



REPUBLIC OF KENYA



**Cheruiyot & 3 others v Sunrise(1976) Limited (Cause 391, 390, 389 & 388 of 2015  
(Consolidated)) [2022] KEELRC 111 (KLR) (31 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 111 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 391, 390, 389 & 388 OF 2015 (CONSOLIDATED)**

**HS WASILWA, J  
MAY 31, 2022**

**BETWEEN**

**GRACE CHERUIYOT ..... 1<sup>ST</sup> CLAIMANT  
HELLEN MOKEIRA OENGA ..... 2<sup>ND</sup> CLAIMANT  
CAROLYNE KERUBO MATOKE ..... 3<sup>RD</sup> CLAIMANT  
JOYCE GATHONI MBURU ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**SUNRISE(1976) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup> Claimant filed her memorandum of claim dated 8<sup>th</sup> December, 2015 on 14<sup>th</sup> December, 2015 through the firm of Gekong'a and company Advocates seeking for the following reliefs; -
  - a) A declaration that the termination of her employment was unlawful, illegal and thus null and void.
  - b) Reinstatement of the Claimant to her position, Or in the alternative.
  - c) The Respondent be Ordered to pay the Claimant damages for the unlawful and unprocedural dismissal for payment of her full terminal benefits and compensatory damages as tabulated hereunder;
    - i. One-month salary in lieu of Notice of Kshs. 8415.
    - ii. Payment in lieu of untaken leave for 7 years from June, 2007 to June, 2014- Kshs 58,905.
    - iii. Payment in lieu of untaken prorate leave from July 2014 to March, 2015 of Kshs. 5,610.



- iv. Service pay for 7 years worked at a rate of 15 days' salary of Kshs 29,452.50.
  - v. Unpaid house allowance of Kshs 116,127.
  - vi. Damages for wrongful and unfair dismissal from employment calculate at 12 months –Kshs 100,980.
  - vii. Unpaid salary for the month February, 2015-Kshs 8415.
- Total Claim Kshs. 327, 904.50

- d) Certificate of service.
- e) Costs of this suit.
- f) Interest on (c) above

2. The 2<sup>nd</sup> Claimant filed her memorandum of claim dated 8<sup>th</sup> December, 2015 on 14<sup>th</sup> December, 2015 through the firm of Gekong'a and company Advocates seeking for the following reliefs; -

- a) A declaration that the termination of her employment was unlawful, illegal and thus null and void.
- b) Reinstatement of the Claimant to her position, Or in the alternative.
- c) The Respondent be Ordered to pay the Claimant damages for the unlawful and unprocedural dismissal for payment of her full terminal benefits and compensatory damages as tabulated hereunder;

- i. One-month salary in lieu of Notice of Kshs. 8415.
  - ii. Payment in lieu of untaken leave for 7 years from June, 2007 to June, 2014- Kshs 58,905.
  - iii. Payment in lieu of untaken prorated leave from July 2014 to March, 2015 of Kshs. 5,610.
  - iv. Service pay for 7 years worked at a rate of 15 days' salary of Kshs 29,452.50.
  - v. Unpaid house allowance of Kshs 116,127.
  - vi. Damages for wrongful and unfair dismissal from employment calculate at 12 months –Kshs 100,980.
  - vii. Unpaid salary for the month February, 2015-Kshs 8415.
- Total Claim Kshs. 327, 904.50

- d) Certificate of service.
- e) Costs of this suit.
- f) Interest on (c) above.

3. The 3<sup>rd</sup> Claimant filed her memorandum of claim dated 8<sup>th</sup> December, 2015 on 14<sup>th</sup> December, 2015 through the firm of Gekong'a and company Advocates seeking for the following reliefs; -

- a) A declaration that the termination of her employment was unlawful, illegal and thus null and void.
- b) Reinstatement of the Claimant to her position, Or in the alternative.



- c) The Respondent be Ordered to pay the Claimant damages for the unlawful and unprocedural dismissal for payment of her full terminal benefits and compensatory damages as tabulated hereunder;
- i. One-month salary in lieu of Notice of Kshs. 6647.
  - ii. Payment in lieu of untaken leave for 7 years from June, 2007 to June, 2014- Kshs 13294.
  - iii. Payment in lieu of untaken prorated leave from July 2014 to March, 2015 of Kshs. 1107.83.
  - iv. Service pay for 7 years worked at a rate of 15 days' salary of Kshs 6647.
  - v. Unpaid house allowance of Kshs 91728.60.
  - vi. Damages for wrongful and unfair dismissal from employment calculate at 12 months -Kshs 79,764.
  - vii. Unpaid salary for the month February, 2015-Kshs 6647.

Total Claim Kshs. 205, 838.43

- d) Certificate of service.
- e) Costs of this suit.
- f) Interest on (c) above.

