



**Inyani v Promasidor Kenya Limited (Employment and Labour Relations Cause E001 of 2021) [2023] KEELRC 2948 (KLR) (17 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2948 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E001 OF 2021  
B ONGAYA, J  
NOVEMBER 17, 2023**

**BETWEEN**

**DAVID INYANI ..... CLAIMANT**

**AND**

**PROMASIDOR KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 02.06.2021 through Auma Okumu Advocates. The amended statement of claim was dated 22.09.2022. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the claimant's suspension from duty and summary dismissal amounted to a violation of the claimant's rights under section 5 (2) and (3)(b) of the *Employment act*, 2007, Article 27(5) and Article 41(1) of the *constitution* of Kenya.
  - b. A declaration that the claimant suffered unfair, wrongful and unlawful dismissal from employment.
  - c. The respondent be ordered to pay the claimant the following sums:
    - i. One month's salary in lieu of the notice .....ksh 471,368.00
    - ii. Compensation for wrongful and unfair dismissal from employment calculated at 12 months' gross salary thus 2×471,368.....ksh 5,656,416.00.
    - iii. Offshore quarterly net payment (one month in lieu of notice) ..... USD 2443 (ksh 263, 844.00).
    - iv. Offshore quarterly net payment .....USD 2443 (ksh 263,844.00).
    - v. Accrued leave .....412,155.73.



Gratuity .....2,034,498.66  
Total .....ksh 12,004,410.39.

- vi. Interest on the above from the date of filing the suit until payment in full at court rates.
  - d. An order that the respondent issues the claimant with a certificate of service and references befitting his status.
  - e. The respondent be ordered to pay the costs of the claim and interest.
2. The Memorandum of defence was filed on 15.09.2021 through Ronn Law Advocates LLP. The respondent prayed that the suit be dismissed with costs.
  3. The claimant's case was that he was employed by the respondent as a supply chain manager vide a letter of employment 21.12.2010.
  4. That he served the respondent company with diligence and as a result was promoted to the position of supply chain director with effect from 09.12.2016.
  5. That on 25.04.2019 the claimant signed a salary review memorandum dated 24.04.2019 which stated that with effect from 01.04.2019 the claimant's basic salary would be ksh 426,368.25.
  6. That for the ten years that the claimant served the respondent, no complaint was raised about his performance.
  7. On 15.03.2021 the claimant received a letter suspending his employment for alleged breach of terms and conditions of his contract and the company's code of conduct.
  8. The claimant states that he replied to said letter, through his letter dated 17.03.2021, informing the respondent of the need to specify the acts by the claimants or conduct which amounted to the alleged breaches.
  9. In a letter dated 24.03.2021 the respondent requested the claimant so show cause why the company should not take disciplinary action against him.
  10. Through a letter dated 27.03.2021 the claimant states that he responded to the respondent's show cause letter addressing each allegation.
  11. By a letter dated 03.03.2021 the respondent invited the claimant to attend a disciplinary hearing on 31.03.2021, to which the claimant honoured the invitation and attended the hearing.
  12. The claimant contends that the disciplinary hearing was not carried out in accordance with fair labour practices, and was unfair for reasons that he was not informed of the particular charges he was facing, prior to the meeting.
  13. The claimant pleaded that he followed all company procedures while discharging his duties as supply chain director and that he acted in good faith while discharging said duties.
  14. The claimant states that Inyani enterprises, allegedly owned by him is non-existent, and the same can be proved by conducting searches with the companies' registry.
  15. On the part of the respondents it is stated that the respondent received anonymous information about possible fraud in its operations, which allegedly involved the respondent's staff. Over a period of time the respondent reviewed its operations with the aim of identifying the possible problem areas and the



extent, if any, of the fraud. The respondent engaged Stealth Africa Consulting Limited to assist with investigating areas where suspicious activities were noted.

