



Mwangi v Tangaza College (The Catholic University of Eastern Africa) (Cause E530 of 2020) [2023] KEELRC 2503 (KLR) (11 October 2023) (Judgment)

Neutral citation: [2023] KEELRC 2503 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E530 OF 2020
NJ ABUODHA, J
OCTOBER 11, 2023**

BETWEEN

DOMINIC KAMAU MWANGI CLAIMANT

AND

TANGAZA COLLEGE (THE CATHOLIC UNIVERSITY OF EASTERN AFRICA) RESPONDENT

JUDGMENT

1. The Claimant filed his memorandum of claim on 15th September, 2020 and pleaded inter alia:-
 - a. At all material times to this cause the Claimant was an employee of the Respondent from 4th February, 2019 appointed in the position of Dean of students for a term of Four years ending 3rd February, 2023, with a gross salary of Kshs. 120,000/= per month which was inclusive of house allowance of Kshs. 36,000/= per month plus travel allowance of Kshs. 12,000/= per month.
 - b. The Claimant held the said position until his termination on 3rd March, 2020 when he received a letter from vice chancellor referenced Re-Deployment Letter purportedly emanating from the decision of the grievance Committee Meeting and averred that on 17th February, 2020 he had attended a grievance Committee Meeting called by the bosses to discuss inter alia a review on a Petition filed by the University Students against one of the University's Deputy Vice-Chancellor's (Administration & Finance) conduct.
 - c. The Claimant averred that according to the letter of Redeployment, the Claimant's redeployment was as a result of a resolution of the Grievance Committee where it was decided to terminate his employment as the Dean of students and redeploying him as full time lecturer.
 - d. The Claimant further averred that no reason was given for the termination and redeployment apart from the said resolution in which he attended the meeting by virtue of his office and position he held being a stakeholder in the said petition as per the University' policy document



to discuss the Petition by university students against conduct of University' deputy vice chancellor.

- e. The Claimant further averred that Grievance Committee did not discuss or resolve to re-organize the college structure and systems and if it did he was not involved or invited to such a discussion and the alleged ensuing resolution.
 - f. The Claimant averred that before the termination and redeployment he was never called to any meeting where the said issue of termination and redeployment was deliberated upon and that he was not issued with any show cause letter or letter setting out the case against him as a ground for termination or redeployment and that the Human Resource Policies & Procedures Manual which provides for Misconduct, Grievance and Disciplinary under Clause 10.9.1 on forms of disciplinary Measures amongst the actions that the University was entitled to take was demotion or reduction in Rank.
 - g. The Claimant in addition averred that his redeployment from the position of the Dean of Students the University activated one of the forms of disciplinary measures against him and he was not accorded an opportunity to be heard and defend himself as to why he should not be demoted and his rank reduced in clear breach of the University's own policy document No.18, the labour laws and practices and that the same was not preceded by notice to show cause, notice setting out reasons, due process or given notice to terminate as required by the contract of employment paragraph 4 which provides for (2) months' Notice and clause 7 of the Terms of service for administration and support staff which termination was contrary to the provisions of the [Employment Act](#) hence unfair and unlawful.
 - h. The Claimant averred that the Respondent in any effort to cover up their unlawful and illegal acts connived and offered the Claimant a new contract with purported retained benefits and due to the termination and reduction in rank the Claimant has suffered emotional and physiological harm.
2. The Claimant in the upshot prayed for orders against the Respondent:
- a. A declaration that the termination of the Claimant's employment by the Respondent was unfair and unlawful
 - b. Damages totaling to Kshs. 4,200,000/= including 2 months' notice pay, 12 months compensation, payment of the remainder of the Contract and general damages for breach of contract.
 - c. Costs and interests of the suit at court rates.
3. The Respondent filed its Response to Claim on 17th November, 2020 and they averred as follows;
- i. The Respondent averred that on 3rd March, 2020 the Claimant was redeployed as full time lecturer and he signed a contract to that effect on 18th June, 2020 and that he was not terminated since his salary and benefits remained the same.
 - ii. The Respondent averred that the Claimant's contract as dean provided for teaching assignments and also stipulated that the Claimant could be assigned other duties by the Vice-Chancellor and deputy Vice-Chancellor Academic and student Affairs.
 - iii. The Respondent further averred that after his redeployment the Claimant assumed his new duties and the new contract he signed on 18th June, 2020 stipulated that the new contract supersedes and replaces all previous oral or written agreements.