4 The 4<sup>th</sup> Claimant filed her memorandum of claim dated 8<sup>th</sup> December, 2015 on 14<sup>th</sup> December, 2015 through the firm of Gekong'a and company Advocates seeking for the following reliefs; -

- a) A declaration that the termination of her employment was unlawful, illegal and thus null and void.
  - b) Reinstatement of the Claimant to her position, Or in the alternative.
  - c) The Respondent be Ordered to pay the Claimant damages for the unlawful and unprocedural dismissal for payment of her full terminal benefits and compensatory damages as tabulated hereunder;
- i. One-month salary in lieu of Notice of Kshs. 6647.
  - ii. Payment in lieu of untaken leave for 7 years from June, 2007 to June, 2014- Kshs 13294.
  - iii. Payment in lieu of untaken prorated leave from July 2014 to March, 2015 of Kshs. 1107.83.
  - iv. Service pay for 7 years worked at a rate of 15 days' salary of Kshs 6647.
  - v. Unpaid house allowance of Kshs 91728.60.
  - vi. Damages for wrongful and unfair dismissal from employment calculate at 12 months -Kshs 79,764.
  - vii. Unpaid salary for the month February, 2015-Kshs 6647.

Total Claim Kshs. 205, 835.43



- d) Certificate of service.
  - e) Costs of this suit.
  - f) Interest on (c) above.
5. The Four suits herein were consolidated with the cause number 391 of 2015 marked as the lead file.
  6. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants were employed on the 1<sup>st</sup> June, 2007, while the 3<sup>rd</sup> and 4<sup>th</sup> Claimants were employed on the 1<sup>st</sup> February, 2013 all in the position of team leaders in weeding at the Respondent's farm. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants were earning a basic salary of Kshs 8415 and a gross salary of Kshs 9900 each per month, while the 3<sup>rd</sup> and 4<sup>th</sup> Claimants were earning a basic salary of Kshs 6647 and a gross salary of Kshs 7820 each per month.
  7. The Claimants aver that sometime on 28<sup>th</sup> February, 2015 while they were enroute out of the Respondent employ aboard the Respondent's staff buses, an inspection was carried out at the Respondent's gate and it was discovered that there were 8 litres of milk which were allegedly bought illegally from their neighboring farm, Marula farm. Since the milk could not be placed on any of the employees in the bus, the Claimants were held accountable because they were team leaders and thus they were summarily dismissed.
  8. It is stated that the Respondent did not carry out any further investigation to unearth the person who had bought the said milk, neither were they subjected to any disciplinary hearing as provided for under section 41 of the Employment Act before the summary dismissal.
  9. They contend that, they were unfairly terminated and were not paid their February salary neither were they paid their terminal dues upon the termination.
  10. The Respondent entered appearance and mounted a joint defence to the various memoranda admitting to employing all the Claimant on the various dates stated at the basic pay stated therein. It however contends that the Claimants were terminated for lawful and justifiable cause.
  11. The circumstances leading to the termination is that the Respondent leased its property from Marula farm, who issued a circular to all its neighboring farms and lessees of the need to curb a cropping practise were milk was stolen from their farm by its employees and sold to the neighboring farm employees. Marula farm then urged all its lessees to ensure its employee adhere to the same and any person got in possession of milk from the said farm was to be barred from accessing any of its property.
  12. This communication was subsequently circulated upon the Respondent's employees including the Claimants herein who are team leaders. However, that on the 28<sup>th</sup> February, 2015 the bus in which the Claimants were traveling in was found to be carrying 8 litres of milk which everyone disowned. Upon further interrogation the Claimant admitted to purchasing from the Marula farm though refused to purchasing that particular one found on the bus.
  13. The Respondent avers that the Claimants being team leaders of the Respondent ought to be an example to the other employee and refrain from such outlawed activities that damage the relationship between it and its lessor, Marula farm. Therefore, that their termination from employment was justified.
  14. The Claimants' case was heard on the 16<sup>th</sup> November, 2021 where Grace Cheruiyot, the 1<sup>st</sup> Claimant herein testified as CW-1 and adopted her witness statement dated 8.12.2015. She added that she started working for the Respondent as a casual labourer in 2005 and became a team leader in September. She stated that she was paid Kshs 9000 at the time of termination.



15. Upon cross examination by Wachira Advocate, the witness confirmed that her employment letter indicate that she was employed on 1<sup>st</sup> June, 2007 and not in 2005. She avers that she was the supervisor of her team and her role was to maintain high discipline. She also confirmed that she was a paid up member of NSSF and also that she was paid house allowance.
16. Upon further cross examination the witness testified that the master roll at page 24, 31,33 and 35 shows that she had taken her annual leave. With regard to the milk illegally bought, the witness testified that there was milk in the bus and since they were the supervisors they were forced to own up to the mistake and were fired on that basis.
17. On re-examination the witness testified that they were not found in possession of the milk rather that the same was in the bus they were aboard together with other employees. She also clarified that she did not sign the muster roll to confirm that she had taken her leave as alleged.
18. The Respondent did not call any witnesses and on the 20<sup>th</sup> January, 2022 their case was closed.

