



**Maingi v Ondex Chemicals Ltd (Cause 169 of 2020)  
[2023] KEELRC 3254 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3254 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 169 OF 2020  
B ONGAYA, J  
DECEMBER 7, 2023**

**BETWEEN**

**NAFTALY KAIMENYI MAINGI ..... CLAIMANT**

**AND**

**ONDEX CHEMICALS LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 14.04.2020 through Muthuri & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a. An injunction order restraining the respondent from repossessing motor vehicle registration no. KCK 917 M.
  - b. A declaration that the purported termination of the employment was unfair, wrongful and unlawful.
  - c. Terminal dues
  - d. Damages for unlawful termination.
2. The respondent's statement of response and counter claim were filed on 14.05.2020 through Kipsang & Mutai Advocates. The respondent prayed that:
  - a. The claimant's memorandum of claim against it be dismissed with costs.
  - b. Judgment be entered for the respondent in the sum of Kshs.1,600,321/= together with interest thereon at the rate of 0.75% from 29.03.2020 until payment in full is made.
  - c. Costs of the suit
  - d. Interest on c above at court rates



- e. Any other order that this court may deem fit to grant.
3. The claimant's case was that he was employed by the respondent in January 2017 as a sales representative.
  4. The claimant earned a salary of Kshs.150,000 per month and in the same year the respondent financed him to purchase motor-vehicle registration no. KCK 917 M.
  5. The claimant states that he was to use the car for the company work and then claim mileage at the end of the month. The respondent was deducting Kshs.50,000 towards the car loan.
  6. On 18.03.2020 the respondent had a meeting in which the Claimant was told to defend himself for underperforming.
  7. Ten days later on 28.03.2020 the claimant received a letter purporting to dismiss him, that on the same day, he received another letter threatening to repossess the motor vehicle.
  8. On the part of the respondent, it is stated that the claimant's employment with the respondent was subject to annual performance reviews under paragraph 7 of his employment contract and expected levels of performance in the company under paragraph 8 of the said contract.
  9. The respondent admits having advanced a loan to the claimant to buy motor vehicle registration number KCK 917M and that to safeguard its interests, the vehicle was registered in the name of the respondent on the understanding that it would be transferred to the claimant's name once the loan was paid in full.
  10. The claimant failed to discharge his duties with required diligence and as a result, he was put under performance improvement plan. Despite being put under performance improvement plan the claimant's work output did not improve.
  11. The claimant had numerous disciplinary issues which forced the management to issue warning and cautionary letters to him on 26.06.2019, 16.12.2019, 20.12.2019 and 28.02.2020.
  12. There being no improvement in his work output and conduct the claimant was served with the final warning letter dated 28.02.2020.
  13. The claimant failed to heed the final warning letter leaving the respondent with no option but to issue him with the notices to show cause letters on 07.03.2020 and 10.03.2020.
  14. The explanation given by the claimant for his failure to perform and for his disciplinary lapses weren't satisfactory. The management informed him as such and asked him to attend a disciplinary hearing on 17.03.2020. The disciplinary hearing did not take place on the said date, but was adjourned to 18.03.2020.
  15. The disciplinary hearing took place on 18.03.2020, although the claimant was informed of his right to have a member of staff present, he opted not to have one present. He made his representations, which the committee considered and made the decision to terminate the claimant for work negligence, poor work performance, not following the company rules and regulations and poor handling of company equipment.
  16. In accordance with the terms of his contract his loan was recalled. The claimant owes the respondent Kshs.1,600,321 being unpaid car loan.
  17. The respondent maintains that throughout his employment, the respondent has treated the claimant fairly and in accordance with the law and principles of natural justice.



18. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
19. To answer the 1<sup>st</sup> issue the Court returns that as pleaded for the parties they were in a contract of service.
20. To answer the 2<sup>nd</sup> issue, the contract of service was terminated by the respondent's letter dated 28.03.2020. The termination included poor handling of the customer Mambo Italia and Masala Twist; taking company equipment for installation and not doing the job as required, Sarova Taita and Salt lick; consistent failure to achieve monthly sales target even after being put on a 3-months' performance improvement plan; breach of rules to share GPS co-ordinates when he arrived and left customer premises, not sending email communication after every customer visit as required, and, not conducting customer training on monthly basis as required; and, poor handling of company equipment such as free on loan documents for company equipment issued to the customer not yet submitted to the office, delivery note not submitted to office after submission of equipment to the customer Om Nom, Zealandia, not returning equipment to the office promptly if the customer does not purchase, and, requesting an equipment for a customer who does not need it.
21. The termination was effective 28.03.2020 for wilfully neglecting to perform assigned tasks as required. The termination letter stated he was entitled to days worked, accrued leave days, mileage claim, and letter of service. He would be paid upon clearance and submission of mileage claims. He had a right of appeal within 7-days.
22. The 3<sup>rd</sup> issue is whether the termination of the contract was unfair. The claimant testified that the disciplinary proceedings were conducted in March 2020. He confirmed during service he received warnings and disciplinary letters and there were 11 of such letters between April 2018 and February 2020. The testimony was that the letters were about company equipment and general poor performance. He confirmed he underwent performance improvement plan in August 2019. By that evidence there is no reason to doubt that due procedure was followed per section 41 of the [Employment Act](#) and the reasons for termination were valid and fair per sections 43 and 45 of the Act. The prayer that the termination was unfair or unlawful and for compensation in that regard will collapse as unjustified.
23. The 3<sup>rd</sup> issue is whether the claimant has established justification for the injunction to restrain the respondent from repossessing motor vehicle registration no. KCK 917 M in issue. The loan agreement to purchase the car stated, "If you leave Odex due to resignation, dismissal /termination you shall be required to repay immediately any outstanding loan sum before being cleared by the company. It is also agreed by you that if you do not have the cash to repay the entire outstanding loan balance, the company shall repossess the car and liquidate to pay off any outstanding balance." The letter dated 28.03.2020 recalling the car loan of Kshs.1,600, 321 stated that the claimant pays that sum of money immediately or the car be repossessed. The claimant testified that he was given a loan of Kshs.2.5 million by the respondent to purchase the car and the car registered in the respondent's name to be transferred to the claimant after clearing repayment of the car loan. Further, as he left in March 2020 there was no loan statement given to him and so he did not the amount owed as despite requesting for the statement it was not given to him. The claimant does not dispute the loan contractual clause. While alleging he had repaid the car loan as he left, he provided no evidence to show he had indeed repaid. The court finds that parties are bound by their car loan contract and the respondent was entitled to repossess the car on 28.03.2020 upon separation because the claimant had not fully paid for the loan. The loan acceptance letter was dated 31.01.2020 it was agreed that upon separation the car loan is repaid promptly or the car be repossessed. That is the applicable clause.
24. To answer the 4<sup>th</sup> issue, the Court has already returned that the respondent was entitled to repossess the car per the car loan contract. It was never agreed that the claimant repays the outstanding loan after the



separation. The claim for Kshs.1, 600, 321.00 plus interest at 0.75 from 29.03.2020 until full payment as made is found not based on that contract. The counterclaim will therefore fail as unjustified.

25. In conclusion judgment is entered for the parties with orders:

1. The declaration the respondent is entitled to repossess the motor vehicle registration No. KCK 917 M in issue per the car loan contract between the parties.
2. The claimant's suit is dismissed.
3. The counterclaim is dismissed.
4. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7<sup>TH</sup> DECEMBER, 2023.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

