



Nyachienga v Postal Corporation of Kenya (Employment and Labour Relations Cause 380 of 2015) [2023] KEELRC 1705 (KLR) (7 July 2023) (Judgment)

Neutral citation: [2023] KEELRC 1705 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 380 OF 2015**

AN MWAURE, J

JULY 7, 2023

BETWEEN

STEPHEN NYANDIEKA NYACHIENGA CLAIMANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

JUDGMENT

Introduction

1. The claimant filed a claim dated 10th February 2015 seeking a declaration of unlawful and malicious termination of his employment

Claimant's Case

2. The claimant says he was employed by the respondent on 1st October 1992 as a postal assistant.
3. He says he was promoted severally and he was a distinguished employee with favourable reviews.
4. On 28th February 2013 he says he received a letter from the respondent referring to “ fake outpatient payments receipts for Coptic hospital”. The letter started that on diverse dates between 19th June 2012 and July 2013 it was realised that payment receipts from Coptic hospital had become unreasonably high compared to the normal charges.
5. He was informed that upon investigation it was discovered that the claimant was the mastermind of producing and supplying fake receipts to his fellow colleagues.
6. He says he wrote and denied the allegations. He asked for particulars/evidence to enable him understand the charges.
7. He says that on 22nd May he received a dismissal letter and he appealed the dismissal.



8. He says he was informed his appeal was unsuccessful and the dismissal was upheld. The claimant submits he was an exemplary employee and at no time was his character questioned.
9. He says his employment over a long period of time was destroyed by unsubstantiated allegations.
10. He therefore seeks to have the termination declared unlawful, malicious and unprocedural and prays for compensation as per his claim.

Respondent's Case

11. The respondent's response to the claim is dated 29th August 2015. The respondent states that claimant was employed by the respondent and he rose over the ranks over the years. He was then confirmed on permanent terms.
12. The respondent further says claimant was dismissed for manufacturing fake receipts of Coptic hospital and distributing to his fellow employee and this was fraudulent. They would receive unwarranted reimbursement.
13. He says upon dismissal claimant was given a chance to appeal. However his appeal was dismissed as he did not bring any new evidence except what he had said initially.
14. The respondent submits the claimant's action amounted to gross misconduct and negligence and it warranted summary dismissal.

Claimant's evidence

15. The claimant testified in court on 31st January 2023. Basically retaliates the evidence in the claim and he emphasises that he was not taken through disciplinary process when he was terminated from his employment. He says he worked as a driver.
16. He says he never forged a document. He says he was accused of forgery with 12 other people who were however unknown to him. He says he explained his charges in writing but he wanted to meet the committee and explain.
17. The claimant insists he was not shown any forged documents and he never got any refunds related to Coptic hospital.
18. The respondent witness one Gerald Mwangi described himself as an investigator. He merely says he investigated the claimant and found he was manufacturing fake receipts for reimbursement. He says he filed his findings for action. He says the claimant did not produce any receipts.
19. The other respondent witness is Beatrice Sungoei who is the human resource manager of the respondent. She testified that she wrote a show cause letter to the accused after she received information and an investigations report implicating claimant of making false medical receipts from Coptic hospital. She admits claimant was a good worker and received awards for exemplary performance.

Submissions

20. The court has perused and considered both the claimant's submissions dated 9th March 2023 and the respondent's submissions dated 29th June 2023.



Analysis and Determination

21. The main issue for determination is whether the respondent proved a valid reason or s to terminate the claimant and secondly in terminating the claimant did he follow the mandated procedure. Thirdly is the claimant entitled to the reliefs he has sought.
22. The law of employment is very firm that an employer before terminating an employee must give a valid reason or reasons as to why he is considering terminating the said employee. Sections 45(1) and (2) provides as follows:
 - (1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove——
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason——
 - i. related to the employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - (c) That the employment was terminated in accordance with fair procedure.
23. The reason given by the respondent was that the claimant manufactured fake receipts from Coptic hospital and sold to his colleagues. A part from the investigation carried by the respondent in claimant’s absence there is no evidence to establish claimant was manufacturing those receipts. The witnesses who ‘testified’ against him and in his absence were also suspects as they admitted they had used those receipts to get reimbursements.
24. None of those witnesses were called to testify in court and the respondent witness who testified in court claimed had all the others been dismissed for gross misconduct. Other than that there is no evidence to demonstrate the claimant forged the receipts from the hospital in order to get reimbursements from the respondent. There is no connection of these fake receipts to the claimant and for that reason the court finds the respondent did not proffer valid reason to terminate the respondent contrary to employment laws.
25. In the case of [*Raymond Cherokenay Mrisha v Civicom Limited*](#) (2014) eKLR held that:

“ Even if employee breached a contractual obligation the claimant was entitled to a fair hearing under the *Employment Act*”.

The court found that it had not been proved and summary dismissal was rendered an unfair termination within the meaning of section 45 of the act.
26. Section 41 as well of the [*Employment Act*](#) is mandatory that an employee must be given a fair hearing in a language he understands and in the presence of a fellow worker of his choice or a floor union representative.
27. The two issues for determination therefore brings the court to the plain conclusion that the respondent did not prove he had valid reason to terminate the claimant and furthermore they did not follow the mandatory procedure provided in section 41 of the [*Employment Act*](#). The court finds the claimant has proved a case for unfair and wrongful termination and enters judgment in his favour.



Remedies

28. The claimant is then awarded the following remedies:

1. Compensation for unlawful dismissal @ 12 months considering the guidelines in section 49 (1) of the *Employment Act* 2009 and considering the period she served the respondent which works at Kshs 12,075 x 12 totalling Ksh 144,900/-
2. Damages for lost reputation is not proved and is not therefore allowed
3. Service pay is also not proved as there is no evidence whether any dues were remitted to NSSF or not which claimant should have verified from NSSF.
4. Costs follow the event and so the costs are awarded to the claimant.
5. Interest at court rates from date of judgment till payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 7TH DAY OF JULY, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

