



**Rota v Envirofit Kenya Limited (Cause 57 of 2019)  
[2023] KEELRC 3326 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3326 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 57 OF 2019  
MN NDUMA, J  
DECEMBER 7, 2023**

**BETWEEN**

**EZEKIEL OMONDI ROTA ..... CLAIMANT**

**AND**

**ENVIROFIT KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed on 31<sup>st</sup> January, 2019 by the claimant seeking the following reliefs:-
  - a. A declaration that the summary dismissal of the claimant was unlawful, unprocedural and unjustified.
  - b. Damages for wrongful termination the equivalent of 12 month's salary at Kshs 130,000 per month totaling Kshs 1,560,000.
  - c. One month's salary in lieu of notice of Kshs 130,000.
  - d. Salary for the month of November and December, at Kshs 260,000.
  - e. Allowances for the month of November at 15,000.
  - f. Accrued 17 leave days.
  - g. General damages for causing the Claimant embarrassment and emotional distress.
  - h. Certificate of Service
  - i. Interest on (b) to (g) at Court rates from the date of this suit until payment in full.
  - j. Costs of the suit
  - k. Any other remedy that this Honourable Court may deem fit to grant.



2. The respondent filed a Memorandum of defence and counter claim on 31<sup>st</sup> May, 2019. Mr. Chemtai ceased acting for the respondent on 4/7/2022. Hearing date was set for 21/11/2022. The respondent did not attend the hearing on the said date. Matter was again set for hearing on 6/7/2023. The respondent did not appear for the hearing and the matter proceeded ex parte as undefended suit. The claimant adopted witness statement dated 31/1/2019 as his evidence in Chief and produced bundle of documents filed on the even date and were marked exhibits '1' to '5'.
3. The claimant testified that he was employed by the respondent on 29/8/2017 as a Regional Sales Manager at a monthly salary of Kshs 61,000 and allowances of Kshs 19,000.
4. On 16/12/2016, the claimant was confirmed to his position and the gross monthly salary was raised to Kshs 130,000.
5. On 7/4/2017, the claimant received a warning letter from the respondent on allegation of lost revenue due to loss of stock.
6. On 20/12/2017, the respondent summarily dismissed the claimant from employment for alleged negligence of duty.
7. The claimant testified that no due process was followed before he was summarily dismissed. The claimant denied having caused any loss of stoves as alleged or at all and blamed a supervisor who had resigned in September, and was his responsibility to ensure stocks were in place. The claimant denied the Counter-claim in its totality.
8. Claimant stated that he performed his duties diligently and was not negligent at all. That a purported disciplinary hearing conducted on 13/12/2017 did not offer the claimant a fair hearing and no evidence was adduced to find the claimant responsible for loss of stoves whose responsibility to maintain and reconcile was the Sales Supervisor who had been let to go without accounting properly for the said stocks.
9. The claimant stated that the respondent violated Section 41, of the *Employment Act* and it had the responsibility to prove that it had valid reason to summarily dismiss the claimant from employment in terms of Sections 43, 45 and 47 of the Act, but failed to appear before Court to discharge that onus. That the Court to find that the dismissal of the claimant was for no valid reason and the respondent did not follow a fair procedure in violation of Section 41 and 45 of the Act.

### **Determination**

10. The respondent failed to discharge the onus placed on it under Section 41, 43, 45 and 47 of the *Employment Act*, to prove on a balance of probabilities that it had a valid reason to summarily dismiss the claimant from employment. The Court finds therefore that the summary dismissal of the claimant was not for a valid reason and the respondent did not follow a fair procedure before summarily dismissing the claimant.
11. The Court finds that the respondent failed to give the claimant one month's notice of termination in violation of Section 36 of the Act. The Court orders that the claimant is entitled and is granted one month's salary in lieu of notice.
12. The Court also finds that the respondent did not pay the claimant salary in the months of November and December and the Court grants the claimant the salary in arrears accordingly.
13. The Court finds also that the respondent did not grant the claimant a Certificate of Service and directs the respondent to provide the said Certificate to the Claimant.



14. The Court further finds that the claimant was not paid Kshs 15,000 being allowances for the month of November, 2017 and grants the claimant accordingly. Furthermore, the Court finds that the claimant had 17 days outstanding leave and award the claimant Kshs 73,100 in lieu of leave days not taken.
15. The claimant had served the respondent from 20<sup>th</sup> December, 2017 a period of one year and four (4) months. The respondent having not defended the suit, the Court finds that the claimant did not contribute to the summary dismissal. That he is entitled to compensation in terms of Section 49(1)(c) and (4) of the Act, for the unlawful and unfair loss of his job and source of income. He was not paid terminal benefits including salary upon summary dismissal. The claimant suffered loss and damage and was not compensated for the loss. The claimant lost prospects of career growth and continued employment.
16. The Court has considered the cases of *Gilbert Maurice Makori v Equity Bank Limited* [2016] eKLR; *Kenfreight (E.A) Limited v Benson K. Nguti* [2016] eKLR to award the claimant the equivalent of two months' salary in compensation for the unlawful and unfair summary dismissal in the sum of Kshs 260,000.
17. In the final analysis, judgment is entered in favour of the claimant as against the respondent as follows:-
  - (a) Kshs 260,000 in compensation.
  - (b) Kshs 260,000 being arrear salary for November, and December, 2017.
  - (c) Kshs 130,000 in lieu of one month notice.
  - (d) Kshs 73,100 in lieu of leave days not taken.  
Total award: Kshs 723,100
  - (e) Interest at Court rates from date of Judgment till payment in full.
  - (f) Costs of the suit.
  - (g) Certificate of Service to be provided to the claimant within 30 days of this judgment.

**DATED AND DELIVERED AT NAIROBI(VIRTUALLY) THIS 7TH DAY OF DECEMBER, 2023.**

**MATHEWS N. NDUMA**

**JUDGE**

Appearance

M/s Sila for Claimant

Mr. Ekale: Court Assistant

