



**Maigua v Premier [Kenya] Limited (Cause 1299 of 2016)
[2023] KEELRC 3082 (KLR) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3082 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1299 OF 2016
J RIKA, J
NOVEMBER 30, 2023**

BETWEEN

SAMUEL MWENDA MAIGUA CLAIMANT

AND

PREMIER [KENYA] LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 30th June 2016.
2. He states that he was employed by the Respondent as a Loans Officer, on 13th January 2015, on a monthly salary of Kshs. 40,000.
3. He was confirmed after probation, effective 13th October 2015, and enrolled in the Premier Credit Staff Scheme, from 1st October 2015. His monthly salary was raised to Kshs. 42,426.
4. He received a letter dated 23rd March 2016 terminating his contract of employment. The Respondent alleged that the Claimant was absent from work; did not meet monthly targets; and lacked proper relationships with other Staff.
5. He states that termination was unfair. There was no notice, and the laid-down procedure was not followed.
6. He prays for Judgment against the Respondent for: -
 - a. Notice pay.
 - b. Salary for the months of March and April 2016.
 - c. Compensation for unfair termination.
 - d. Letter of Service.



- e. Costs.
7. The Respondent filed its Statement of Response on 17th August 2016. It is conceded that the Claimant was employed by the Respondent, as pleaded in the Statement of Claim. He was summarily dismissed for valid reasons, indicated in the letter of termination. Termination was carried out fairly. The Respondent urges the Court to dismiss the Claim with costs.
 8. The Claimant filed a short Reply to the Statement of Response, on 23rd August 2016. The Reply reiterates the averments made by the Claimant in the Statement of Claim.
 9. It was directed by the Court on 13th July 2023, that the Claim is considered and determined under Rule 21 of the Court's [Procedure] Rules, 2016. Parties attempted voluntary settlement unsuccessfully, before the Court gave directions. They confirmed the filing and exchange of their Closing Submissions at the last appearance before the Court, on 22nd September 2023.
 10. The Claimant, in his Submissions dated 8th August 2023, states that the reasons stated in the letter of termination in justifying the decision, were not supported by evidence. There were no documents to support any of the grounds. There was no letter to show cause issued to the Claimant. His salary had been reviewed upwards in December 2015 on account of good performance. He had performed exceptionally well in 2015. Was 2 months into the year 2016, sufficient to assess his performance and conclude it was poor? There was no letter asking the Claimant to explain his 5 days of absence. His contract provided for a notice period of 30 days. He was not given a fair hearing, in accordance with Section 41 of the Employment Act, 2007.
 11. The Respondent filed Submissions dated 18th September 2023. It is submitted that poor performance was tied to failure to meet monthly targets. The Claimant did not meet monthly targets. He harassed other Staff. The Respondent had a duty to protect other Staff. His conduct irreparably damaged relationship with his colleagues. The Claimant was absent for as long as 5 continuous days. His acts of gross misconduct undermined trust and confidence between him and the Respondent.
 12. The issues are whether: termination of the Claimant's contract was based on valid reason[s]; it was executed fairly; and remedies claimed merited.

The Court Finds: -

13. The Claimant was employed by the Respondent on 13th January 2015 as a Loans Officer on a monthly salary of Kshs. 40,000. He was confirmed after successfully completing a period of probation, on 13th October 2015. His salary was raised to Kshs. 42,426.
14. His contract was terminated by the Respondent on 23rd March 2016. There are 3 reasons justifying the decision, stated in the letter of termination: he was absent from work for more than 5 days without lawful cause or leave of the Respondent; he was not able to meet his monthly targets; and lacked proper relationships with colleagues.

Validity of reason[s].

15. The Respondent did not file any documents in support of any of the aforesaid reasons. The List of Documents dated 11th August 2016 indicates 'none at the moment.' None was filed subsequently. There was no letter to show cause issued to the Claimant asking him to explain his failure to meet monthly targets; absence of more than 5 days; or poor relationship with colleagues. Details of the absence were not supplied to the Court. There was no document exhibited before the Court, setting the Claimant's monthly performance targets. No evidence of monthly appraisal was placed before



the Court. Details of the Claimant's alleged incompatibility with workmates, were not disclosed. No colleague was named. The acts of incompatibility, the alleged harassment of Staff by the Claimant, were not brought out by the Respondent.

16. Remarkably, allegations about poor performance came fast on the heels of the letter dated 14th December 2015. The letter states that the Claimant's performance in the year 2015 was commendable. He was dedicated to the Respondent's core values. His commitment to his tasks greatly contributed to the evolution of the Respondent's brand. The Respondent was excited about the prospect for the year 2016. How did this change abruptly in approximately 3 months leading to termination of the Claimant's contract? What were the targets in January, February and part of March 2016, that the Claimant failed to meet, warranting termination? What occasioned the sudden collapse in the Claimant's commendable and committed service? If there indeed was such a sudden collapse in the Claimant's performance, why was he not placed on a Performance Improvement Plan?
17. The Court is not satisfied that termination was based on valid reasons, under Sections 43 and 45 of the *Employment Act*.

Procedural fairness.

18. The Respondent did not present any allegations to the Claimant through a letter to show cause. He was not asked to explain the allegations through a letter to show cause or a disciplinary hearing convened subsequently. The Claimant was just issued an abrupt letter of termination, dated 23rd March 2016. He was simply told that, "we wish to inform you that your services have been terminated with effect from 23rd March 2016." This was a worst form of termination-at-will, with no notice and no cause. The Respondent did not meet the minimum statutory standards of procedural fairness, under Sections 41 and 45 of the *Employment Act*.

Remedies

19. It is declared that termination was unfair for want of valid reason[s] and fair procedure.
20. Parties were bound to a period of 30 days' notice, or payment of 1-month salary in lieu thereof, under the contract of employment. The Respondent did not issue the Claimant notice, or pay 1-month salary. He is granted notice at Kshs. 42,426.
21. The letter of termination is dated 23rd March 2016. The Claimant states that he received it on 5th April 2016. This is not contested by the Respondent. The effective date of termination was 5th April 2016. The Claimant was entitled to salary for the month of March, and for 5 days for the month of April 2016. The claim for salary for the entire month of April 2016 is unfounded. He is granted salary for 35 days at Kshs. 50, 584.
22. Termination was unfair in substance and procedure. The Claimant had worked for 1 year and 2 months. He was confirmed as permanent and pensionable Employee on 1st October 2015. He expected to continue working until retired. Sections 49 and 50 of the *Employment Act* require the Court to look into several factors, in awarding remedies for unfair termination. The length of service, is as important as the expected length of service. The Claimant did not cause, or contribute to, the circumstances leading to termination. He was not paid anything on termination. He did not tell the Court whether he made attempt to mitigate loss of employment. It is not on record whether he secured another comparable job. He is granted 5 months' gross salary in compensation for unfair termination at Kshs. 212, 130.
23. Certificate of Service to issue.



24. Costs to the Claimant as prayed.

In Sum, it is ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Claimant notice at Kshs. 42,426; 35 days' salary at Kshs. 50,584; and compensation for unfair termination at Kshs. 212,130 – total Kshs. 305,140.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF NOVEMBER 2023.

JAMES RIKA

JUDGE

