



**Murithi v SGS Kenya Limited (Cause 328 of 2018)  
[2022] KEELRC 1325 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1325 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 328 OF 2018**

**B ONGAYA, J**

**MAY 13, 2022**

**BETWEEN**

**CHARLES MBUTHIA MURITHI ..... CLAIMANT**

**AND**

**SGS KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim on 16.05.2018 through Munyiithya, Mutugi, Umara & Muzna Company Advocates. The claimant was employed by the respondent as a Quality Assurance Operator effective 10.12.2012. He was promoted to Equipment Supervisor on 06.11.2013 and to Operations Supervisor on 01.04.2017. He was summarily dismissed on 07.03.2018 at a time he earned Kshs. 84, 225.00.
2. The claimant was unwell on 26.02.2018 and while at hospital, his supervisor, the Operations Manager telephoned the claimant to say there were issues to be discussed. The claimant went to the office and was given a letter of suspension and to show cause dated 26.02.2018. it was alleged as follows:
  - a. Several reports had been received from different employees in the claimant's department accusing the claimant of sexually harassing 3 SGS employees and extortion of money from 3 other SGS employees hired into the claimant's department.
  - b. Three female employees Sharon, Laura and Rebecca accused the claimant of sexually harassing them through either verbal or physical unwelcome sexual advances as well as threatening them with termination if they did not yield to the claimant's advances.
  - c. Three new employees Mohammed, Henderson, and Sospeter recruited into the claimant's department between October and November 2017 accused the claimant of demanding for Kshs.10, 000.00 or their Christmas vouchers as payment for their employment at SGS.



3. The letter stated that the conduct amounted to breach of the respondent's Code of Integrity integral to the claimant's employment. The claimant was suspended for 7 days effective 26.02.2018 to allow the claimant time to present his case. He was to show cause by 26.02.2018, 5.00pm.
4. The claimant replied by his letter dated 28.02.2018 as follows:
  - a. He denied sexually assaulting Sharon but that she had a vendetta against the claimant on her allegation that the claimant had in December 2017 instigated her receiving a letter to show-cause and she had promised to avenge. She was a security officer and did not directly report to the claimant but to one Vince.
  - b. He had seen a missed call from Rebecca made on the late night of 13.12.2017. He complained to her supervisor Ebby on 14.12.2017. Rebecca again made a missed call on the night of 17.12.2017. When the claimant complained to her supervisor, the supervisor promised to advise her to manage her cell phone from making the night calls to the claimant.
  - c. He conversed with Laura only on official business at work and she did not report to him at all.
  - d. He had submitted applications by all prospective casuals to the human resource office. The interview panellists were 4 including the claimant and human resource officer Nuane. He had never extorted money from staff as alleged. At end year party he approached staff members to top up on the vouchers given to him so as to buy a take away drink because he was the day's designated driver and could not drink at the party. On that occasion he did two trips to Bamburi and the mentioned three employees were not his passengers.
  - e. He did not have financial challenges to force staff to give him cash. The sexual harassment allegations were malicious as he was a family man.
5. The letter dated 01.03.2018 invited him to a disciplinary hearing fixed for 06.03.2018. The claimant attended the hearing and was served with a letter of summary dismissal dated 07.03.2018. The letter stated that there was sufficient reason to suspect that the claimant had committed the offence of extortion against the mentioned three employees and further that the sexual harassment had been established as was alleged.
6. The claimant's case is that he attended the disciplinary hearing without being accompanied by a colleague of his choice per section 41 of the [Employment Act](#). He further states that he had no access to work call logs, work Mpesa messages, emails, CCTV footages and statements from complainants so that he could not properly prepare his defence. Some complainants participated at the hearing on telephone and the claimant did not have opportunity to challenge and examine their statements as to details on dates, time, and place where the alleged misconducts took place. Further the respondent had not instituted a sexual harassment policy to address the very serious allegations made against the claimant. The claimant's case is that there was no evidence to verify the allegations and no record or minutes of the disciplinary hearing was prepared. Further, the disciplinary proceedings were unusually fast tracked, unlawful, unfair and illegal.

The claimant claimed as follows:

- a. One-month salary in lieu of the notice Kshs. 84, 225.00.
- b. Days worked in March Kshs. 22, 675.00.
- c. Leave allowance for 2018 Kshs. 5, 745.00.
- d. 12 months' compensation Kshs. 1, 010, 700.00.



