 2014. She spent almost 8 months, disputing redeployment. She wanted to have her own way. She demanded that her position is declared redundant, and she is paid severance. The Respondent was overly patient with her. She was a prodigal daughter.
  34. Cross-examined, the former CEO told the Court that the Respondent trained the Claimant for the new role. She was assigned mentors. She was sent to Eastlands Branch, for rigorous on-the-job training. Field work was for 1 week. Qualification for all Staff is basic high school education. Internal candidates could be redeployed and trained as they worked. The Respondent did not require Employees to have degrees or diplomas. Even a humble Clerk, could be employed as a Recovery Officer. She accepted redeployment and submitted to 1 week of training at Eastlands. She was notified by the Human Resource Office, about the disciplinary hearing. If there was a redundancy situation, she would not have been the first to be released, having worked from 2003. She spent 8 months resisting transition, and collecting documents from the Respondent, to enable her file this Claim.
  35. Redirected, Ochola told the Court that he was himself trained on-the-job. He was not born a CEO. The Respondent had never set a trap for any of its approximately 146 Employees. There would be no



benefit for the Respondent to trap the Claimant. The Respondent does not declare redundancy, upon request of any Employee.

36. The issues are whether termination of the Claimant's contract was based on fair procedure under Section 41 and 45 of the *Employment Act*; whether there was valid reason to justify termination under Sections 43 and 45 of the *Employment Act*; and whether she merits the remedies sought.

#### **The Court Finds:**

37. The Claimant was employed by the Respondent on November 11, 2003, as per her Certificate of Service, dated May 13, 2016.
38. Her contract was terminated by the Respondent on August 12, 2015.
39. She held the position of Communications, Marketing and Events Coordinator, as at the time of termination.
40. The reason[s] for termination are stated in the letter of termination. The Claimant refused to sign the performance agreement, which was mandatory to all Employees of the Respondent. The Respondent cited its Human Resource Manual and Section 44 [4] of the *Employment Act*, to justify termination. She was offered 1-month salary in lieu of notice, salary for days worked in the month of August 2015, and outstanding annual leave days.
41. Procedure. The Claimant was informed by the Respondent that the role she held, Communications and Events Coordinator was no longer strategic to the business. She was required to redeploy to the position of Recovery Officer immediately, beginning December 22, 2014.
42. She wrote to the Respondent on December 23, 2014 accepting redeployment, and looking forward to the challenge. She also indicated that she was ready to accept what she characterized in her letter, as a lateral move. She stated that her acceptance was subject to being trained for the new role, and being facilitated with airtime, to enable her reach out to Clients and Branch Managers.
43. She was required to sign a performance agreement, in line with the Respondent's Human Resource Manual, Section 3.4.4. She did not sign, insisting that she had not received training for the new role, and was being entrapped by the Respondent, with the objective of failing her on appraisal, and terminating her contract. She held that the Respondent should let her leave employment through redundancy, and refused therefore, to sign the performance agreement.
44. On April 16, 2015, the Operations Director issued the Claimant a letter to show cause why disciplinary action should not be taken against her, for failure to sign the performance agreement.
45. She responded on the following day, April 17, 2015. She insisted that she did not qualify for the new role. She did not have the requisite training for the role. She stated that she was being coerced to sign performance agreement. She further wrote on May 12, 2015, informing the Respondent that she was agreeable to leave employment through redundancy.
46. She was called to a disciplinary hearing through phone and short message service, on July 8, 2015. She attended the meeting and her position did not change. She would not sign the performance agreement for the role of Recovery Officer.
47. In the view of the Court the Claimant was offered the minimum statutory standards of fairness, in the procedure leading to termination. She was aware of the charge against her, having engaged the Respondent for several months on the subject, before termination. She expressed her position and



the Respondent considered her representations before termination. The Respondent adhered to its Manual and the *Employment Act*, in terminating the Claimant's contract.

48. Reason. It is quite clear that the Claimant engaged in a persistent act of insubordination. She was asked repeatedly to sign performance agreement. It was required of every Employee to sign performance agreement. For about 7 months, she engaged the Respondent in a needless debate, holding that she would not sign performance agreement, because she had been reassigned to Recovery Officer role, which she was not qualified or trained to discharge.
49. She wrote a letter accepting the role of Recovery Officer. She signed the contract for the new role of Recovery Officer. There is evidence that even her demands for training, were met. She was trained at Eastlands Branch. She was trained through field work, accompanying other Credit Officers out in the field. The Respondent retained a policy of on-the-job training. The Claimant had served from 2003, and was not a stranger to the Respondent's operations. She had a background in administration and data management. It was irrational for her to argue that she did not have a basic degree in commerce. The Respondent did not ask of her, to possess such a degree. The Respondent, quite laudably, accepted a high school certificate, as the minimum qualification. Even a lowly clerk, could be mentored to top management. It was therefore quite irrational for an Employee to hold that she is not qualified for a job offered by the Employer. Ordinarily, it is the Employer who states the requirements to be met by Employees, in filling roles within the Employer's business. Why was the Claimant setting her own requirements for the role of Recovery Officer? Did the Respondent require that she obtains a first degree, to discharge the role? The Respondent explained that much of its training, is on-the-job. This would not be a one-off exercise, carried out in a classroom, before an Employee commences working. It was progressive training. The Claimant was reassured, she would be in continuous training, as she worked.
50. The Claimant appears to have desired leaving employment on redundancy. Redundancy is not a decision taken by an Employer, at the request of an Employee. It is a decision made by the Employer based on real redundancy situation. The Respondent stated it did not have a redundancy situation. The Claimant was re-designated as Recovery Officer. Phillip Ochola explained to the Claimant, in his letter dated April 8, 2015, that she had merely been re-designated, and it was entirely the prerogative of the Employer, to re-designate Employees.
51. Furthermore, the CEO restated the Respondent's commitment to continue supporting the Claimant, in her new role. So why would the Employee refuse to sign the performance agreement, as required by her terms and conditions of service, incorporated to her contract through the Human Resource Manual? Why insist on leaving through redundancy, while the Employer had not declared that there was a redundancy situation? Where did the Claimant get the idea that the Respondent re-designated her role, with a view to terminating her contract? She did not give evidence suggesting that the Respondent had any axes to grind. The Claimant had the choice to terminate her contract through a written notice to the Respondent, if she felt she was not ready to continue working, having worked from the year 2003, instead of demanding for exit through redundancy. Employers, not Employees, declare redundancies.
52. The Claimant was guilty of insubordination, under Section 44[4] [e] of the *Employment Act*, having adamantly refused to sign the performance agreement, as instructed by the respondent. The respondent had valid and fair reason, to justify termination, as required under sections 43 and 45 of the *Employment Act*.

It is ordered:

- a. The Claim is dismissed.



b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, VIA E-MAIL,  
UNDER PRACTICE DIRECTION NO. 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JULY 2023.**

**JAMES RIKA**

**JUDGE**

