



**Murimi v Institute of Human Resource Management (IHRM) (Cause 281 of 2020) [2023] KEELRC 2729 (KLR) (31 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2729 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 281 OF 2020**  
**MN NDUMA, J**  
**OCTOBER 31, 2023**

**BETWEEN**

**MILKAH MURIMI ..... CLAIMANT**

**AND**

**INSTITUTE OF HUMAN RESOURCE MANAGEMENT  
(IHRM) ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed suit on 18/8/2020 against the respondent seeking various reliefs set out in the Statement of Claim as follows:-
  - (a) Kshs.1,183,554.00 being three months' notice she is entitled to.
  - (b) Kshs.394,518.00 being unpaid salary arrears.
  - (c) Kshs.697,280.00 being in respect of fifty nine (59) days accrued leave days.
  - (d) Redundancy notice and severance pay at the rate of 30 days salary for every year worked considering the Claimant's seniority.
  - (e) Damages for loss of salary equivalent at the 10 years the Claimant would have served before retirement at the age of 60 years.
  - (f) Aggravated damages.
  - (g) Punitive Damages.
  - (h) Costs of this claim and interest on the damages awarded.
2. The claimant, C.W.1 testified that she was employed by the respondent as an Office Secretary in December, 2000. That she served diligently and had a clean record for a period spanning 20 years.



3. That she gained valuable experience and knowledge and received training over the years that led to accolades from IHRM and salary increments over the years. In the year 2019/2016, C.W.1 said that she was appointed to the position of Acting Executive Director the most senior position at IHRM.
4. C.W.1 stated that she was on 7/1/2020 placed on suspension for “disposing Institute of Human Resource Management (IHRM) Asset in the form of a vehicle by signing off transfer of asset without informing or express and delegated authority of the Executive Director.”
5. On 20/1/2020, the claimant was issued with a Notice to Show Cause (NTSC) requesting her to explain why disciplinary action should not be taken against her for “signing off the sale of IHRM vehicle KCD 556J without the authority of the Executive Director.”
6. C.W.1 stated that she responded to the NTSC on 21/1/2020 and produced a copy of a memo, C.W.1 had copied to the Executive Director dated 5/11/2019 in which C.W.1 had informed the Executive Director that she had received offers from respective purchasers of the said motor vehicle. C.W.1 stated that the Executive Director had expressly authorized C.W.1 to “proceed and close, approved” noted on the said memo which was produced before Court.
7. C.W.1 said that she was convinced that the respondent was merely victimizing her and that the issue of sale of the motor vehicle was merely a ruse.
8. C.W.1 said that the particular vehicle had many mechanical problems and documented breakdowns. That even a complete engine overhaul done around May, 2018 did not place the vehicle in good state. That history of repairs reflected that the respondent had incurred Kshs.650,000 costs upto June, 2019. That as far back as September, 2018, the National Chairman had requested C.W.1 to sell the said motor vehicle and C.W.1 had brought to the attention of the Executive Director this issue. C.W.1 relied on an email to the Executive Director in this regard dated 6/9/2018. That the Director wrote back to C.W.1 telling her to confirm the matter of sale of the motor vehicle in an email dated 6/9/2018, the same date. That the Director put the claimant under considerable pressure to sell the vehicle stating that the respondent could not continue to incur further repair costs on the vehicle.
9. On 10/9/2018, C.W.1 wrote an email to the Director suggesting that the vehicle be taken to Motor Vehicle yard for sale and another dated 1/10/2019 in which C.W.1 proposed to the Director that the vehicle be advertised for sale. As at 5/11/2019, the vehicle had again broken down and required Kshs.59,972 for repairs. It was that time when the Director approved the sale of the vehicle by noting in a memo C.W.1 had written to her “proceed and close, approved.” C.W.1 stated that she requested in-house lawyer Mr. Llyod Wachira to draw an agreement for sale of the vehicle. That in the absence of the Executive Director who was away from office, C.W.1 signed the Agreement for Sale and the respondent was paid Kshs.400,000 as purchase price. The Agreement is dated 11/11/2019 and Deposit Slip of the money was produced before Court.
10. C.W.1 stated that the position of Head of Secretariat which she held was number two (2) position to the Executive Director. C.W.1 said that in the past, she had signed document’s binding the report such as Memorandums of understanding and the words “proceed and close, approved” constituted sufficient authority to finalise the sale of the vehicle. C.W.1 said she had full confidence that in signing the Agreement, she was exercising proper delegated authority of the Executive Director.
11. C.W.1 said that on 27/1/2020 she was subjected to a disciplinary process that was fraught with irregularities and that led to the termination of her employment on 31/1/2020 for gross misconduct.