- iv. The Respondent further averred that the Claimant was invited in to grievance and disciplinary committee to give his side of story whereby he allowed the students unrest to escalate without any action from his office and that the grievance committee decided to redeploy both the Deputy Vice Chancellor Administration and Finance as well as the Claimant on the Committee's findings.
 - v. The Respondent further averred that the Claimant's redeployment was not a disciplinary measure to require disciplinary hearing because it was a reorganization measure meant to resolve a situation where the Claimant had not been effective in handling a situation of students unrest and it was therefore resolved after hearing the students and both the Claimant and the Deputy Vice-Chancellor that the best course of action was the redeployment of the Claimant to the full time lecturing where he would be most effective.
 - vi. The Respondent further averred that the Claimant was given full hearing and this informed the Grievance committee's decision to redeploy him, he was not demoted as he continued to enjoy his full salary and benefits and he continues to work with the Respondent to date hence his prayer for damages for unlawful termination is untenable.
 - vii. The Respondent therefore prayed for a declaration that the Respondent's actions were justified under the circumstances, his employment was not terminated; the Claimant was not entitled to any damages or compensation and this claim to be dismissed with costs to the Respondent.
4. Both the Claimant's and Respondent's case were heard on 16th May, 2023, where the witnesses testified in support of their respective case on oath.
 5. CW 1 the Claimant herein adopted the documents filed before the court as evidence in chief and testified that he was a lecturer at the Respondent's university and formerly Dean of students where he was to liaise between the students and management.
 6. CWI testified that an issue arose with students concerning wearing student ID where the Deputy Vice-Chancellor Administration and Finance took it with vigor until students felt bullied and their space invaded. The students came to him and he escalated the complaint to DVC Academics.
 7. CW1 testified that he never went on leave during the period he worked and apart from appointment letter he was given HR Policy and Manual and terms of service for the faculty and that his previous position was more senior to what he held as a lecturer since he was restricted to one department in school while being a dean allowed him opportunity spheres and in middle management which currently, he was not.
 8. It was his evidence that there was a meeting on 17th February, 2020 where he attended as dean of Students and as a witness. The purpose of the meeting was to investigate the conduct of DVC Administration and Finance over whom the students had complained of bullying and racism and he was invited to the meeting by Mr. Wangombe.
 9. On cross examination he testified that his work as a dean required him to conduct lecturers that he is now a full time lecturer; he confirmed that he signed the transitional contract after reading it and letter of appointment as full time lecturer where terms of the previous contract remained the same and he was aware that the new contract superseded the previous contract.
 10. CW 1 confirmed that by signing the new contract it did not mean his contract as Dean of Students was terminated as there was no mention of termination in the redeployment letter; his remuneration remained the same as when he was a dean and none of his allowances were affected.



