



**Mohammed v Quite Bright Films Limited (Cause 243 of 2017)
[2022] KEELRC 12704 (KLR) (19 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12704 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 243 OF 2017**

M MBARÚ, J

MAY 19, 2022

BETWEEN

AMINA MOHAMMED CLAIMANT

AND

QUITE BRIGHT FILMS LIMITED RESPONDENT

JUDGMENT

1. In June, 2007 the respondent employed the claimant as a video editor and worked until October, 2016 when she was sent on compulsory leave without being given any reasons.
2. On October 24, 2016 the claimant resumed duty but was issued with notice terminating her employment on the grounds of redundancy.
3. The claim is that there was no redundancy within the respondent business and the reasons given for termination of employment was not lawful and no notice issued to the Labour Officer to justify such measures. This resulted in unfair termination of employment.
4. At the time the claimant was earning Ksh 79, 871 and I seeking the following terminal dues;
 - a) Severance pay for years worked Ksh 359,419.50;
 - b) leave pay Ksh 55,909.70;
 - c) 3 months' notice pay Ksh 239,613.00;
 - d) Salary arrears since employment terminated from November to December, 2016 and January, 2017 Ksh 263,574.00;
 - e) Compensation for unfair termination of employment; and costs.



10. The claimant testified in support of her claims that in October, 2016 her employer sent her home on compulsory leave without being given any reason and after a week she wrote an email seeking to know when she should report back to work. On October 23, 2016 she went to the office and informed that she had been fired and issued with a cheque with payment of her terminal dues but she refused to take it. There was no notice prior issued, no disciplinary action taken and the reasons given that termination of employment was due to a redundancy was not true.
11. The claimant testified that the cheque issued to her was for Ksh 540, 000 which was not sufficient to compensate her for unfair termination of employment.
12. In response, the respondent has made a case that she used to report to work late but no warning of such matter had issued and she was not late for work as alleged. The warning letters filed by the respondent were never issued to her while in employment.
13. Her problems started when she asked for a salary increase. She had no growth in her employment and she took the step to ask that her salary be increased. She was instead fired.
14. The claimant also testified that she had a young family and would at times request to report to work late and then work for longer hours with the approval of the respondent. Her role as video editor is core to the respondent business and such position cannot be removed so as to declare a redundancy. Such reason only applied to avoid giving justified grounds for termination of employment.
15. In response, the respondent's case is that the claimant's employment was terminated on the grounds that she was indisciplined as she was layaways late to work and despite several warnings she did not change. Several warnings issued leading to termination of employment for indiscipline and lack of commitment to duty.
16. Termination of employment was not on account of redundancy but on account of indiscipline and any reference to redundancy by the respondent was a misnomer and therefore misapplied under the circumstances.
17. The claimant was last earning Ksh 79, 871 and was paid her dues all at Ksh 543, 942 which she has refused to collect and the claims made should be dismissed with costs.
18. In evidence, the respondent called Pauline Larre Pior a director of the respondent who testified that the respondent company produces films and documentaries and the claimant was employed as a video editor in the year 2007. The claimant was dismissed from her employment for reporting to work late, being insubordinate and failure to make for lost time. This led to delayed response to clients and affected other employees in their duties which were interconnected to the claimant's role. The claimant was issued with 3 warnings but failed to take heed.
19. The notice terminating employment noted that it was on account of redundancy and the respondent took it as a fancy word to use but this was not the intention. Employment terminated on account of the claimant reporting to work late and upon being issued 3 warnings. She was paid her dues of Ksh 543, 000 but she refused to collect. It was a mistake to use the term redundancy. The claimant has since been paid her dues and the claims made should be dismissed with costs.

Determination

20. The reason(s) assigned by an employer as leading to termination of employment is important and relevant in two ways.



21. First, pursuant to section 43 of the *Employment Act, 2007* (the Act) read together with section 45 the reason given must be genuine, reasonable and he one relating to termination of employment. such then gives the employee the opportunity under section 47(5) of the Act to challenge the lawfulness and validity of the reason(s) given as leading to termination of employment. without a valid reason, then the employer denies the employee an essential element of a lawful process contemplated under the Act.
22. Secondly, pursuant to section 51 of the Act, at the end of employment, the employer is mandated to issue the employee with a certificate of service. without assignment of the lawful reason leading to termination of employment, the employee is left exposed.
23. It becomes therefore important that the employer, upon giving a reason that is not genuine as the cause of end of employment, such notice must be recalled and an appropriate notice issued. The net effect of a notice that is issued by error, through a misnomer, a mistake or otherwise is that the employee has to carry such error for the rest of her life.

Section 43 of the Act thus directs that;

- (1) 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.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
24. Having assigned a wrong reason for termination of employment and to date such notice has not been recalled, the reason leading to loss of employment was not due to redundancy and there was unfair termination of employment. notice of redundancy issued is applicable though a misnomer.
Notice pay is due together with a severance pay.
 25. The claimant was warning Ksh 79, 871 and notice pay pursuant to the provisions of section 40(1) is due at one month all at Ksh 79, 871.
 26. The claimant worked from June, 2007 to October, 2016 all 9 complete years and based on the provisions of Section 40(1) (g) of the Act, severance pay is due for at least 15 days' pay for each full year. at the salary of Ksh 79, 871 and for 9 years, the claimant is entitled to Ksh 359, 419.50 in severance pay.
 27. On the claim for pay in lieu of taking leave, the claimant testified that she was sent on compulsory leave prior to termination of employment. such time out of work is not accounted for. this claim is not justified.
 28. On the claim for 3 months' notice pay, such is awarded based on section 35 of the Act at one month pay which is due in a redundancy.
 29. On the claim for salary arrears for November and December, 2016 and January, 2017, employment ceased upon notice dated October 24, 2017. The claimant did not offer her labours to the respondent after such date. no salary is due after end of employment.
 30. On the finding that the claimant's employment terminated unfairly, the court has redressed the same by assigning the given reason of a redundancy and assessed the severance pay due. such was noted by the employer as a misnomer and should have applied a gross misconduct for reporting to work late and failing to attend duty as directed. The letters of warning issued to the claimant were produced by the responded as the employer since work records are to be kept and produced in court by the employer



pursuant to section 10(6) and (7) of the Act. such is conclusive of matters at the shop floor despite the contestations by the claimant.

31. To delve into the warnings, the claimant would lose all the claims made herein save for the fact that the respondent failed in its duty to withdraw the notice issued in error. The case of redundancy is therefore addressed and redressed with severance pay. Such shall suffice in this regard.
32. The claimant has since been paid Ksh 543, 000 by the respondent. such put into account places the respondent in good standing and costs shall not be paid.
33. The paid amounts shall be put into account in tabulation of the awards above.
34. Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;
 - a) Notice pay Ksh 79,871;
 - b) Severance pay Ksh 359,419.50;
 - c) Dues (a) and (b) above shall be subject to the provision of section 49(2) of the [Employment Act, 2007](#);
 - d) Dues paid (c) above shall be less amounts received at Ksh 543,000; and
 - e) Each party shall bear own costs.

DELIVERED IN COURT AT NAIROBI THIS 19TH DAY OF MAY, 2022.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

