



**Kamula v Meditec East Africa Fairlife Ltd (Cause E038 of 2022)
[2023] KEELRC 2709 (KLR) (1 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2709 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E038 OF 2022
S RADIDO, J
NOVEMBER 1, 2023**

BETWEEN

TABITHA KAMULA CLAIMANT

AND

MEDITEC EAST AFRICA FAIRLIFE LTD RESPONDENT

JUDGMENT

1. The Cause was heard on 27 February 2023, 15 June 2023 and 19 September 2023. Tabitha Kamula (the Claimant), a former Managing Director and Vice-President with Meditec East Africa Fairlife Ltd (the Respondent) testified.
2. The Claimant filed her submissions on 4 October 2023, and the Respondent on 27 October 2023.
3. The Court has considered the pleadings, evidence, and submissions.

Did the Claimant resign?

4. The Respondent asserted that the Claimant resigned by her conduct of requesting for a termination of employment letter and abruptly leaving a virtual meeting meant to discuss her performance with the management.
5. The Respondent further asserted that the Claimant's conduct compelled it to remove her from the office WhatsApp platform and instruct her to return company properties in her possession.
6. A resignation in employment law is a unilateral termination of the employment contract by the employee. There should be clear and unambiguous intention to leave the contract.
7. It does not need to be in writing to be valid.



8. It is not in dispute that the Claimant left the virtual meeting with her supervisors abruptly and without notice. What is disputed include the proceedings during the meeting. The Respondent contended that the Claimant requested for a letter terminating her employment. The Claimant denies that version.
9. The Claimant sent an email to the Respondent after the meeting asking for a termination of employment letter and the Respondent responded on 1 March 2022. The response did not make any reference to an indication from the Claimant that she had or intended to resign but rather gave notice of termination of contract.
10. Looking at the circumstances objectively, the Court finds that there was no clear or unambiguous intention evinced by the Claimant to resign.

Unfair termination of employment

11. Sometime in February 2022, the Respondent's Vice-President visited Kisumu, the Claimant's work base on a performance fact-finding mission.
12. While in Kisumu, the Vice-President queried the Claimant on her performance. The Claimant was then invited to a virtual performance review meeting on 28 February 2022.
13. The meeting did not go very well. It appears that there were verbal exchanges between the Claimant and her superiors and the Claimant left the meeting before it had been formally closed. The Respondent felt the Claimant had insubordinated the Managing Director.
14. Later the same day, the Claimant sent an email to the Respondent asking for a formal disengagement and indicating that she had been informed orally during the meeting that her contract had been terminated with immediate effect.
15. The Respondent replied to the email on 1 March 2022, advising the Claimant that she would receive the termination letter in the course of the day. She was instructed to return the Respondent's properties in her possession through G4S.
16. The Respondent's Managing Director thereafter sent a notice of termination of employment letter to the Claimant.
17. In Court, the Respondent alleged that the Claimant had resigned from employment by demanding for a letter terminating her contract.
18. The Claimant on the other hand asserted that the Respondent terminated her contract unfairly.
19. The Claimant did not dispute leaving the virtual meeting abruptly on 28 February 2022.
20. After leaving the meeting, the Claimant sent an email to the Respondent. In the email, the Claimant stated that the Managing Director had verbally informed her of the termination of her employment. The Claimant asked for formal notification of the termination.
21. The Respondent's Managing Director responded the next day, informing the Claimant that the termination notice would be issued in the course of the day.
22. The reply from the Managing Director did not advert to a resignation or threat of resignation from the Claimant.
23. In the Court's view, any misconduct by the Claimant during the virtual meeting on 28 February 2022 did not amount to a resignation or repudiation of the contract.



24. If there was a resignation or repudiation of the contract, nothing stopped the Respondent from informing the Claimant that it was accepting the resignation or repudiation of the contract.
25. The Respondent terminated the Claimant's employment on allegations of misconduct.
26. By virtue of section 41 of the *Employment Act*, 2007, the Respondent was expected to notify the Claimant of its intention to terminate the contract and afford her an opportunity to make representations, possibly in the company of a colleague of her choice.
27. The meeting of 28 February 2022 was not a disciplinary hearing. It was to review the Claimant's performance.
28. The Respondent did not allow the Claimant the opportunity to be heard and or respond to allegations of insubordination before issuing the termination notice dated 1 March 2022, and the Court concludes that its decision to bring the contract to an end was devoid of procedural fairness.

Compensation

29. The Claimant served the Respondent for about 3 years and in consideration of the length of service, the Court is of the view that the equivalent of 3 months' gross wages as compensation would be appropriate (gross pay was Kshs 120,000/-).

Pay in lieu of notice

30. The Respondent gave the Claimant one-month notice of termination of contract on 1 March 2022. The Claimant was then paid her March 2022 salary. She is not entitled to pay in lieu of notice.

Breach of contract

Lost income

31. The Claimant urged the Court to award her Kshs 2,280,000/- being the salary she would have earned had she served out the full term of the contract. She cited the decisions in *Minnie Mbue v Jamii Bora Bank Ltd* (2019) eKLR and *Jackson Kanigia Myagah v University of Nairobi* (2022) eKLR.
32. The Claimant did not place before the Court any contractual foundation to this head of the claim.
33. As far the law is concerned, this Court adopts and endorses the holding by the Supreme Court of Uganda in *Bank of Uganda v Tinkamanyire* (2008) UGSC that:

the contention that an employee whose contract of employment 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. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

Service pay

34. The Claimant prayed to be awarded service pay of Kshs 165,000/- and she drew the attention of the Court to *Elijah Kipkoros Tonui v Ngara Opticians t/a Bright Eyes Limited* (2014) eKLR and *Pravin Bowry v Ethics & Anti-Corruption Commission* (2013) eKLR.
35. The Claimant was a contributor to the National Social Security Fund and the Respondent dutifully paid the monthly subscriptions. It is not for the Court to award service pay as an exception to section



35(5) and (6) of the [Employment Act](#), 2007 on the basis that the scheme under the Act is inferior without a direct challenge to fairness of the restrictive provision.

36. The Bowry case concerned gratuity. Gratuity and service pay are legally and contractually not the same thing.

Certificate of Service

37. A certificate of service is a statutory entitlement and if the Respondent did not issue one to the Claimant, it should issue one within 30 days.

Conclusion and Orders

38. From the foregoing, the Court finds and declares that the Respondent unfairly terminated the employment of the Claimant.

39. The Claimant is awarded:

(i) Compensation Kshs 360,000/-

40. The Claimant to have costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 1ST DAY OF NOVEMBER 2023.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Abidha & Co. Advocates

For Respondent MMW Advocates LLP

Court Assistant Chrispo Aura

