



**Abdullahi v City Oil (K) Limited (Cause 109 of 2016)  
[2022] KEELRC 1377 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1377 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 109 OF 2016  
HS WASILWA, J  
MAY 31, 2022**

**BETWEEN**

**ADAN MOHAMMED ABDULLAHI ..... CLAIMANT**

**AND**

**CITY OIL (K) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his memorandum of claim on the 14<sup>th</sup> March, 2016 through a memorandum of claim of even date seeking for the following reliefs; -
  - a. A declaration that the termination is unlawful.
  - b. A declaration that the reasons stated in the letter of termination/summary dismissal do not constitute proper ground for termination.
  - c. Reinstatement to his employment as a Depot Manager.
  - d. Damages in the sum of Kshs. 660,000.00 for unfair and unlawful termination of employment, equivalent to twelve months gross salary at Kshs. 55,000/= per month.
  - e. House allowance at the statutory rate of 12% of the gross salary for the period of his employment.
  - f. Compensation for Unpaid leave days for the years 2011, 2012, 2013, 2014 and 2015.
  - g. The Respondent be ordered to issue a certificate of service to the Claimant forthwith as per section 51 of the *Employment Act*.
  - h. Damages for wrongful termination.
  - i. Interest on the monetary orders from the date of the filing of the Claim.



- j. Costs of the claim and any other Order, the Court may deem it fit to award.
  - k. Costs of the suit.
2. The basis of the Orders above is that the Claimant was employed by the Respondent on the 4<sup>th</sup> November, 2011 and terminated abruptly on the 22<sup>nd</sup> February, 2016 without any notice or Disciplinary hearing.
  3. The Respondent entered appearance on the 19<sup>th</sup> June, 2016 and filed a response to claim on the 29<sup>th</sup> July, 2016.
  4. The Respondent then laid basis leading to the Claimant's dismissal and stated that sometimes in the year 2011, the Claimant was appointed a deport manager and he was furnished with the terms and conditions of service, which detailed the duties and responsibilities to be undertaken by the Claimant.
  5. Sometimes in April, 2015, the Claimant used abusive words against one of its strategic partners, prompting the Respondent to issue a warning letter on the 14<sup>th</sup> April, 2015.
  6. It is alleged that the Claimant on various occasions abused his office by extorting money from the Respondent's transporters which acts tainted the Respondent's image, informing its decision to issue the Claimant with another warning letter.
  7. It is stated that the Claimant had also formed a habit of absconding duty without any permission of lawful cause and on 17<sup>th</sup> November, 2015 the Respondent served him with a notice to show cause why disciplinary action should not be taken against him for absconding duty. Subsequently, that a disciplinary meeting was convened for 20<sup>th</sup> February, 2016 which the Claimant was called to hearing.
  8. It was therefore contended that the Claimant was subjected to due process before the termination and the claim herein is without any basis.
  9. The Claimant filed a response to reply to claim on the 30<sup>th</sup> August, 2016 denying all the averments of the defence and in addition stated that he was never served with any show cause letter neither was he invited to any disciplinary hearing.

### **Hearing.**

10. This matter proceeded for hearing on the 10<sup>th</sup> March, 2020 where the Claimant testified as CW-1 and stated that he lives in shabab area within Nakuru county and currently works for Nakuru County Government. He avers that the Respondent had employed him between 4.11.2011 and 18.2.2016. He then sought to adopt his statement filed on the 30/8/2016 and produced the documents filed on 14.3.2016 and further documents filed on the 6.8.2016 as his exhibits.
11. He testified that he was never subjected to any disciplinary hearing and that on the 20<sup>th</sup> February, 2016 when the alleged disciplinary hearing was carried out, he was in Nakuru admitting her sick daughter and as such he never attended any meeting. He stated that he was sacked by a phone call on the 22<sup>nd</sup> February, 2016. He also testified that he was not paid his terminal dues after the dismissal. He further stated that by 19<sup>th</sup> February, 2016 his office had already been occupied by another employee.
12. The Respondent did not participate in the hearing of this cause, neither did they file any submissions thereafter.



### Claimant's Submissions.

13. The Claimant submitted on two issues, whether the Claimant was unfairly terminated and what reliefs the Claimant is entitled to.
14. On the first issue, it was submitted that the Claimant was unfairly terminated without being issued with a notice to show cause nor being subjected to any disciplinary hearing. He argued that the allegation by the Respondent that a disciplinary hearing was held on 20.2.2016 is without any basis and he had already been replaced by another employee as captured in his exhibit 4 of the further list of documents, therefore it was not possible to conduct a disciplinary hearing when he had already been replaced. He further argued that on the date of the alleged disciplinary hearing the Claimant was in Nakuru and evidence of his withdrawal of money from Stanbic bank is captured in his further list of documents dated 30.8.2016.
15. On the second issue of the prayers sought, the Claimant prayed for all the reliefs to be allowed as prayed save for the prayer for reinstatement since 6 years have lapsed since his termination and also that he is now an employee of the county Government of Nakuru.
16. I have examined the evidence and submissions of the parties herein. The case proceeded *ex parte* since the Respondent was not ready to proceed and offer any evidence, the matter having been adjourned previously at the instance of the Respondent.
17. The Claimants evidence is that he was terminated unfairly by the Respondent since he was not subjected to any disciplinary hearing.
18. He indicated he was sacked over the phone on 20/1/2016 and on 22/2/2016 he picked his dismissal letter.
19. He even indicates that on 19/2/2016 before he was terminated someone had already taken over his duties.
20. There was no evidence offered by the Respondent to indicate that the Claimant was subjected to a fair disciplinary process. Validity of the reason leading to his termination were also not established.
21. I therefore find that the Claimant's termination was unfair and unjustified under Section 45 (2) of the [Employment Act](#) which states as follows;

“ 45.

- (1) .....
- (2) A termination of employment is unfair if the employer fails to prove-
  - (a) that the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason-
    - (i) related to the employee's conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and



(c) that the employment was terminated in accordance with fair procedure”.

22. In terms of remedies I find for Claimant and award him as follows;

1. 1 month salary in lieu of notice = 55,000/=
2. 10 months salary as compensation for the unfair and unlawful dismissal  
= 10 x 55,000/=  
= 550,000/=
3. Payment of house allowance not paid being 15% of salary per month  
= 15% of 55,000 = 8,250/=  
X 51 months  
= 420,750/=
4. 15 days pay as service pay = 27,500/=  
= 55,000/=  
TOTAL AWARDED = 1,053,250/=  
Less statutory deductions
5. The Respondent will pay costs of this suit plus interest at Court rates with effect from the date of this Judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 31<sup>ST</sup> DAY OF MAY, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Terer for Claimant – present

No appearance for Respondent – absent

Court Assistant - Fred