### **Claimants Submissions.**

19. The Claimant filed four sets of submission with regard to each of the claim which however raised similar issues being; whether the Claimants' employment was unfairly terminated, whether due process was followed and whether the Claimants are entitled to the reliefs sought in their claims.
20. The Claimants then submitted on the first and second issue together and argued that the Claimant's reason for termination was based on suspicion of being in possession of Milk when each one of them was searched and not found with the said milk. It was argued that the Respondent narrowed down to the Claimant only on the basis that they were supervisor not because they were found in possession of the said Milk.
21. It was further submitted that the Respondent did not subject the Claimants to any disciplinary process and or hearing as envisaged under Section 41 of the Employment Act, therefore that the termination failed both procedural fairness and substantive justification. In support of their case the Claimants relied on the case of *Silas Owiti Oluoch and Another V Fidelity Commercial Bank Limited* [ 2017] eklr where the Court relied on the case of *Nicholas Otinyu Muruka vs. Equity Bank Limited* Nairobi ELRC case No. 25 of 2013 where Hon. Justice Mbaru held that an employer in cases of summary dismissal must demonstrate reasonable and sufficient grounds that link an employee to acts of gross misconduct warranting summary dismissal. She stated thus:

“Mere suspicion is not enough. There must be reasonable and sufficient grounds. Otherwise if employers are allowed to hold mere suspicions, they would use these simple reasons to harass, intimidate and/or harass their employees for no just cause. Even where an employer has a just cause as to apply the provisions of Section 44(4)(g), the same must comply with the provisions of Section 41 and 43 of Employment Act. If the reasons for termination are not proved to amount to gross misconduct, then the application of Section 41 of the Act will apply. Thus, disputes of summary dismissal will always be subjected to the test of Section 41 of the Act whenever employees dispute and claim that the circumstances of the case did not give themselves to reasons of gross misconduct”.



22. The Claimants also relied on the case of *Faith Gacheru V GolfKey Casino* [2018] eklr where the Court emphasized the provisions of section 43 of the Employment Act and stated that;

“In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45”

23. Accordingly, it was submitted that the Claimants were unfairly terminated in the circumstances and prayed for the claims to be allowed as prayed.

### **Respondent’s Submissions**

24. The Respondent submitted that all the Claimants were terminated for justified cause. It was argued that the Claimants had purchased milk from Marula farm employee, who were selling the said milk without authority of their company. The Claimants were therefore held liable for the said acts firstly for buying milk from its lessor’s farm illegally and secondly for failing to exhibit integrity of team leaders expected of them. In this the Respondent relied on the case of *Daniel Raiti Ogeto Vs college management Board Acting for Elgon view Board* [2014] eklr where the Court held that; -

“There is also no doubt that the Claimant was given a lengthy hearing about the dismissal and the reason for the dismissal at the meeting of 15.05.2013 between the Claimant and the Respondent’s chairman resulting in the upholding of the dismissal. The Court finds that the lengthy hearing and discussion served to cure any procedural defects that would have occurred if the termination had taken place without a hearing.”

25. According, the Respondent prayed for the dismissal of this claims with costs.

26. I have examined all the evidence and submissions filed. The Respondent didn’t call any witnesses despite filing documents which in my view remained as pleadings and not evidence. The Respondent also filed submissions which in any case is part of pleadings as there was no evidence called to support the submissions.

27. From the evidence of the Claimant they were summarily dismissed because the bus upon which they were travelling from the farm was found to contain milk bought from the neighbor’s farm.

28. They content that liability for this milk was placed upon them because they are team leaders.

29. There is no evidence that the Claimants were subjected to any disciplinary process as envisaged under Section 41 of the Employment Act 2007.

30. In absence of the disciplinary process there is also no evidence that the reason for the termination were valid or were established.

31. I therefore make a finding that the dismissal of the Claimants was unfair and unjustified.

32. In terms of remedies, I award each Claimant;

1. 1 month salary in lieu of notice
2. 10 months salary as compensation for the unlawful dismissal
3. Salary for February 2015 which translates as follows;-
  1. 1<sup>st</sup> Claimant Grace Cheruiyot;-



8,415 x 12 months – 100,980/=

Less statutory deductions

2. 2<sup>nd</sup> Claimant Hellen Mokeira Oenga;-

= 100,980/=

Less statutory deductions

3. 3<sup>rd</sup> Claimant Carolyne Kerubo Matoke;-

= 79,764/=

Less statutory deductions

4. 4<sup>th</sup> Claimant Joyce Gathoni Mburu;-

= 79,764/=

Less statutory deductions

4. Each Claimant should be issued with a certificate of service.

5. The Respondents shall 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 31ST DAY OF MAY, 2022.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Oganga for Claimant – present

Wachira for Respondent – present

Court Assistant - Fred