16. In March 2021 the respondent directed its review towards members of staff who regularly dealt with or had contacts with suppliers. During this review, the respondent states that it received anonymous information regarding the activities of various staff members. In respect of the claimant it was alleged that he had been involved in or aided and abetted activities that breached the respondent's requirement that staff act with integrity and promote a culture of ethics and compliance, and that he was involved in activities that constituted conflict of interest.
17. The respondent states that in view of the general nature of the information that the respondent had received anonymously, the respondent considered that it was necessary to commission an investigation to ascertain the full facts and circumstances relating to the alleged breaches.
18. Consequently, the respondent suspended the claimant from employment vide a letter dated 15.03.2021 in order to facilitate the carrying out of an investigation. The claimant was informed of the suspension as well as the reasons and terms thereof.
19. Stealth Africa Consulting Limited conducted the investigations by interviewing staff members, conducting analysis of forensic images from the laptop that the respondent assigned the claimant for work purposes and the carrying out of company and business searches.
20. On or about 23.03.2021 an investigation report was submitted by Stealth Africa Consulting to the respondent, as regards the aforesaid investigations. The respondent states that the investigation report identified various alleged breaches by the claimant together with evidence supporting the alleged breaches.
21. The respondent considered the above and decided to give the claimant an opportunity to show cause why disciplinary action should not be taken against him.
22. That by a letter dated 24.03.2021 the respondent informed the claimant of the alleged breaches and requested him to show cause in writing on or before 27.03.2021 why disciplinary action should not be taken against him.
23. The claimant did not request for additional time to prepare his response, but responded through his letter of 27.03.2021. Upon receiving the response the respondent reviewed it and found it unsatisfactory and instead decided to convene a disciplinary hearing.
24. By a letter dated 30.03.2021 the respondent invited the claimant for a disciplinary hearing, in which it informed the claimant of his right to be accompanied to the disciplinary hearing by a fellow work colleague of his choice.
25. The respondent states that the claimant did not request for additional time to prepare for the disciplinary hearing.
26. By a letter dated 01.04.2021 the respondent terminated the claimant's employment by summary dismissal. In the said letter, the respondent advised the claimant of his right to appeal against the decision to terminate him, however, the claimant did not exercise this right.
27. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
28. To answer the 1<sup>st</sup> issue, the Court returns that there is no dispute that parties were in a contract of service. The respondent employed the claimant as the Supply Chain Manager by the letter dated



- 21.12.2010 effective 01.03,2011. He was promoted to Supply Chain Director by the letter dated 09.12.2016. By letter dated 24.04.2019 his salary was increased to ksh 426,368.25.
29. To answer the 2<sup>nd</sup> issue, there is no dispute that the contract of employment was terminated by the letter of summary dismissal dated 01.04.2021 on account of gross misconduct upon particulars enumerated in the letter. The termination was effective 01.04.2021. He was to be paid prorated salary up to and including 01.04.2021, the last day of service; leave accrued but not taken; and, gratuity.
30. The 3<sup>rd</sup> issue is whether the termination was unfair. On procedure, the claimant was suspended by the letter dated 15.03.2021. While testifying that the suspension was imposed without prior warning and reasons disclosed, the letter refers to a meeting on 15.03.2021 between the claimant and the Group Chief Executive Officer (CEO) Mr. Olivier Thiry, the Managing Director (MD) Mr. Mark C. Williams; Doris Njoroge the Human Resource Manager (HRM). The letter states that at the meeting the claimant had been informed about information suggesting that he had breached the terms and conditions of service of the employment and provisions of the respondent's Code of Business Conduct relating to claimant's acting with integrity and promotion of a culture of ethics and compliance; the protection and use of the Company's assets; and compliance with rules on conflict of interest. He was therefore suspended pending the investigations. The claimant says that the suspension was unfair for want of particulars of the allegations. The Court finds that concern unfounded because the suspension was clearly a preliminary decision pending investigation. It appears that investigations were to be carried out to crystallise the allegations. Further, the claimant had attended the meeting and was informed the circumstances prior to suspension. The Court finds that the suspension being a preliminary decision based on preliminary inquiry, the respondent had not adopted an unfair procedure in the manner the suspension had been imposed. The letter was categorical that the suspension was on full pay as the claimant remained an employee. The letter further stated that the suspension was not a disciplinary sanction but it was a necessary tool to facilitate the investigation referred to in the letter. It was categorical that the company would contact him and convey the findings once the investigations were completed. In all circumstances and as submitted for the respondent the suspension has not been shown to have been unlawful or unfair in the circumstances of the case.
31. Further on procedure, the claimant confirmed he received the request to show cause being the letter dated 24.03.2021. It was allegations were levelled against the claimant as follows:
- a. Breach of the respondent's Code of Business Conduct and terms of employment by causing or abetting aiding and abetting the making of payments to supposed suppliers of the respondent for fictitious supplies hence loss of respondent's funds. That included claimant's approval of Local Purchase Orders (LPOs) for the supposed suppliers knowing well that supplies had not been delivered by the supposed suppliers. Such suppliers included Gibcoll Enterprises which was paid ksh 1,250,545.00 for fictitious supply of spare parts and consumables between January and November 2020; Koyitoror Merchants Limited which was paid a total of ksh 257,720.00 for supply of spare parts and consumables between January and November 2020; and Toror Merchants and Lyne and Alia Engineering ltd.
  - b. In breach of the Code he received ksh 25,000.00 from Patel Mondish Kumar Dineshkumar on 04.03.2020 and who was the Manager at Bindip ltd, a supplier of the Company.
  - c. None disclosure of multiple interests including directorship or shareholding- by using company assets for personal benefit or for the benefit of other persons; using the respondent's assets, computer and equipment for outside business or unethical activities; engaging in personal activities during working hours. The allegations included use of respondent's intellectual property such as on 07.08.2020 he prepared a draft memorandum of



