



REPUBLIC OF KENYA



KENYA LAW
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**Chandi v One Acre Fund (Cause 377 of 2018)
[2022] KEELRC 1572 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1572 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 377 OF 2018**

S RADIDO, J

JUNE 8, 2022

BETWEEN

ELIAS CHANDI CLAIMANT

AND

ONE ACRE FUND RESPONDENT

JUDGMENT

1. For determination are the questions:
 - (i) Whether the termination of the Claimant's employment was unfair?
 - (ii) Whether the Respondent was in breach of contract?
 - (iii) Appropriate remedies.
2. The Cause was heard on 14 December 2021, 17 February 2022 and 24 March 2022.
3. The Claimant and 2 witnesses called by the Respondent testified.
4. The Claimant filed his submissions on 5 May 2022 and the Respondent on 25 May 2022.
5. The Court has considered the pleadings, evidence, and submissions.
Unfair termination of employment
Procedural fairness
6. The Respondent issued a show-cause notice dated 17 April 2018 to the Claimant. The show-cause requested the Claimant to make a written response on or before 19 April 2018. He was also invited to attend an oral disciplinary hearing on 24 April 2018. The Claimant was informed of the right to be accompanied by a colleague.



7. On the day the Respondent was issuing the show-cause (17 April 2018), the Claimant lodged a complaint with the Labour office against the Respondent, alleging breach of contract.
8. The Claimant did not respond to the show-cause nor attend the hearing.
9. The Respondent then terminated the Claimant's employment through a letter dated 24 April 2018.
10. The Claimant contended that the process leading to the termination of employment was unfair because he was not given the written notice contemplated by section 35(1)(c) of the [Employment Act, 2007](#) and that he was not allowed an opportunity to be heard.
11. The Claimant testified that instead of the notice, the Respondent issued him a unilateral prepared resignation notice which he declined.
12. The facts presented before the Court show that the Claimant was issued with a show-cause notice setting out the allegations to confront. He snubbed the opportunity given to him by the Respondent to make written representations.
13. The Respondent also invited the Claimant to attend an oral hearing. He was informed of the right to be accompanied by a colleague.
14. Again, the Claimant did not take advantage of the opportunity to make oral representations.
15. The Claimant's explanation for the failure to make a written response or appear for the oral hearing was that he had reported a dispute to the Labour Office.
16. In the Court's view, the fact that the Claimant had made a complaint to the Labour Office was not a genuine or valid explanation for failing to make direct representations to the Respondent as to why disciplinary action against him should not be taken.
17. In light of sections 35(1)(c) and 41 of the [Employment Act, 2007](#), the Court finds that the Respondent substantially complied with the statutory requirements of procedural fairness.

Substantive fairness

18. By dint of sections 43 and 45 of the [Employment Act, 2007](#), the Respondent was expected to prove the validity and fairness of the reason(s) for the termination of the Claimant's employment. The reason given was poor performance.
19. The Respondent issued the Claimant with a schedule setting out the nature of his work, the main expectations and how to distinguish himself.
20. The Respondent reviewed the Claimant's performance for June to November 2017. The review found some areas where the Claimant's performance was wanting (red).
21. These included proactive long and short-term planning, efficient use of time to meet agreed deadlines and expectations, mentorship leveraging, and lack of data to provide clear recommendations.
22. The Respondent invited the Claimant for progress update sessions around 10 January 2018.
23. The Respondent then put the Claimant on a Performance Improvement Plan for 12 weeks starting on 15 January 2018.
24. The Claimant and his Supervisor held regular meetings to provide additional support during the course of the Plan (including on 10 February 2018).



25. When the Claimant met with his Supervisor after 8 weeks of the Plan, the meeting did not go too well. The Claimant was given 4 more weeks to show improvement.
26. The Claimant did not show improvement after the 12 weeks, and on 13 April 2018, was informed of contemplated disciplinary action. He was also given the option to resign. A follow-up meeting on 16 April 2018 was not successful, and on 17 April 2018, a show-cause was issued.
27. On 12 April 2018, the Claimant was invited to a meeting on 13 April 2018 to discuss the way forward, including possible separation.
28. The Claimant had job expectations to meet. He did not meet those expectations. The Respondent put him on a Performance Improvement Plan for 12 weeks, but the Respondent was not satisfied with the outcome.
29. Any reasonable employer would have taken the decision to separate with an employee whose performance did not improve after a performance improvement plan.
30. The Court cannot fault the Respondent for bringing the relationship to an end on the ground of poor performance.

Breach of contract

Anticipated income, benefits and allowances to the end of the contract

31. The Claimant had 14 months to the end of his contract, and he alleged that because the Respondent's decision was unfair, he should be awarded the income he would have earned up to the end of the contract amounting to US \$ 24,000.
32. The Claimant also made a pitch for 2 years' worth of flight allowances amounting to US \$ 2400; friends and family flight allowance worth US\$ 1800; 1-year regional travel allowance worth US\$ 800; 2 years' worth of laptop charger and battery allowance; 2 years foreign language course allowance worth US \$ 400; 2 years' worth of professional development course allowance; 1 year medical cover for family; college savings for children and house allowance for the unserved term of the contract.
33. The Respondent rebutted the heads of claim on the ground that the benefits, dues, and allowances were reimbursable, and since the Claimant had not utilised the same, he was not entitled to any payments.
34. The Respondent also contended that some of the heads of claims were payable as a bonus, and that the Claimant was not eligible for the same, having not fulfilled the criteria for payment.
35. In the Court's view, the Claimant is not entitled to these heads of claim because he did not provide any contractual or legal foundation for these reliefs, which were mainly reimbursable benefits.
36. In declining to grant the awards, the Court endorses the decision of the Supreme Court of *Uganda in Bank of Uganda v Tinkamanyire* [2008]UGSC that:

the contention that an employee whose contract of employment is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law. Similarly, claims of holidays, leave, lunch allowances and the like which the unlawfully dismissed employee would have enjoyed had the dismissal not occurred are merely speculative and cannot be justified in law.

Conclusion and Orders

37. From the foregoing, the Court finds no merit in the Cause, and it is dismissed with costs.



**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
8TH DAY OF JUNE 2022.**

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mwamuye Mzungu Solomon Advocates LLP

For Respondent L.G. Menezes & Co. Advocates

Court Assistant Chrispo Aura