12. C.W.1 appealed the decision to terminate her employment on 4/2/2020. That on 14/2/2020 the Council of IHRM revoked the summary dismissal of the claimant and held that the same was “null and void.”
13. C.W.1 stated that instead of reinstating the claimant to her position, the claimant was served with another letter of suspension pending investigations thereby subjecting the claimant to double jeopardy. The claimant was not served with a new Notice To Show Cause but on 6/3/2020, IHRM sent a letter to the claimant extending her suspension for a further 30 days to allow a “special committee of Council to be immediately constituted and make a final report before the lapse of the suspension.”
14. By a letter dated 21/2/2020 the Audit Risk and Compliance Committee invited the claimant to a meeting on 28/2/2020. C.W.1 testified that she attended the meeting at 9.00 a.m. but was kept waiting until 12.00 noon when she was informed that the Committee had “no questions for me and my presence was not required.”
15. The further suspension lapsed on 6/4/2020 but IHRM did not contact her. On 8/4/2020, C.W.1 wrote to IHRM asking about the progress in finalizing her matter since a whole month had now lapsed since 28/2/2020. I was told by the Managing Director by email dated 9/4/2020 that “the various committees had concluded and Council would contact me.”
16. On 14/4/2020, C.W.1 stated that she received an SMS text message inviting her to an “Ad hoc Disciplinary Committee of Council” on 15/4/2020. C.W.1 attended and requested to be allowed a representative. At the meeting, C.W.1 was informed that the Council felt that the relationship between C.W.1 and IHRM had become sour and therefore their decision was to terminate her employment. C.W.1 said herself and her representative were in utter shock because no hearing was held at all before any conclusion on the matter was reached. The council asked C.W.1 to write to IHRM a proposal for a separation on 17/4/2020. C.W.1 wrote to IHRM in which she declined to write a separation proposal since she did not intend to walk away from her employment. C.W.1 said the meeting of 15/4/2020 was purely constituted to communicate termination of her employment and not to accord her a hearing.
17. IHRM wrote a letter of termination to the claimant dated 30/4/2020 in which they stated that the claimant disposed of motor vehicle Registration Number KCD 556J, being a property of the institute without following the laid down procedure in Public Procurement and Disposal of Assets.
18. C.W.1 said that she was subjected to double jeopardy and was not given a hearing before she was finally terminated from her employment. That the issue of Public Procurement and Disposal Procedure was never raised in any Notice To Show Cause written to the claimant. C.W.1 said she was not aware of any such procedures applicable to IHRM. That IHRM does not receive funding from Government through the budgetary process and therefore does not hold “Public Funds” within the meaning of Public Procurement Act.
19. In any event the amount of Kshs.400,000 is below the threshold prescribed under the said Act which requires a procuring entity to have in place a Disposal Committee; Tender Evaluation Committee; and Acceptance Committee which had never been constituted by IHRM. That IHRM had purchased a new motor vehicle at that time which no doubt was not subjected to any such committee since none existed. That IHRM had sold another vehicle in an even simpler manner by selling it to a member of staff without following any procedure.
20. That the in-house Advocate and Executive Director did not provide any advice prior to the sale of the vehicle regarding any procedure to be followed.



