



**Mbinga v Doshi & Company Limited & another (Cause E419 of 2021)  
[2023] KEELRC 3231 (KLR) (8 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3231 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E419 OF 2021  
J RIKA, J  
DECEMBER 8, 2023**

**BETWEEN**

**ODILIAH WACHIA MBINGA ..... CLAIMANT**

**AND**

**DOSHI & COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**METSEC CABLES LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant filed her Statement of Claim on 25<sup>th</sup> May 2021.
2. She describes the Respondents as sister companies, running various businesses in Kenya.
3. She was employed by the 1<sup>st</sup> Respondent on 30<sup>th</sup> April 1996 as a Computer Operator-cum-Secretary.
4. She was promoted to the position of Cashier, in charge of Doshi Electricals in Mombasa. In 2009, she was transferred to Nairobi as the In-Charge, Doshi Electrical Stores and Inventory Controller.
5. She was later transferred to the 2<sup>nd</sup> Respondent, in the position of Production Supervisor, small cables department.
6. In 2013, the 2<sup>nd</sup> Respondent started to operate Oracle Project. The Claimant underwent training in the programme for 2 ½ years.
7. In 2015 she was promoted as the In-Charge, Oracle Process Manufacturing Department. In 2016, she was promoted as the In- Charge, Advance Supply Chain Planning. She was later promoted to the position of Production In- Charge in 2017.
8. She held this position as of March 2021, when she states that the Respondents unfairly and unlawfully terminated her contract.



9. She was arrested by Police from Nairobi Police Headquarters, on 12<sup>th</sup> October 2020. She was alleged to have been involved in the offence of theft by servant. The amount involved was Kshs. 58 million. She was locked in for 3 days. The allegations turned out to be false. The Claimant states that she was set free without any charges.
10. She received a letter to show cause from the 2<sup>nd</sup> Respondent dated 24<sup>th</sup> February 2021. She was alleged to have solicited for bribes from the 2<sup>nd</sup> Respondent's suppliers. She wrote back asking for details from the 2<sup>nd</sup> Respondent. Instead of being supplied with details, she received a request from the 2<sup>nd</sup> Respondent, to avail herself for disciplinary hearing, on 5<sup>th</sup> March 2021. She attended the meeting, which turned out to be a total sham, devoid of any serious allegations against the Claimant.
11. She states that she was denied a fair hearing, she was falsely imprisoned. She was defamed. She was traduced. She is a mother and a wife, God-fearing, and worked for the Respondents for 25 years. Her record was clean.
12. She prays for Judgment against the Respondents for: -
  - a. General damages for false imprisonment.
  - b. General damages for defamation.
  - c. General damages for wrongful termination of employment.
  - d. Withheld half salary for November, December 2020, January, February and March 2021 at Kshs. 387,657.
  - e. Compensation for the period worked of 25 years at half month salary for each year, at Kshs. 5.4 million.
  - f. Certificate of Service to issue.
  - g. Kshs. 200,000 in legal fees incurred, when the Claimant was arrested.
  - h. Kshs. 28,000 being valuation charges for title Mwerua/ Kagio/ 9728.
  - i. Costs.
  - j. Any other suitable orders.
13. The Respondents filed their Statement of Response dated 27<sup>th</sup> June 2021. It is conceded that the Claimant was an Employee of the Respondents, as outlined in her Statement of Claim. Her promotions and transfers, and the relationship between the Respondents, are not contested.
14. In 2020, the 2<sup>nd</sup> Respondent received information that its electrical cables were disappearing from its stores. It carried out investigations. It was discovered that cables worth approximately Kshs. 69 million, had been stolen from the 2<sup>nd</sup> Respondent over a period of time. Theft was concentrated at the Production Department, where the Claimant worked. It was discovered that some Employees, including the Claimant were taking bribes from suppliers in order to give out orders.
15. The 2<sup>nd</sup> Respondent called in Police Officers to investigate. Police investigated and took independent decisions and actions. The Respondents commenced disciplinary proceedings against various Employees, including the Claimant.
16. The Claimant was suspended through a letter dated 13<sup>th</sup> November 2020. She was issued a letter to show cause, dated 24<sup>th</sup> February 2021. She replied on 25<sup>th</sup> February 2021 asking for more details. She