understanding (MOU) between himself and Royal Converters Limited to provide consultancy services in the development of an extrusion process for textured vegetable protein in circumstances that Royal Converters Limited was not a customer of the Company and had no business relationship with the company. The MOU had been prepared using respondent's time and laptop. Under the allegation, other specific allegations whose specifics were stated were levelled against the claimant.

32. The claimant replied the letter to show cause by his letter dated 26.03.2021. He denied making the LPOs; he denied knowing the mentioned suppliers subject of the LPOs allegations and finance director was answerable on how payments may have been effected; he had not received money from Patel Mondish in capacity as company supplier and allegations were intrusive of his privacy in illegal access of his mobile phone; the MOU remained a draft and there was no contractual relationship or as Inyani Enterprises Consultancy or Limited was a fictitious company; he had used company time and laptop or equipment because he desired that the same communication be in respondent's best interest and acted with utmost good faith.
33. Further by letter dated 30.03.2021 he was invited to attend the disciplinary hearing which he attended on 31.03.2021. The dismissal letter was dated 01.04.2021.
34. The Court finds that the procedure adopted by the respondent was per the prescribed notice and hearing in section 41 of the *Employment Act*. While alleging that the time to defend himself was short, he as well confirmed that he never asked for the extension of the time to prepare. He lamented that the investigation report was not provided but despite the request to show cause stating that the investigation report had made the specific findings per the levelled allegations, he ably made his response to each allegation by the letter dated 26.03.2021 without asking for the report or suggesting that he needed details about the findings beyond what was in the request to show cause. Thus, as submitted for the respondent, the procedure was not unfair at all.
35. For the reasons for termination the Court returns that the respondent has established that they were valid as per section 43 of the *Employment Act* and as well, they were fair per section 45 of the Act as they related to the respondent's operational requirements and, the claimant's compatibility and conduct. The claimant did not deny but admitted using the respondent's time and equipment to draw the MOU. The MOU, he admitted, had been drawn yet it amounted to a design to unfairly interfere with the respondent's enterprise. The claimant admitted in his testimony that he had communicated as was alleged against him and urged that it was in the respondent's best interest. How that could be was not demonstrated at all. As submitted for the respondent, there is nothing on record which, on a balance of probability, would exculpate the claimant. The Court finds that claimant 100% contributed to his summary dismissal when he breached the terms and code of service as was alleged. The respondent's submissions are upheld in that regard.
36. Thus, the Court returns that the termination was not unfair both in procedure and substance.
37. The 4<sup>th</sup> issue is on remedies. The Court returns that the claimant has not established any of the remedies as being justified. One-month notice-pay and compensation were based on a return that the declarations as prayed for are awarded. The Court has found they are not justified at all. Offshore quarterly net payment was futuristic per the claimant's own testimony and the Court finds they were unjustified. The suit must therefore collapse with costs.

In conclusion the suit is hereby dismissed with costs for the respondent, and, the Deputy registrar to cause the court file to be returned to the Machakos Court's sub-registry forthwith.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 17<sup>TH</sup> NOVEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

