



**Benadette Nafula Bwire v Equator Bottlers Limited (Cause
153 of 2017) [2022] KEELRC 1775 (KLR) (29 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1775 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 153 OF 2017**

**S RADIDO, J
JUNE 29, 2022**

BETWEEN

BENADETTE NAFULA BWIRE CLAIMANT

AND

EQUATOR BOTTLERS LIMITED RESPONDENT

JUDGMENT

1. The questions for adjudication are:
 - (i) Whether the dismissal of the claimant was unfair?
 - (ii) Whether the respondent was in breach of contract?
 - (iii) Appropriate remedies.
2. The cause was heard on March 21, 2022 and May 5, 2022. Benadette Nafula Bwire (the claimant) and a Human Resource Coordinator with Equator Bottlers Ltd (the respondent) testified.
3. Pursuant to directions by the court, the claimant filed her submissions on June 3, 2022 (should have been filed and served before May 31, 2022) and the respondent's submissions were not on file by this morning.
4. The court has considered the pleadings, evidence, and submissions.

Unfair Termination Of Employment

Procedural fairness

5. The claimant asserted that the respondent dismissed him without following the statutory protections outlined in the [Employment Act](#), 2007.



6. The respondent issued a show-cause notice to the claimant on or around May 30, 2016. The notice set out the allegation the claimant was expected to respond to and requested him to respond before the end of the day.
7. The claimant responded on the same day, and on June 10, 2016, she was invited to an oral hearing to be held on June 14, 2016. The claimant was informed that she could present witnesses during the hearing.
8. The claimant attended the hearing, and on June 29, 2016, she was informed of the termination of her employment (backdated to June 23, 2016).
9. The court is satisfied that the respondent complied with the statutory requirements of procedural fairness as contemplated by sections 35(1) and 41 of the *Employment Act*, 2007.

Substantive Fairness

10. Sections 43 and 45 of the *Employment Act*, 2007 require the employer to prove and prove as valid and fair the reasons for terminating an employment contract.
11. The reason for terminating the claimant's employment was:
you were instructed by your supervisor to obtain a police abstract report and transmit the same to the HR department for insurance claim. You failed to follow this instruction, which has rendered the company unable to claim the cooler from its insurer.
12. To discharge the burden, the respondent called its human resource coordinator.
13. The genesis of the instruction given to the claimant was that a building housing one of the respondent's distributors or client had collapsed leading to the destruction of a cooler. The respondent wanted a police abstract to make a claim for compensation.
14. The claimant did not deny receiving the instructions to obtain the police abstract. She explained that she was unable to get the abstract because when she went to the police station, the police informed her that they could not issue a second abstract since one had already been given to the owner of the premises which had collapsed.
15. She also explained that was not responsible for the market where the building had collapsed leading to the destruction of the cooler.
16. When the respondent requested the claimant to respond to the show-cause, she never mentioned in the written response that the police had declined to issue her with a police abstract.
17. The explanation she gave was that the owner of the building had relocated to Nairobi from Busia and, therefore, she was unable to communicate with him.
18. The court finds the explanation given in court as an afterthought.
19. Further, the claimant did not lead any evidence to show that there is any regulation or practice by the police that an abstract is only issued once. Such a premise cannot be probable because there are numerous incidents where many persons are affected by either a crime or incident as at hand and it would make no sense to suggest that only one abstract would be issued.
20. In the case at hand, the owner of the building would have required an abstract for his own purposes, while business occupiers of the building would also have required abstracts for their own purposes.
21. The respondent herein was occasioned a loss as it was not able to get compensation from its insurers for the cooler which was lost during the collapse of the building.



22. The respondent also produced records to show that the claimant had a history of disciplinary cases.
23. The court is satisfied that the respondent proved valid and fair reasons to terminate the claimant's contract.
24. Compensation and pay *in lieu* of notice are, therefore, not remedies available to the claimant (the court notes that the respondent offered the claimant the equivalent of a 1-month salary *in lieu* of notice).

Breach Of Contract

Severance pay

25. The claimant did not separate with the respondent on the ground of redundancy, and thus is not entitled to severance pay.

Earned Wages

26. The claimant prayed for Kshs 38,487/- being earned wages for June 2016.
27. The respondent offered the claimant the earned wages amounting to Kshs 41,240/- and nothing turns on this relief.

Accrued Leave Days

28. On account of accrued leave days, the claimant sought Kshs 50,200/-. The respondent offered him Kshs 82,838/- which was paid through the bank.
29. Before concluding, a word on some of the authorities cited by the claimant (*Associated Provincial Pictures Houses Ltd v Wednesbury Corporation* (1947) 2 All ER 680 and *R v Public Procurement Administrative Review Board & 2 Ors ex parte Pelt Security Services Ltd* (2018) eKLR). The authorities were founded on cases which had come to court for judicial review.
30. There is now a vast body of jurisprudence on unfair termination of employment cases.
31. Therefore, in the court's view, there is no need to take recourse to jurisprudence developed in administrative law/judicial review in disputes comprising ordinary unfair termination disputes.

Conclusion and Orders

32. From the foregoing, the court finds no merit in the cause. It is dismissed with no order on costs as the respondents submissions were not filed in time.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 29TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Omondi, Abande & Co. Advocates

For Respondent Kiragu Wathuta & Co. Advocates

Court Assistant Chrispo Aura