11. On re-exam CW1 clarified that he was part of the management and he was not issued with any show cause letter, informed of any charges against him, he was not the subject of the grievance committee and he has never received any warning or reprimand after the meeting as he was only redeployed which to him was a demotion.
12. CW1 further clarified that as a dean of students he was allowed to interact with other deans, it was an upward career movement and allowed him some spaces he cannot now access as a lecturer hence the demotion curtailed his career.
13. On the other hand the Respondent called its witness RW1-Fr. Lenoxie Lusabe the secretary and legal officer of the Respondent who adopted his statement and documents filed in court as evidence in chief and testified that he was a former lecturer at the Respondent and that the Claimant joined the Respondent as a Dean of students as well as a lecturer.
14. RW1 testified that the redeployment letter was recommended by Grievance committee. The letter informed the Claimant that he was redeployed because there was a crisis in the university. The students were complaining against the DVC Administration and Finance. They accused him of racism over the manner he pushed them to wear name tags and further their were complaints that the Claimant did not handle the grievances effectively. The Grievance committee recommended his redeployment.
15. RW 1 testified that the Claimant was still working for the Respondent on the new contract as he was redeployed but he was never demoted as his salary and allowances remained unchanged.
16. It was his evidence that lecturers had full access to management and being a full time lecturer had more job security than that of a dean of students.
17. In cross examination RW1 confirmed that the decision of the grievance committee was not communicated to the Claimant directly since the Claimant was involved with the HR and he attended the grievance meeting as the Dean of students and he was part of the discussions in the meeting as part of the crisis.
18. RW1 confirmed that the Claimant was not under trial or undergoing any disciplinary hearing at the Grievance and Disciplinary Committee. The committee concluded that the Claimant did not handle the crisis well and recommended he be redeployed.
19. It was his evidence that the Claimant was aware of the complaints having been told verbally. The meeting was convened by the chancellor even though the meeting was to be convened by the DVC Academic under clause 10.3 and the DVC academic and Finance could not chair the meeting when there were accusations against him.
20. In Re-examination, RW1 clarified that the grievance committee was convened over the conduct of management and DVC and Petition by students.
21. The Claimant filed written submissions dated 15th September, 2023 and submitted among others that his termination was unfair one for varying the terms of contract and demoting him. Counsel further submitted that varying and altering the terms of employment without consulting the employee was unlawful and amounted to unfair labour practices and relied on Petition No. 32 of 2016, *James Ang'awa Atanda & 10 others v. Judicial Service Commission* [2017] eKLR and Cause No. 190 of 2013, *Elizabeth Kwamboka Khaemba v. BOG Cardinal Otunga High School Mosochi & 2 others*[2014] eKLR.
22. Further counsel for the Claimant submitted that the redeployment could be a horizontal administrative action by any institution and that the actions of the Respondent amounted to



- constructive dismissal from the Claimant's employment and relied on the case of Civil Appeal No. 20 of 2012- *Coca Cola East & Central Africa v. Maria Kagai Ligaga* [2015] eKLR). The redeployment had to be done in fair and transparent procedure. The Claimant ought to have been heard before redeployment with reasons for the actions and with a right to appeal the decision.
23. On the issue of unfair termination the Claimant submitted that there was no reason given for his redeployment and relied on the cases of *Peter Munywoki Nzivo v. Nguvu Construction & Mining Company Limited* [2022] eKLR, Cause No. 955 of 2011, *Walter Ogal Anurov. Teachers Service Commission* (2013) eK and Civil Appeal No. 31 of 2015, *Kenfreight (EA) Limited v. Benson KNguit* (2016) eKLR together with Section 43 and 45 of the *Employment Act*.
 24. It was the Claimants' further submission that even if the reason for the termination was valid the procedure itself was unprocedural and relied on the case of Cause No. 1050 of 2011, *Loice Otieno v. Kenya Commercial Bank Limited* (2013) eKLR to submit on the requirements of Section 41 of the *Employment Act* on the procedural fairness.
 25. Counsel urged the court to find that the termination was unfair for having failed the substantive and procedural fairness and relied on the case of Cause No. 213 of 2014- *Raymond Cherokewa Mrisha vs Civicon Limited* [2014] eKLR.
 26. On the issue of redeployment amounting to demotion counsel submitted that this action amounted to demotion of the Claimant since the duties changed, the place of work changed, the qualifications were different and relied on the case of *Silvanus Lukoko Were v Ministry of Lands & Physical Planning & Another* [2020] eKLR to define demotion
 27. Counsel also submitted that even if the Claimant did not lose his income he lost his status, caused him embarrassment and the actions of demoting the Claimant were punitive in nature as a disciplinary action not just redeployment. At the time of preparing this judgment the Respondent had not filed their submissions.
 28. The court has reviewed and considered the pleadings, witness testimonies and submissions by both counsel in support and opposition to the case and authorities relied on by Counsel and comes up with the following issues for determination.
 - a. I have Aa. aa. Whether the redeployment of the Claimant amounted to termination and demotion.
 - b. Whether wWhether the Claimant is entitled to the reliefs sought

Whether the redeployment of the Claimant amounted to termination and demotion.

