



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Molla v Kenya Women and Children Wellness Centre & another (Cause 328 of 2019) [2023] KEELRC 2934 (KLR) (17 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2934 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE 328 OF 2019**  
**B ONGAYA, J**  
**NOVEMBER 17, 2023**

**BETWEEN**

**STEPHEN MOLLA ..... CLAIMANT**

**AND**

**KENYA WOMEN AND CHILDREN WELLNESS CENTRE ... 1<sup>ST</sup> RESPONDENT**

**DELORIS JORDAN ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 22.05.2019. The claimant as pleaded, was employed by the 1<sup>st</sup> respondent in 2013 and initially on casual basis. The respondent issued the letter dated 01.03.2019. It conveyed that the respondent had lost confidence and trust in the claimant and his last working day would be on 01.03.2019. he was directed not to report to work in the month of March but he would receive his pay check at the end of March 2019. His certificate of service was attached on that letter of termination of employment. The certificate stated that he had worked for the 1<sup>st</sup> respondent from January 2013 as a consultant up to September 2014. Further, he was a full time employee from August 2014 to 1<sup>st</sup> March 2019. The certificate and the letter were signed by the 2<sup>nd</sup> respondent as the President of the 1<sup>st</sup> respondent.
2. The claimant alleges that the termination was unlawful and unfair and claims and prays for:
  - a. 5-years salary  $112,244 \times 12 \times 5 = \text{Kshs.}6,734,640.00$ .
  - b. Gratuity for 5 years  $\text{Kshs.}112,244 \times 5 = \text{Kshs.}561,220.00$ .
  - c. Leave allowance for years worked  $\text{Kshs.}471,417.00$ .
  - d. Costs of the suit.
  - e. Any other order the Court deems fit.



3. The respondent filed the statement of response on 06.02.2021 through Archer & Wilcock Advocates. The respondent admitted employing the claimant and as at termination the prevailing contract of service was the one dated 01.04.2018. and he served as a driver or Program Training Support Team Member in the 1<sup>st</sup> respondent's establishment. The respondent further pleaded as follows. On 28.01.2019 the 1<sup>st</sup> respondent lost several assets through internal theft. A staff meeting was called and the claimant and other two staff members were summoned and heard in self-explanation. The 1<sup>st</sup> respondent considered the proceedings and lost trust and confidence in the claimant and the contract was terminated in accordance of with the terms and conditions of service. The claimant was paid one-month salary in lieu of notice and he unreservedly acknowledged receipt. The respondent prayed that the suit be dismissed with costs as lacking in merits.
4. The claimant testified to support his case. The respondent's witness (RW) was Pauline M. Gathanga, the 1<sup>st</sup> respondent's Program Manager. Final submissions were filed for the parties.
5. There is no dispute that the parties were in a contract of service and the contract was terminated by the letter dated 01.03.2019.
6. Was the termination unfair? By his own testimony the claimant confirmed that on 28.01.2019 some incident took place because the 1<sup>st</sup> respondent's office was broken into and some items stolen. Further, he confirmed that thereafter a meeting was convened and everyone was investigated and he gave his version of the account. After the meeting he was given a notice of termination of the contract of employment dated 01.03.2019. he confirmed that earlier in his service on 29.01.2018 he was arrested surrounding some banking event but later he was released and continued working for the 1<sup>st</sup> respondent. RW testified that as at termination of the claimant the issue of theft was under investigation.
7. The Court has considered the material evidence that a meeting was held following the theft and the 1<sup>st</sup> respondent concluded it had lost confidence in the claimant and terminated per termination clause. The Court considers that as urged for the respondents, the 1<sup>st</sup> respondent was entitled to invoke the contractual termination clause which is as well recognised in section 35 of the *Employment Act*. In the circumstances it cannot be said that the reason for termination was unfair or the procedure was unfair. The Court upholds the respondent's case and submission in that regard and in view of sections 43 and 45 of the Act. It was submitted for the claimant that it was unfair for want of a genuine reason per section 43 and due procedure per section 41 of the *Employment Act*, 2007. The Court has found that the invoked contractual clause was available in the circumstances of the case and loss of trust and confidence appears to have been a genuine reason, the claimant and RW having confirmed the theft in issue and the investigative meeting indeed took place. The reason for termination was diminished trust and confidence and the procedure was invoking the contractual termination clause. It is not for the Court to get into the respondent's mind to graduate impact of the incidence and trust or confidence levels. What is important is that the theft took place and in the circumstances, it is not far fetched that the trust and confidence dwindled or likely diminished. The Court will not interfere with the respondents' discretion in that regard to terminate the contract of service.
8. The Court returns that as submitted for the respondents, the claimant has not shown statutory or contractual or other basis for claiming Kshs.6,734, 640.00 salary for 5 years. As for gratuity, as urged for the respondent, it is not due per section 35 of the Act because the claimant was a member of the National Social Security Fund. For the claim of leave, the claimant confirmed that he had taken all his leave days. The claimant would not be entitled to receive statutory deduction dues and any failures in that regard would fall for resolution under the relevant statutes.



In conclusion the suit is hereby dismissed with costs.

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

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

