



**Nyamache v Karen Hospital (Cause 1575 of 2018)  
[2023] KEELRC 2761 (KLR) (24 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2761 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1575 OF 2018  
DKN MARETE, J  
OCTOBER 24, 2023**

**BETWEEN**

**JELDA MOKEIRA NYAMACHE ..... CLAIMANT**

**AND**

**THE KAREN HOSPITAL ..... RESPONDENT**

**JUDGMENT**

1. This matter come to court *vide* a Memorandum of Claim dated 28th November, 2018. The issues in dispute are herein cited as;
  1. Unfair and unlawful Termination of the Claimant.
  2. Unfair Labour Practices Calculated to Frustrate the Claimant
  3. Discrimination.
  4. Constructive Termination of the Claimant
2. The Respondent in a Response to Memorandum of Claim dated 15th February, 2019 denies the claim and prays that this be dismissed with costs.
3. The Claimant in reply to Statement of Response rubbishes the response and denies its contents and prays for a finding in his favour and costs.
4. The claimant’s case is that she applied for the position of Head of Department, Accident and Emergency at the Respondent’s facility. She was invited and partook four interviews and was subsequently issued with an appointment letter dated 10th February, 2018. Her job description was not attached and the post offered per the appointment letter was Deputy Chief Medical Officer.



5. The Claimant's further case is that she reported to work on 14th February, 2018 as instructed which time she enquired verbally and the Human Resource office about the official interviewed and the one now offered and was informed that her duties will be the same regardless of the change of title. However, after two weeks in employment she realized there was conflicting information about the role she was interviewed for because different staff would refer to her with different titles.
6. The Claimant's other case is that rather than availing job description to her, the Human Resource Manager confirmed that she was held as the Head Accident and Emergency and further that she was required to hold in an acting capacity the office of Medical Superintendent who was on leave. She would also be serving as deputy.
7. The Claimant further avers that she was never given a job description for either Head of A&E or Deputy Chief Medical Officer. She therefore sought a meeting with the Medical Director, her immediate boss to have an highlight of her role. This was not to be and instead he outlined the projects she was supposed to concentrate on.
8. The Claimant's other case is that ultimately and after consultation with the CEO, Doctor Betty Gikonyo, she was issued with job description as Deputy Chief Medical Officer. It here she noted that she was technically handling many departments and that her term involved more of management than clinical duties. She therefore enquired on remuneration for his and she will ensured that this would be reviewed after probation with an upgrade on her salary and benefits to match her duties as performed.
9. It is the Claimant's further case that May, 2018 she reminded the medical director who was her supervisor that her appraisal was due after three months probation stipulated in her appointment letter. This was organized and done and the director rated her highly. She was left to await her confirmation letter which was not forthcoming and three weeks down the line, she invited to a panel appraisal by the CEO.
10. The Claimant's other case is that she went through two other panel appraisals, the first with the CEO and Human Resource Manager in the absence of her immediate supervisor which was unusual. The appraisal was like a fresh interview and the CEO proposed that they had to go through a job description and also demanded evidence of performance in all assignments tasked to her by members of top management. She explained all this adduced documentary evidence where available but the meeting was postponed to the following week where she would get the results of her appraisal.
11. The claimant's second appraisal was 2nd July, 2018 and here, there is no mention of any of the report she had prepared subsequent to the first panel meeting and she was accused of non performance in new tasks that she had no information about. After one hour of what the Claimant felt was a pre-meditated meeting, the panel meeting was concluded with the Claimant being informed that her probation would be extended to September 2018 and she signed a probation extension though under duress. She was also given assignment to carry out during the extended probation and also informed that she would be supervised by the CEO other than her immediate supervisor. This was suspicious and indicator of trouble ahead.
12. The Claimant avers that after this meeting, the Human Resource Manager tried to cool her by explaining that both meetings can be nasty and she was not to worry as all would be well. However, on 10th July 2018 the same Human Resource Manger informed her that the top management (read CEO) had decided she should leave as a consequence of her poor appraisal rating. She was advised to resign inorder to facilitate a smooth exit with additive benefits. She was later to be issued with a letter of termination dated 20th July 2018 with 18th July as her last working day.



13. She now seeks reinstatement without any loss as to benefits or compensation for unlawful and unfair termination of her employment. She further prays as follows;
- a. A declaration that the Respondent's conduct towards the Claimant amounts to violation of her constitutional and labour rights.
  - b. A declaration that the Respondent's conduct towards the Claimant amounts to an unfair labour practice deliberately and maliciously intended to frustrate her into resignation.
  - c. A finding that the claimant was unlawfully and unfairly terminated.
  - d. An award of Kshs.4,550,000 worked out as follows
    - i. 1 months notice pay .....Kshs350,000
    - ii. 12 months compensation .....Kshs.4,200,000
  - e. Costs of this suit
  - f. Any other relief that the court will deem fit to grant.
14. The Respondent's case is an admission of the employment contract *inter partes* by a letter dated 10th February 2018 as Deputy Chief Medical Officer with effect from 14th instant.
15. It is the Respondent further case that this employment was subject to a three months probationary period and confirmation into employment would be based on satisfactory performance. After the three months probationary period, the Claimant's performance was found to be unsatisfactory and she was placed on her further three months extended probation with her consent.
16. The Claimant's further case is that during the extended probationary period the Claimant did not improve on performance and continued to perform dismally warranting her termination from employment. She was paid her terminal dues and issued with certificate of service and a recommendation letter.
17. The issues for determination therefore are,
1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the relief sought.
  3. Who bears the costs of this suit.
18. The 1st issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The parties differ on this.
19. The Claimant in her written submissions dated 31st May, 2023 narrates the circumstance and terms of employment of the Claimant and faults the termination process in toto. It her case that she highly won on her first appraisal by her supervisor but lost on the second and third appraisal conducted by the CEO and Human Resource Manager in the absence of her supervisor, the Director of Medical Services.
20. It is her further case that the second panel appraisal was pre-meditated and was like a fresh interview. Her various endeavour to satisfy the panel through verbal presentations and documentary evidence



would not satiate the panel's urge to decimate her career. She was ultimately terminated from her employment on grounds of poor performance.

21. The Claimant further fault the Respondent conduct by raising the issue of the Respondent's Human Resource Manager's request for her resignation which was a bait for termination.
22. The Respondent in her written submissions dated 5th June, 2023 submits of a probationary term of contract for the Claimant as exemplified by clause 5 of the letter of employment. The claimant would not meet her terms of probation and this was extended on her own violation.
23. Upon unsatisfactory performance on the part of the Claimant she was terminated from employment and paid all her terminal dues.
24. The long and short of all this is a case of lawful termination of employment. In as much as the Claimant praises various issues on conduct of the Respondent during her employment, one find that these are not substantiated. She does not establish this in evidence.
25. The Respondent demonstrate a case of a performance appraisal gone sour. The Claimant had performed well in the first appraisal with her supervisor but badly defaulted on the second one with the CEO and Human Resource Manager. On this I find a case lawful termination employment and hold as such. And this answers the 1st issue for determination.
26. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination employment, she becomes dis-entitled to the relief sought.
27. I am there inclined to dismiss the claim with orders that each party bears the costs of the same.

**DELIVERED, DATED AND SIGNED THIS 24TH DAY OF OCTOBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