- did not specifically respond to any allegation made against her. She was invited for disciplinary hearing, through a letter dated 2<sup>nd</sup> March 2021. Hearing was scheduled for 5<sup>th</sup> March 2021. She was advised about her right to be accompanied to the disciplinary hearing. She opted to attend in the company of her husband, Tony Githinji. The 2<sup>nd</sup> Respondent heard all evidence, and found the Claimant guilty of soliciting money from suppliers.
17. A decision was made to terminate her contract, through the letter dated 24<sup>th</sup> March 2021. The 2<sup>nd</sup> Respondent called the Claimant to another meeting on 24<sup>th</sup> March 2021, where the decision to terminate her contract was formally communicated. She was advised to clear with the Respondents in order to be paid her dues. She did not do so, but instead chose to file this Claim against the Respondents.
  18. The Respondents pray for dismissal of the Claim with costs, emphasizing that arrest by the Police of the Claimant, was entirely carried out by the Police; the Respondents did not utter any words defamatory of the Claimant; and the Claim is made in bad faith.
  19. The Claimant gave evidence and rested her case, on 2<sup>nd</sup> February 2023. The Respondent's Group Human Resource Manager, Alice Mutitu, gave evidence for the Respondents, and rested the Respondents' case, on 12<sup>th</sup> July 2023. The Claim was last mentioned in Court on 21<sup>st</sup> September 2023, when Parties confirmed the filing and exchange of their Submissions.
  20. The Claimant adopted in her evidence-in-chief, her Witness Statement and Documents, exhibited as 1-18, [except exhibits 9 and 10 which were expunged from the record upon the Claimant's application at the hearing]. She restated her employment history with the Respondents, and her terms and conditions of employment, as outlined in the Statement of Claim.
  21. 7 other Employees were arrested alongside the Claimant. The Claimant did random checks on the cables, and was the whistleblower, in suspected theft of cables. She was nonetheless arrested. She was in custody for 3 days. She deposited cash bail of Kshs. 150,000 with the Police. 3 weeks after the arrest, she was advised to collect her cash bail, without any charges, being preferred against her. On 11<sup>th</sup> December 2020, she wrote to the 2<sup>nd</sup> Respondent, enquiring about her employment status. She received a backdated letter of suspension on 13<sup>th</sup> November 2020. She was told investigations were ongoing. She received a letter to show cause dated 14<sup>th</sup> February 2021. It was now alleged that the Claimant was soliciting bribes from suppliers. She asked for details of solicitation and received none. She was invited for disciplinary hearing which she attended on 5<sup>th</sup> March 2021, accompanied by her husband.
  22. The minutes of the disciplinary hearing did not mention the names of any suppliers, or money involved. She was called for another meeting on 24<sup>th</sup> March 2021. She again attended in the company of her husband and was issued the letter of termination. She worked for 25 years. She had a clean record. Her name was damaged. She was characterized as a thief. Termination was based on the allegation of solicitation, which had not been mentioned at the time of the Claimant's arrest. Statements exhibited by the Respondents, allegedly taken from their suppliers on solicitation, were not presented to the Claimant. She first saw them in Court. They were not exhibited at the disciplinary hearing.
  23. Cross-examined, the Claimant told the Court she was employed in 1996. She was promoted variously. She was not told about investigations. She was arrested by the Police. They acted independently. Some of her workmates were charged. Police decided who to charge. The Claimant did not challenge the contents of the suspension letter. She did not allege that it was backdated. She received 50% of her salary while on suspension. Suspension letter did not state that the Claimant was guilty. She was issued letter to show cause after suspension. She responded. It related to solicitation of bribes. She was told