21. That the termination was malicious and an afterthought. That termination was based on new accusation with respect to which the claimant had not been notified of. That the termination was unlawful and unfair.
22. C.W.1 was subjected to very close cross-examination by Mr. Okeyo for the respondent and basically restated her case emphasizing that the termination of her employment was unlawful and unfair.
23. R.W.1, Irene Kimacia testified for the respondent and adopted witness statement dated 29/7/2020 as her evidence in Chief. R.W.1 told the Court that she was the Acting Executive Director of the Respondent. R.W.1 stated that she has knowledge of this matter from the records. That C.W.1 was Head of Secretariat of the respondent until 30/4/2020 when her services were terminated. That the reason for the termination was Unauthorized Sale of Motor Vehicle Registration Number KCD 556J belonging to the respondent by executing a Sale Agreement on 11/11/2019 in that respect.
24. That the Purchase Price of the said vehicle was Kshs.400,000 despite the claimant being aware that the vehicle was valued at Kshs.1,220,000 at the time.
25. That the respondent issued a notice to show cause to the claimant dated 20/1/2020 to which the claimant responded on 21/1/2020. That a disciplinary hearing was held on 27/1/2020. That the claimant's employment was then terminated on 21/1/2020. The claimant appealed the decision on 4/2/2020. The appeal was considered by the respondent's Council on 7/2/2020 and the termination was set aside.
26. The respondent however continued to place the claimant on suspension pending further investigation by the Respondent's Audit, Risk and Compliance Committee. An Ad hoc disciplinary committee deliberated the matter and concluded that the decision made by the disciplinary committee on 31/1/2020 was procedural and fair.
27. The claimant was invited to a sitting of the Ad hoc Disciplinary Committee on 15/4/2020 in which meeting the claimant was informed that a decision to terminate her employment had been arrived at by the Committee and a letter of termination was served on the claimant. That the claimant again appealed the decision by a letter dated 5/5/2020 but the suit was filed before the appeal was heard and determined. That the termination was lawful and fair. R.W.1 was cross-examined extensively by Mr. Mutua for the claimant and said that the termination of the employment of the claimant was because she had sold the vehicle without following the Procurement Act.
28. That the respondent was in the process of adopting Public Sector Guidelines on Procurement at the time. R.W.1 said she was not aware if the respondent followed the Procurement Act at the time. R.W.1 admitted that there was no reference to the Procurement Act in the NTSC issued to the claimant. R.W.1 admitted that the Council being the Supreme body of the respondent had nullified the termination of employment of the claimant by a letter dated 14/4/2022. R.W.1 said no further investigations were conducted and R.W.1 was not aware how the procedural deficiencies noted by the Council were sorted out by the Ad hoc Disciplinary Committee that subsequently terminated the employment of the claimant.
29. R.W.1 said that she had no document recalling the claimant to a fresh hearing but she had written to the claimant to meet the committee on 15/4/2020. R.W.1 said the invitation letter did not indicate that the committee was to give the claimant a hearing on 15/4/2020. R.W.1 said no new Notice To Show Cause had been issued to the claimant.



