



**Njihia v Rafiki wa Maendeleo Trust (Cause E020 of 2023)
[2023] KEELRC 2367 (KLR) (4 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2367 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E020 OF 2023
S RADIDO, J
OCTOBER 4, 2023**

BETWEEN

FREDRICK KANYORA NJIHIA CLAIMANT

AND

RAFIKI WA MAENDELEO TRUST RESPONDENT

JUDGMENT

1. Fredrick Kanyora Njihia (the Claimant) was offered a two-year contract as Finance Manager on 1 February 2019 by Rafiki Wa Maendeleo Trust (Respondent).
2. When the contract lapsed, the Respondent renewed it for a five-year term.
3. Two years into the contract, the Respondent received an anonymous complaint dated 1 November 2022, alleging that the Claimant and a female member of staff were spending too much time together in the finance office leaving little time to carry on their work.
4. The complaint further alleged that the Claimant had confronted another employee asking him to keep off his wife (the female colleague).
5. Consequently, the Respondent's Executive Director issued a show-cause notice to the Claimant dated 7 November 2021, alleging that he had summoned a colleague and confronted him for associating with his (Claimant's) wife and suggesting that he was having intimate relations with a member of staff.
6. The show-cause requested the Claimant to make a written response within 9 days as to why disciplinary action should not be taken against him.
7. The Claimant responded on the same day denying the allegations and stating that the allegations were pure gossip and total falsehood meant to injure his reputation.



8. On 10 November 2022, the Executive Director sent an email to the Claimant seeking further clarifications/explanations before the close of 11 November 2022. The Claimant replied the same day.
9. In the reply the Claimant again denied the allegations and stated that he only had informal engagements with the member of staff regarding the female staff member at lunchtime on 31 October 2022.
10. Upon receipt of the reply, the Executive Director sent an email to the Claimant inviting him to a disciplinary hearing on 21 November 2022. The invitation advised the Claimant of the right to present evidence/witnesses.
11. At the same time, the Executive Director instructed the Human Resources Manager to constitute a disciplinary committee and invite the Claimant to a disciplinary hearing.
12. The Claimant attended the hearing and was asked and responded to questions.
13. At the end of the hearing, the Committee recommended a warning and not termination of employment. The warning letter was issued on 22 November 2022.
14. In the new year, the Respondent was up for audit, and on 9 January 2023, the auditors brought to the attention of the Respondent unresolved/uncompleted matters (reconciliations of bank accounts, petty cash, intercompany transfers, inventory stocks, liquidation of staff advances, accounts payable and receivable, classification of expenses and draft management accounts).
15. On 18 January 2023, the Executive Director instructed the Claimant to focus solely on the finalisation of the 2022 accounts. The Executive Director requested the Claimant to finalise by 24 January 2023.
16. The Claimant acknowledged the instructions by return email the next day but indicated that he could not meet the deadline if he worked alone.
17. The Claimant requested to be allowed to finalise by 28 January 2023 if he had the assistance of a named colleague.
18. The Claimant did not deliver and on 3 February 2023, the Executive Director noted that he was not giving daily updates and sought for an explanation.
19. The Claimant sent an update later that day and indicated that he would deliver on outstanding aspects of invoicing in the course of the next day, a Saturday.
20. On 7 February 2023, the Executive Director informed the Claimant that he had barely delivered 50% of the work, urged him to put in extra effort, and conclude no later than 8 February 2023.
21. The Claimant replied that he was doing his best and the Executive Director instructed him to deliver by close of 20 February 2023. The Director put the Claimant on notice that he would not be given any more time. The Claimant sent an email to the Director on 22 February 2023 indicating that he had completed the tasks assigned to him.
22. On 28 February 2023, the Executive Director wrote to the Claimant, notifying him of the termination of his contract. The letter cited section 34(1)(c) of the [Employment Act](#) and the Respondent's Policy.
23. The Claimant was aggrieved and he sued the Respondent on 26 April 2023, asserting unfair termination of contract and breach of contract.
24. The Respondent filed a Response on 12 May 2023 and the Cause was heard on 27 June 2023.
25. The Claimant filed his submissions on 18 July 2023, and the Respondent on 28 August 2023.



26. The Court has considered the pleadings, evidence, and submissions and identified the Issues for determination as examined hereunder.

Unfair termination of contract

27. Sections 35(1), 41, 43, and 45 of the *Employment Act*, 2007 set out the threshold a termination of employment should meet to pass the procedural and substantive fairness test.

28. Termination clauses in employment contracts should therefore be judged against the standard set out in the aforesaid provisions.

29. It is correct that clause 14.2.1 of the contract reserved to the Respondent the right to terminate the contract on notice or by the payment of the equivalent of 1-month salary in lieu of notice.

30. However, sections 43 and 45 of the *Employment Act*, 2007 require an employer to have and prove valid and fair reasons for terminating an employment contract.

31. The letter terminating the Claimant's contract did not give any reasons. It is not known whether the termination was on account of the Claimant's conduct, capacity, compatibility, or the Respondent's operational requirements.

32. The Court, in the circumstances finds that the termination of the Claimant's employment was statutorily procedurally and substantively unfair.

Appropriate remedies

Notice pay

33. The Respondent offered the Claimant pay in lieu of notice and nothing turns on this head of the claim.

Compensation

34. The Claimant had served the Respondent initially for 2 years and then a further two years of a five-year fixed-term contract. The Claimant had a reasonable expectation to serve out the full term of the contract. The trust between the Claimant a Senior Manager and the Respondent became lost with the termination of employment.

35. Considering these factors, the Court is of the view that the equivalent of 4 months' gross pay as compensation rather than reinstatement would be appropriate (the gross pay was Kshs 199,695/-).

Lost income

36. The Claimant pitched for Kshs 7,189,695/- being the income he would have earned if he had served the full term of the contract.

37. The Supreme Court of Uganda in *Bank of Uganda v Tinkamanyire* (2008) UGSC 21 held in respect of loss of income in relation to unfair termination of employment:

the contention that an employee whose employment contract is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law.

38. This Court endorses the holding and declines to allow this relief.



Conclusion and Orders

39. Arising from the above, the Court finds and declares that the termination of the employment of the Claimant was unfair.
40. The Claimant is awarded:
 - (i) Compensation Kshs 798,780/-
41. The decretal sum to attract interest from the date of judgment if not paid within 45 days from the date of judgment.
42. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 4TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Union Oscar & Associates Advocates

Respondent ROW Advocates LLP

Court Assistant Chrispo Aura