- she could go to the disciplinary hearing, accompanied by any colleague who was not her supervisor. She was not given statements recorded by suppliers. Police investigated theft of cables, not solicitation of bribes. She told the Respondents that she had never solicited bribes from suppliers. She was issued the letter of termination. She was offered arrears of salary, accrued annual leave and 1-month salary in lieu of notice. She was required to sign discharge. She did not and was not paid her terminal dues. The Respondents did not ask the Claimant to carry out valuation of her piece of land. She was falsely imprisoned. The Respondents are responsible.
24. Redirected, she told the Court that the letter to show cause, referred to ongoing investigations. Police acted on the report made by the Respondents.
  25. Alice Mutitu adopted her Witness Statements, and Documents filed by the Respondents, exhibited 1-16, in her evidence-in-chief.
  26. She confirmed that the Claimant was employed by the Respondents. Police investigated theft of Respondents' cables, and recommended that the Respondents cease their internal investigations, and only provide the Police with the relevant information. As investigations were going on, the Respondents received complaints from their suppliers, that the Claimant was soliciting bribes from them. The Claimant was suspended and issued letter to show cause, on these complaints. She was taken through a disciplinary hearing. She was later called and given the verdict, finding her guilty and terminating her contract. She was offered terminal dues, subject to clearance. The Respondents did not defame her, and could not supply her with documents that were subject of police investigations, on disciplinary hearing. The Respondents did not prosecute her. Her statutory deductions were paid. Her pension was deposited with the scheme administrator. Pension was paid out to her. She was paid 50% of her salary during suspension. The Respondents did not ask her to have her land valuated.
  27. Cross-examined, Mutitu told the Court she is the Group Human Resource Manager, with a vast experience in the area, spanning 25 years. The Claimant was not issued warning letters. She did not have disciplinary issues. She was dismissed on account of soliciting bribes from Respondents' suppliers. Mutitu was not aware that the Claimant was a whistleblower in the matter concerning theft of cables. Mutitu was not aware if another Employee was dismissed for theft of cables. The 2<sup>nd</sup> Respondent lost about Kshs. 69 million. Several Employees were charged. Mutitu did not know if the Claimant was one of them.
  28. The letter of suspension referred to ongoing investigations. The Claimant was aware about solicitation. She was issued a letter to show cause. She wrote back asking for details. She was supplied information. She was called to disciplinary hearing. Mutitu was not aware that the Claimant was secretly recording disciplinary proceedings [exhibit on this was expunged from the record]. The statements taken from 3 of the Respondents' suppliers – Dinesh, Shawn and Francisca – were not availed to the Claimant. Dinesh stated that he had been sending money to the Claimant. No amount was indicated. No M-pesa statement showing bribery transactions was exhibited. Termination was fair.
  29. Redirected, Mutitu told the Court that she was not aware of any Employee, dismissed for loss of cables. The Respondents carried out their own investigations. The Claimant was informed about the allegations against her. She responded. She did not raise objection about the suppliers' statements. She did not object to the letter of suspension, on the ground that she was not aware about the ongoing investigations, mentioned in the letter. She breached the Respondents' code of ethics. Police came in, with regard to the stolen items.
  30. The issues are whether the Claimant's contract was terminated for valid reason[s]; whether termination was procedurally fair; and whether she merits the prayers sought.



### The Court Finds:

31. The employment history of the Claimant by the Respondents, and the terms and conditions of that employment, are not contested facts. It is not contested that the Claimant's contract was terminated by the Respondents. The letter of termination, dated 24<sup>th</sup> March 2021, states that the Claimant was found guilty, of "taking money from suppliers, un-procedurally." This is the reason over which the Claimant's contract was terminated.
32. There are reliefs sought by the Claimant, which from the outset, have no foundation. Prayer [h] on valuation charges, relating to her plot N0. Mwerua/ Kagio/ 9728, has no relationship with the Respondents. The Respondents did not advise the Claimant to have her property valuated. Valuation is not based on any transaction, to which any of the Respondent was a party. This is a prayer that from the outset, appears to the Court unfounded, and is therefore declined.
33. The prayers for general damages for false imprisonment, and defamation [a] and [b] have not been established. The Claimant did not adduce evidence, establishing that the Respondents made a false statement purporting to be a fact against the Claimant. The Respondents merely complained about theft of their cables by Employees. The Claimant in her Pleadings and Evidence confirms that such theft occurred, and that she was the whistleblower. The Respondents did not state to the Police, that the Claimant stole the cables. She was one among other Employees, who were investigated by the Police. The Respondents did not make any false statement against the Claimant, as would be deemed to be defamatory.
34. Employers are allowed by Section 43 of the [Employment Act](#), to have reasonable suspicion against their Employees. They are allowed to enquire into these suspicions, and show validity of reason. This provision would not be workable, if every time an Employer flags certain issues for investigations against an Employee, the Employer is held accountable for damages in defamation and false imprisonment or related torts.
35. The Claimant has not established that there was publication or communication of any statement to a 3<sup>rd</sup> party, amounting to defamation. It was not established by the Claimant that the Respondents acted negligently, without reasonable cause, and that harm was caused to the reputation of the Claimant. There is just no evidence supplied by the Claimant, to bring her Claim within the tort of defamation. The Respondents merely made a complaint to the Police about theft of cables by its Employees. Theft is acknowledged by the Claimant to have taken place. It took place from within the department where the Claimant served. Police investigated and arrested those who were deemed to be suspects. Those who were exculpated, including the Claimant, were let go by the Police.
36. Prayer [g] seeks recovery of legal fees the Claimant allegedly incurred in defending criminal allegations against her. She did not specifically prove that she incurred Kshs. 200,000 in legal fees, when she was arrested and placed in police custody for 3 days. There was no criminal trial, where she defended herself as an accused person. She has not exhibited any receipt issued by her Advocate, or specified the nature of legal work performed by her Advocate, to warrant the legal fees, pursuant to the Advocates Remuneration Order. The prayer is declined.
37. Prayer [c] seeks "compensation for the period of 25 years worked at the rate of 1 month's salary per year worked, of Kshs. 5,400,000. " What compensation is this? it is not provided for in her contract, and the Claimant has not directed the mind of the Court to a provision in the [Employment Act](#), granting compensation for years worked. If the Claimant meant to plead service pay, she was not entitled to service pay, under Section 35[6] of the [Employment Act](#), having been actively subscribed to the N.S.S.F, as shown in her pay slips on record. The prayer is declined.