30. R.W.1 said also that he had no document inviting the claimant to a new hearing. That she was not asked to bring a colleague to the meeting. R.W.1 said she had no record of this meeting of 13/4/2022 held by the Ad hoc Committee.
31. R.W.1 said the Committee reported to the full Council. R.W.1 stated she had no record of the deliberation on the matter by Council and what decision was reached. R.W.1 however said she was satisfied that the claimant was engaged before letter of termination was issued. R.W.1 said the matter was grave and did not warrant a warning hence the dismissal. R.W.1 said that the Executive Director denied having authorized the sale. R.W.1 said the Executive Director said she authorized the claimant to sell the motor vehicle but not to sign the sale agreement. That selling was a process. Under cross-examination, R.W.1 was at pains to explain the fact that the executive Director had been pressing the claimant to close the sale stating that the Sale of asset of the respondent was not a simple matter. R.W.1 however was unable to produce the operations manual guiding a sale of respondent's asset. R.W.1 insisted a fair process was followed in terminating the employment of the claimant.
32. R.W.1 when shown the letter dated 5/11/2019 written by the claimant in which the claimant told the Executive Director that best offer so far was Kshs.400,0000. R.W.1 admitted that the Executive Director had noted on the said memo "proceed and close, approved."
33. R.W.1 said this was the only communication from the Chief Executive Officer on the matter and did not amount to authority to sign the agreement of sale as that was the mandate of the Chief Executive Officer.
34. R.W.2, Mr. Wycliffe Osoro relied on a witness statement dated 3/9/2020. He said he was a member of the Respondent's Council. He said that the claimant's employment was terminated on 31/1/2020 for gross misconduct due to her execution of a sale agreement with respect to motor vehicle KCD 556J.
35. That the claimant appealed the decision to terminate her employment and the Council upheld her appeal and set aside the termination. That the Council called for further investigations by the Audit Risk and Compliance Committee who had the mandate to give a consolidated recommendation to the Council. That the Audit, Risk and Compliance Committee on or about 28/2/2020 recommended appointment of an Ad hoc disciplinary Committee to review the matter. The Ad hoc committee on 18/3/2020 resolved to rectify the error made by the disciplinary committee that led to the setting aside of their decision by inviting the claimant for a meeting on 15/4/2020 during which the claimant was notified of the Council's decision to terminate her employment.
36. R.W.2 said the claimant was invited to make a proposal for mutual separation at the meeting but she wrote back declining the offer. That the Council having received the recommendations of the Ad hoc Committee was left with no choice but to terminate the employment of the claimant by a letter dated 30/5/2020. That the decision was arrived at procedurally and was fair.
37. R.W.2 was extensively cross-examined by Mr. Mutua, advocate for the claimant. He said he was a member of the Ad hoc Committee. R.W.2 said the role of the claimant at the meeting of the Ad hoc Committee was to sit and listen to the proceedings and not to participate. That the claimant was invited to the meeting of Ad hoc Committee on 15/4/2020. That the purpose of the meeting was to advise the claimant of the decision reached by the committee on her matter verbally. The claimant was allowed to bring a witness but R.W.2 could not recall if the claimant brought any witness. R.W.2 did not have minutes of the meeting. R.W.2 said the Committee conveyed the decision reached by the Committee to terminate the employment of the claimant. R.W.2 said there are no minutes of these proceeding's and there was no reference to the notice given to the claimant and the purpose of the meeting of 15/4/2020.



38. R.W.2 confirmed that the earlier termination had been revoked. R.W.2 said that the committee did not issue the claimant with Notice To Show Cause after the termination was revoked on 4/4/2020. R.W.2 said he had no investigation report and investigation did not necessarily mean having an investigator. R.W.2 said they wanted to give the claimant a separation package but she declined to make a proposal and insisted that she did not wish to leave the employment of the respondent. R.W.2 said the Human Resource Manual provided that failure to follow procedure warranted issuance of a warning to an employee. He said the manual was under review at the time. R.W.2 said that on reflection there may have been need to issue the claimant with a new NTSC before calling her to the meeting of 15/4/2020 when decision of termination of her employment was given to her.

### **Determination**

39. The parties filed written submissions which the Court has carefully considered together with the evidence adduced by C.W.1 and R.W.1 and R.W.2. The issues for determination are:-
- (a) Whether the termination of the employment of the claimant for a second time on 15/4/2020 was for a valid reason following a fair procedure?
  - (b) If the claimant is entitled to the reliefs sought?
40. The issue for determination in this matter is largely dependent on narrow set of facts which are not in dispute even though there is a large morass of contested peripheral facts which do not necessarily go to the core of the dispute. Common facts which are not in dispute and have been proved include:-
- (a) The claimant was Head of Secretariat of IHRM and was defacto number two most senior employee after the Executive Director/Chief Executive Officer.
  - (b) The claimant had risen through the ranks and had acted as Acting Executive Director of IHRM some time.
  - (c) That IHRM had identified the need to sell motor vehicle Registration Number KCD 556J due to its state of disrepair and unreliability over the years.
  - (d) That the Executive Director had given the claimant the go ahead to process the sale of motor vehicle and by a memo dated 5/11/2019, captioned “Report on KCD 556J” the claimant told the Executive Director that:-

