



Amalgamated Union of Kenya Metal Workers v Associated Motors (Employment and Labour Relations Cause 58 of 2018) [2023] KEELRC 2289 (KLR) (29 September 2023) (Judgment)

Neutral citation: [2023] KEELRC 2289 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 58 OF 2018
AN MWAURE, J
SEPTEMBER 29, 2023**

**BETWEEN
AMALGAMATED UNION OF KENYA METAL WORKERS CLAIMANT
AND
ASSOCIATED MOTORS RESPONDENT**

JUDGMENT

1. The claimant filed a memorandum of claim for a grievant one Kavu Gube Kadilo and the same is dated January 22, 2018.
2. The claimant's case is that the grievant was employed by the respondent as a mechanic in 1984 and was promoted to grade 4 mechanic in 1986. He was dismissed on January 18, 2017.
3. He says he was the claimant's chief steward and branch manager and treasurer. He says that while moving a motor vehicle he hit a customer's car by sheer accident and the same was damaged. It required kshs 70,000/- which they agreed to share with the respondent and the matter was resolved as far as he was concerned.
4. He says that notwithstanding this the claimant was issued a dismissal letter dated January 18, 2017. He says the respondent had been trying to dismiss him because of his union involvement. He says he had even filed a case to challenge redundancy being Case No 230/2015 and 515/2016.
5. The claimant says he tried to resolve the dispute through a conciliator but it was not resolved.
6. He prays either to be reinstated or to be paid terminal due.



Respondent's Case

7. The respondent filed a memorandum of response dated February 19, 2018. The respondent admits the claimant worked for them for 33 years and over but he was not diligent or honest and that reasons for termination were not informed by outside forces.
8. He says they did not terminate him because of his position in the union. He says the claimant was lawfully and procedurally dismissed in terms of provision of the [Employment Act](#). He states that the claimant also drove a customer's car without a valid reason and no authorisation.
9. Respondent prays the claimant's suit be dismissed with costs.

Claimants Evidence in Court

10. Claimant says he was terminated from work for causing an accident when driving a customer's car. He says he repaired the car but was still terminated.
11. He says he had worked for the respondent for 33 years. He says he was given a notice to show cause letter and was invited to a disciplinary hearing which he attended and even signed the minutes. He says he was not paid for days worked in January or for leave. He denied he refused to pick his cheque.

Respondent's Evidence

12. The respondent witness Kariuki Kiiru who said he was a branch manager with the claimant. The witness averred that the claimant drove a customer's vehicle and caused an accident without authority and had no driving licence.
13. He says claimant proposed to pay 50% of the repair charges but he never paid. He says claimant was invited for a disciplinary hearing and was found guilty of the charge. He says claimant was dismissed and was entitled to be paid his leave days and days worked in January 2017. The witness says there was a tester for vehicles. Claimant was a mechanic not a driver and was not to drive vehicle.
14. The claimant submissions are dated March 22, 2023 and the court considered the same. As well the respondent's submissions dated March 27, 2023 and the same were considered by the court.

Analysis and Determination

15. The issue for determination as the court decipheres it is whether the claimant was unlawfully terminated by the respondent is the claimant entitled to any reliefs?
16. The claimant was summarily dismissed from the evidence on record for driving a customer's vehicle without authority and without a valid driving reason. He caused an accident and the client's motor vehicle was damaged and kshs 70,000 was the cost of the repair.
17. The claimant was served a show cause letter and he admitted he caused an accident but averred it was not intentional. An accident is not intentional. But the fact that he drove the car without authority is the gist of the matter. He also admitted he did not have a driver's licence.
18. Hence the law provides clearly under section 45 of [Employment Act](#) That before an employer terminates the employment of an employee he must have a valid reason to do so. Section 45(1) of the [Employment Act](#) reads as follows:

"No employer shall terminate the employment of an employee unfairly."



19. In this case the respondent proved he had a valid reason to terminate the claimant's employment. The show cause letter dated December 21, 2016 claimant was informed the reason for this requirement to show cause and he put a response and was invited for a disciplinary hearing on January 12, 2017.
20. The disciplinary hearing brought the issue that the claimant drove a customer's vehicle without authority and never reported the accident.
21. That far the court finds the respondent proved he had sufficient grounds to discipline the claimant and so has satisfied provision of section 43(1) of the Employment Act which provides as follows:

"In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45."
22. The respondent took the claimant through a disciplinary hearing as provided in section 41 of the Employment Act which states as hereunder:-

"Section 41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation."
23. The pleadings and documents provided to the court show the claimant was accorded the opportunity to invite a witness of his choice being his colleague during the disciplinary hearing. He signed the minutes of the disciplinary meeting.
24. The respondent therefore satisfied the tenets of substantive justification provided in employment laws which allude to valid reason. The respondent also accorded claimant fair procedural process for the disciplinary hearing.
25. As held in the case of Walter Ogal Onuro vs Teachers Service case No 955 of 2011 "for termination to pass the fairness test it ought to be shown that there was not only substantive justification for termination but also procedural fairness."
26. Flowing from the above the court is satisfied the respondent proved he had sound reason to terminate the claimant's employment and followed the right procedure. The court is persuaded to dismiss the claimant's suit forthwith.
27. That notwithstanding the claimant should be paid for the days worked in January 2017 amounting to kshs 28,775/-.
28. He is also entitled to leave days that were unpaid amounting to kshs 12,789 totalling kshs 41,544/-.
29. Each party will meet their own costs of the suit. Interest on the above from date they were due till full payment.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 29TH DAY OF SEPTEMBER 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