38. The remaining prayers are [c] compensation for unfair termination; [d] salary arrears; [i] costs; and [j] on any other suitable order.
39. Validity of reason[s]. The Respondents initially alleged that the Claimant was involved in theft of their cables. When this allegation was investigated and could not stand against the Claimant, the Respondents came up with allegations about the Claimant soliciting bribes from suppliers. It was only when the Claimant asked about her employment status, on being released by the Police on allegations of theft of cables, that the Respondents issued her a letter to show cause, alleging she had been soliciting for bribes from suppliers. She asked for details of solicitation in writing. None was supplied.
40. Mutitu told the Court that the letter of suspension referred to ongoing investigations. The statements alleged to have been obtained from 3 suppliers, implicating the Claimant, were not shared with the Claimant, even when she called for information on solicitation. The alleged suppliers were not called as Witnesses at the disciplinary hearing. No amounts of bribes sought by the Claimant, and paid by suppliers were stated. No records of payment from M-pesa or other mobile money platforms, were exhibited. The Claimant first saw the statements of suppliers Dinesh, Shawn and Francesca – when they were filed in Court. None of the alleged supplier was called as a Witness before this Court. The suppliers remained faceless and shadowy characters, on the margins of proceedings before the Court.
41. In the end the Court is persuaded that the Respondents conjured solicitation of bribes, when it was clear to them that the Claimant, had no role in theft of cables. It was not a valid reason. It was not a reason established through evidence. It was not even made clear to the Court, why solicitation of bribes, which is itself a grave criminal offence, was not reported to the Police who were already at the workplace investigating loss of cables worth Kshs. 69 million. Solicitation of bribes was a red herring. There was no valid reason[s] to justify termination.
42. Procedural fairness. The basic standards of fairness, contemplated under Sections 41 and 45 of the *Employment Act* were largely, observed. The Respondents suspended the Claimant on half-pay to investigate the allegations against the Claimant. The Claimant was issued letter to show cause. She asked for details of solicitation, which unfortunately, were not supplied. She was called for disciplinary hearing. She was advised she could go accompanied by a workmate of her choice. She opted to attend disciplinary hearing, in the company of her husband, which was irregular, because her husband was not a workmate or a trade union representative of her choice. The Respondents nonetheless were magnanimous and allowed the Claimant's husband to participate in the disciplinary proceedings. Hearing took place on 5<sup>th</sup> March 2021.
43. The Respondent's Group Human Resource Manager called the Claimant for another meeting on 25<sup>th</sup> March 2021, which she attended again in the company of her dutiful husband. She was explained to, the reason why, the Respondents decided to terminate her contract, in accordance with the letter of termination dated 24<sup>th</sup> March 2021.
44. Procedure was largely in conformity with Sections 41 and 45 of the *Employment Act*. It was fair.
45. Remedies. Pay slips on record show that the Claimant earned a monthly salary of Kshs. 216,000. She was paid half-salary for the months of November and December 2020, and for the months of January, February and March 2021. The Court has concluded that there was no valid reason, to justify termination. She remained an Employee of the Respondents, until termination. She is entitled to arrears of her salary for the period of suspension, at Kshs. 216,000 divide by 2 x 5 months = Kshs. 540,000.



46. She worked for a very long period of 25 years. Her record, prior to the unexpected accusations leading to termination, was clean. She did not cause, or contribute to, the circumstances leading to termination of her employment. She expected to continue working. She was offered 1-month salary in lieu of notice; accrued annual leave days; and salary arrears. This was not paid because the Claimant did not sign discharge as demanded by the Respondents. She has not pleaded for notice pay, or accrued annual leave. She did not inform the Court if she mitigated loss of employment by looking for alternative or comparable work. She is granted equivalent of 10 ½ months' salary in compensation for unfair termination at Kshs. 2, 268,000.
47. Costs to the Claimant.
48. Interest granted at court rate from the date of Judgment, till payment is made in full.
49. Certificate of Service to issue.

**In Sum It Is Ordered:**

- a. It is declared that termination was substantively unfair.
- b. The Respondent shall pay to the Claimant: salary arrears at Kshs. 540,000; and compensation for unfair termination at Kshs. 2,268,000 – total Kshs. 2,808,000.
- c. Costs to the Claimant.
- d. Interest granted at court rate from the date of Judgment till payment in full.
- e. Certificate of Service to issue.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 8<sup>TH</sup> DAY OF DECEMBER 2023.**

**JAMES RIKA**

**JUDGE**