29. In this case, the Claimant was redeployed in the position of Full time lecturer from Dean of students on 3rd March, 2020 through the decision of grievance committee which came out clearly was convened to discuss the petition by the students who were complaining of the conduct of the DVC Administration and Finance.
30. It is worth noting that it is not only the Claimant who was redeployed by the Grievance Committee but also the DVC in question who was accused of bullying students and racism and that the Claimant was still working for the Respondent to date earning the same salary he was earning as dean of students together with other allowances.
31. It was also clear that the Claimant signed the transitional contract and the contract of full time lecturer on 18th June, 2020 which in essence overrode the other contract of dean of students and during hearing



- the Claimant acknowledged having signed the same after reading and he was aware that it superseded the earlier contract of Dean of students.
32. The Court therefore needs to interrogate what constitutes termination to arrive to the conclusion that the Claimant was terminated by the Respondent even though he was still working with the Respondent on another contract.
 33. In the Black's Law Dictionary the word terminate is defined as 'to put an end to; to make to cease; to end' while termination of employment. Is described as 'Within policies providing that insurance should cease immediately upon termination of employment, means a complete severance of relationship of employer and employee'.
 34. From the above definition, termination arises where the employer and employee are no longer together. In this case the Claimant was still working for the Respondent. In addition the Claimant signed a new contract in 18th June, 2020. From the foregoing, it cannot be said that the Claimant was terminated but redeployed as a full term lecturer.
 35. On the issue of demotion in the case of *Silvanus Lukoko Were v Ministry of Lands & Physical Planning & Another* [2020] eKLR the court expressed itself as follows–

“...The ordinary English meaning of the word ‘demotion’ is “reduction in rank or status”. The meaning of the word ‘rank’ on the other hand is “place within a grading system”. Furthermore, the ordinary meaning of the word ‘status’ is “person’s social standing.”
 36. In *Edah Cheronno Maiywa v University of Nairobi Enterprises and Services Limited* [2020] eKLR the court went on to state as follows;

...Again, considering the said JD, the place where she was to perform the new duties was different and manifested a demotion. According to the Oxford Learner's Dictionary, demotion is defined as a move to a lower position or rank.
 37. In this case the Claimant was redeployed as Full term lecturer from Dean of students and of which as a dean of students he was still lecturing. The reason for the said redeployment was because he did not handle the student complaints as required.
 38. It came out clearly that the place of work of the Claimant changed and his status as well changed even though the benefits remained the same. The Court is therefore of the view that the said redeployment amounted to demotion which was a disciplinary action on the Respondent's policy manuals even though they did not give the Claimant the right to be heard and defend these allegations.
 39. In above case of Edah Cheronno the court went on to state as such;

On the other hand, it is clear from the letter dated 4.4.2019 that, the reason the claimant was redeployed to the post of Administration Officer, was due to alleged performance issues and her personal conduct towards Rw2. It was a punishment inflicted on her without following the due process of the law, and it amounted to unilateral change of the terms of her contract of service contrary to section 10(5) of the *Employment Act* which requires that prior consultation be made with the employee.
 40. The Court therefore finds and holds that the Claimant's redeployment did not amount to termination but amounted to demotion and amounted to an unfair labour practice under article 41 of *the Constitution*.



Whether the Claimant is entitled to the reliefs sought

41. Having found that the Claimant's employment was not terminated and the Claimant was still working for the Respondent, the Court will disallow the claim for unfair termination of employment. The Court so says in order to foster a good working relationship. Even though the Respondent demoted the Claimant the available prayer which could be awarded would be reinstatement to his previous position before the demotion but the claimant accepted and signed for the redeployment hence the award is not available and in any event it was not among the prayers sought by the Claimant.
42. In conclusion the Court finds and holds that the Claimant's employment was not terminated hence there was no unlawful and unfair termination.
43. The claim is therefore found without merit and is hereby dismissed.
44. Bearing the nature of the claim; that parties are still working together to safeguard this relationship and the finding that the Claimant was demoted I order that each party to bear their own costs
45. It is so ordered.

DATED AT NAIROBI THIS 11TH DAY OF OCTOBER, 2023

DELIVERED VIRTUALLY THIS 11TH DAY OF OCTOBER, 2023

ABUODHA JORUM NELSON

JUDGE