- e. Certificate of service.
7. The claimant prayed for judgment against the respondent for:
- a. A declaration that the respondent failed to maintain a sexual harassment policy as provided by law.
  - b. A declaration the summary dismissal was unfair.
  - c. Damages for unfair termination.
  - d. Payment of Kshs. 1, 123, 345.00 as prayed for.
  - e. Costs of the suit,
  - f. Any other relief as the Court deems fit to grant.
8. The respondent filed the response to claim on 13.02.2019 through Obura J & Company Advocates. The respondent admitted that it employed the claimant and he was summarily dismissed as pleaded. The respondent pleaded that the disciplinary procedure was lawful and the reasons for termination valid and fair so that the claimant's claims as pleaded are a mere afterthought as no objections were raised throughout the disciplinary process. The disciplinary process was not fast tracked but was timeous. Further the claimant did not request a colleague to accompany him at the hearing and he had an opportunity to examine all witnesses. The respondent prayed that the suit be dismissed with costs.
9. The claimant testified to support his case. Despite numerous adjournments for the respondent to avail its witnesses, the respondent failed to do so and counsel confirmed that the witnesses had declined to attend court. The respondent's case was therefore closed for final submissions to be made. The Court has considered the pleadings, documents, claimant's evidence and final submissions and finds as follows.
10. The 1<sup>st</sup> and main issue for determination is whether the termination was unfair. It was submitted for the respondent that the nature of the claimant's case was such that it was necessary for the respondent's witnesses to turn up in Court. The Court agrees with that submission and further respondent's submission thus, "We therefore in the circumstances concede that the claimant's version is not controverted save by the claimant's own documents." The allegations that confronted the claimant were extremely serious. However, the Court finds that the respondent failed to bring witnesses to establish that as at the time of termination, the alleged reasons for summary dismissal existed and were genuine or valid as required under section 43 of the *Employment Act*, 2007. Further, the respondent did not discharge the burden of justifying the reasons for the dismissal as was imposed under section 47(5) of the Act. In absence of the minutes of the disciplinary hearing, as per the respondent's submission, there is no reason to doubt the claimant's pleadings and as confirmed by his oral evidence on the deficiencies at the disciplinary hearing. The evidence is that the claimant was not accorded an opportunity to attend the hearing with a colleague as per section 41 of the Act. The Court holds that it was the obligation of the respondent to afford the claimant that chance and not for the claimant to ask for it as was purportedly shifted in the respondent's pleadings. Further, the statements purportedly by the grievants and exhibited for the respondent were not signed or verifiable in whatever respect because they were not served upon the claimant prior to the disciplinary hearing and the alleged makers were never examined and cross-examined in Court.
11. Accordingly, the Court returns that the summary dismissal was unfair both in substance and procedure.



12. To answer the 2<sup>nd</sup> issue for determination the Court returns that the claimant has established that he is entitled to all the claims and prayers as pleaded. In awarding full compensation of 12 months' salaries, the Court has considered the factors in section 49 of the Act. The Claimant desired to continue in employment. The claimant had a good record of service and the exhibited appraisal reports show that his performance was satisfactory and as manifested in the promotions he had earned. The aggravating factor is that the respondent had failed to institute, publish and publicise to its employees a policy on sexual harassment as was mandatorily required in section 6 of the Act. Further, no mitigating factor was established for the respondent and the allegations were grave going to the status of the claimant as a family man whose social integrity was as well placed at stake. His evidence was that after the termination he went back to his home in Kiambu to stay with his mother as he was not able to secure employment as hounded with the circumstances of the termination. The claimant's case and submissions are upheld towards that finding.
13. The notice pay is due per section 35 of the Act as the termination was unfair and the claimant was not given a termination notice. As submitted for the respondent, there is no reason to disturb the evidence by the claimant which was not rebutted on the special claims made for days worked, prorated leave days and the same are awarded. The claimant has succeeded and is awarded costs of the suit.
14. In conclusion judgment is hereby entered for the claimant against the respondent for:
  - a. The declaration that the respondent failed to maintain a sexual harassment policy as provided under section 6 of the *Employment Act*, 2007 and the respondent to issue the same per section 6(2) of the Act and file and serve the same by 01.09.2022.
  - b. The declaration that the summary dismissal was unfair.
  - c. The respondent to deliver the claimant's certificate of service per section 51 of the Act by 01.07.2022.
  - d. The respondent to pay the claimant a sum of Kshs. 1, 123, 345.00 (less PAYE) by 01.07.2022 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
  - e. The respondent to pay the claimant's costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT MOMBASA THIS FRIDAY 13<sup>TH</sup> MAY, 2022.**

**BYRAM ONGAYA**

**JUDGE**