“I have advertised for its sale and so far the offer I have gotten ranges from 300,000 – 400,000. So far, the best offer we have received is for Kshs.400,000 and the buyer is willing to buy it as it is and willing to incur expenses to repair.”
  - (e) The Executive Director having received this memo noted on it “proceed and close approved.” and signed this as noted instruction to the claimant on 5/11/2019.
  - (f) It is not in dispute that the claimant instructed the in-house Legal Council to proceed to prepare the sale agreement of the said motor vehicle at the sale price of Kshs.400,000. The Agreement was done and Executed by the buyer and the claimant on behalf of the respondent. A deposit of Kshs.400,000 was paid to the account of the respondent on 11/11/2019 and the motor vehicle was duly conveyed to the buyer.
  - (g) The Executive Director on 23/12/2019 wrote an email to the claimant as follows:-

“Good morning Milkah,



I hope you are having a restful holiday.

I have learnt that KCD 556J was disposed of and the process was completed without any updates to my office. Kindly furnish me with the following updates:-

- i. What process did you follow in disposing of the car? Did you align with Asset Disposal guidelines? Please send details
  - ii. When was the car sold and to whom? Attach quotations.
  - iii. How much was the car sold for and how was the payment made?
  - iv. Who signed off the sale agreement
  - v. When was the transfer effected?
  - vi. When was the car handed over to the buyer?
  - vii. Who has the paper work?
- (h) On 6/1/2020 the claimant responded to the queries by the Chief Executive Officer as follows:-
- (i) After you approved for the sale, two potential customers expressed interest.
  - (ii) One was willing to pay Kshs.400,000 but was not ready to pay the cost of repairs which already we had received an invoice for. The other was ready to pay Kshs.400,000 and pay for the cost of repairs. I did not get quotations.
  - (iii) The car was sold for Kshs.400,000 as per earlier attached banking slip.
  - (iv) Since you had given me the approval to sell I signed off the agreement.
  - (v) The transfer was effected on 12/11/2019.
  - (vi) The car was handed over to the buyer immediately they paid i.e. on 11<sup>th</sup> November, 2019.
  - (viii) I have the paper work.
- i. On 20/1/2020, the Executive Director issued a Notice To Show Cause to the claimant for “signing off the Sale of IHRM vehicle KCD 556J without the authority of the Executive Director.” The claimant was called to a disciplinary hearing on 27/1/2020 and her employment was terminated on 31/1/2020 for “gross misconduct.”
  - (j) The claimant appealed the decision on 4/2/2020. On 4/2/2020, the Council revoked the decision to terminate the employment of the claimant and called it “null and void.”
  - (k). The claimant did not receive any other Notice To Show Cause. The claimant was however kept on suspension despite the revocation of the termination by council.
  - (l). On 14/4/2020, the claimant received a text message in, SMS inviting her to an “Ad hoc Disciplinary Committee of Council” meeting the following day on 15/4/2020. The claimant attended the meeting with a representative. The decision to terminate the employment of the claimant was conveyed to her. A second letter of termination was given to her on 30/4/2020.
41. The Court is satisfied that the aforesaid facts, represent the true chronology of events leading to the filing of this suit. The Court is satisfied further that on the basis of the said facts, the supreme body of the respondent, the Council, having reviewed and revoked the termination of employment of the



- claimant on 14/2/2020, the claimant could not be subjected to further disciplinary hearing on the same set of facts by another disciplinary committee.
42. That as a matter of fact, the said Ad hoc Committee did not subject the claimant to another disciplinary process since no new Notice To Show Cause was issued to her. The Ad hoc Committee embarked on an arbitrary, unfair and exclusive process before arriving at a decision to terminate the employment of the claimant on facts not presented to the claimant to answer to and without giving the claimant another hearing to explain herself on 15/4/2020.
  43. The procedure followed by the Ad hoc Committee, violated the provisions of Section 41 of the Employment Act and the Rules of natural justice. The claimant was denied a fair hearing and in fact was not given any hearing at all before her employment was terminated again. This process violated the principles of legality in that it subjected the claimant to double jeopardy.
  44. The respondent did not demonstrate that it had a valid reason to terminate the employment of the claimant, her termination having been nullified by the Council. The respondent was unable to provide evidence of any due process and hearing given to the claimant before the second termination on 30/4/2020.
  45. On the basis of the above exegesis, the claimant has demonstrated in terms of Section 47(5) of the Employment Act, 2007 that the termination was wrongful, unlawful and unfair.
  46. The Court finds that the decision by the respondent violated Sections 36, 41, 43 and 45 of the Employment Act.
  47. The facts set out above depict an Executive Director who was in denial and was hell bent to victimize unfairly and unlawfully her second in command. The rest of participants towed the line in an unreasonable manner and on no valid facts at all, the whole process of sale having been authorized by the Executive Director.
  48. In conclusion, the termination of the employment of the claimant was unlawful and unfair and the claimant is entitled to compensation in terms of Section 49 (1) (c) and (4) of the Employment Act, 2007.
  49. The claimant lost prospective employment for 10 years remaining to her retirement. She had faithfully served the respondent for about 20 years since December, 2000 to date of termination. The claimant was the second most senior employee of the respondent. The claimant suffered immense financial loss as a result of the termination. The claimant was already at an advanced age and in the Court's view did not contribute to the termination of her employment on malicious grounds contrived by the Executive Director. The Executive Director did not come to Court to face the facts and explain herself. The claimant was not compensated for the immense loss, pain and suffering as a result of the arbitrary and unreasonable termination.
  50. The Court relies on similar cases including Bernard Dodo Mbaia -vs- Air Traffic Limited [2014] eKLR; Bomas of Kenya -vs- Thiriku (Civil Appeal 379 of 2019) [2022] KECA 795 [eKLR]; CMC Aviation Limited -vs- Mohammed Noor [2015] eKLR; Martin Ireri Ndwiga -vs- Olerai Management Company [2017] eKLR to find that the conduct by the respondent in this matter taken as whole constituted gross violation of the claimant's right to fair labour practices as enshrined in Article 41 of *the Constitution*, 2010. The double jeopardy she was subjected to is a serious aggravating factor in this suit.
  51. The Court awards the claimant the equivalent of twelve (12) months' salary in compensation for the unlawful and unfair termination of the employment of the claimant, by an employer who by fact of its trade, ought to know better. The claimant earned a basic salary of Kshs.354,518 and transport



allowance of Kshs.30,000. The compensation granted to the claimant is to be calculated on the gross salary of Kshs.  $(384,518 \times 12) = 4,614,216$ .

### **Terminal Benefits**

52. The claimant having been unlawfully terminated is entitled to payment of notice pay in terms of her contract of employment. The claimant did not adduce sufficient evidence as to the separation notice contained in the employment Agreement. The claim for three months' salary in lieu of notice has therefore not been proved. Accordingly, the Court awards the claimant as follows:-

(a) One month's salary in lieu of notice in the sum of Kshs.384,518.

(b) Unpaid salary Arrears.

The claimant established that she was not paid salary arrears in the sum of Kshs.394,518 during the period of her suspension. The Court awards the claimant accordingly.

(c) Leave days

The claimant also proved that she did not take and was not paid in lieu of 59 days leave in the sum of Kshs.697,280. The Court awards her accordingly.

53. The Court has considered the prayer for aggravated and punitive damages and decided that the maximum compensation awarded to the claimant in terms of Section 49 of the Employment Act, 2007 adequately compensated the claimant for the loss and suffering she experienced under the hands of an employer she had faithfully, diligently and with no adverse record served for more than 20 years.

54. The Court finds that further award of damages sought by the claimant is not warranted and the said reliefs sought are dismissed.

55. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-

a. Kshs.4,614,216 in compensation (12 months' salary)

b. Kshs.384,518 in lieu of one month notice;

c. Kshs.697,280 in lieu of 59 leave days.

Total: Kshs.5,696,014

d. Interest at Court rates from the date of judgment till payment in full.

e. Costs of the suit.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 31<sup>ST</sup> DAY OF OCTOBER, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearance

Mr. Mutua for claimant

Mr. Okeyo for Respondent

