



**Muli v Rentokil Initial (K) Ltd (Cause 1215 of 2016)  
[2022] KEELRC 1653 (KLR) (4 August 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1653 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1215 OF 2016  
AN MWAURE, J  
AUGUST 4, 2022**

**BETWEEN**

**JULIUS KAVOI MULI ..... CLAIMANT**

**AND**

**RENTOKIL INITIAL (K) LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed his memorandum of claim on June 22, 2016 whereas the respondent put his response dated August 11, 2016.

**Claimant's case**

2. The claimant says he was employed by the respondent in 2007 as a service man in his pest control department.
3. He says he served with due diligence and loyalty until September 5<sup>th</sup> 2015 when his services were terminated without any notice or plausible reasons.
4. He says on that date he was summoned in the office of the manager and was shown a statement of his personal mpesa account. He says he was terminated and was told he had been collecting money from company's clients.
5. He says he was not given a chance to defend himself neither was he given a show cause letter or to call a witness of his choice. He says he was also not paid his terminal dues. As particularised in his claim he is praying for a total of Kshs 677,894/15 and he avers that at the time of his termination he was earning Kshs 27,669/15 per month.



### **Respondent's claim**

6. The respondent denied the claimant's averments but instead says the claimant was reckless, disloyal and dishonest during the term of his employment.
7. He accused him of demanding money from Respondent's clients using Respondent's chemical. He is also accused of collecting money from Respondent's clients and failing to remit the same. The people he collected money from are (1) Gilbert Ouko, Sheilla Mwangi, Daniel Karuga, Boas Balaza and others to be availed.
8. He was also accused of doing private business with respondent's client. They say they invited claimants for a disciplinary hearing on September 7, 2017.
9. It is their averment that the claimant neglected or refused to show cause why disciplinary action could not be taken against him. He says the claimant despite attending the disciplinary meeting on September 7, 2015 he refused to defend himself and hence his employment was terminated.
10. The respondents says the claimant was summarily dismissed and so is not entitled to one month salary in lieu of notice. He also says he is not entitled to severance pay or leave pay as he had taken his leave days and further he forfeited any unused day at the end of the year as per the Respondents human resource manual.
11. The respondent says the claimant termination was fair and deserved due to his behaviour. The respondent prays the claimant's claim therefore be dismissed with costs.

### **Claimant Evidence in Court**

12. The Claimant in his evidence in Court says he signed his contract on 25/8/2012 and he promised to work diligently and honestly. The contract was effective from 1/8/2012. He says on 28/10/2014 he received a warning letter and on September 5, 2015 he got a termination letter. He says he was not called for a disciplinary hearing but was going for a routine meeting and was then informed it was a disciplinary hearing. He says he never got a chance to defend himself. He says he was terminated and was not paid his benefits.
13. The Claimant says when he went for the meeting he found his MD holding his (claimant's) mpesa statement and he says he does not know where to get it.

### **Respondent Evidence**

14. The Respondent witness Geoffrey Nyoro says he is a Human Resource officer at Rentokil. The witness says the Claimant's services were terminated for gross misconduct as he was performing private jobs and was working with their competitors. The witness says he got mpesa statements from the Claimant and it showed he received money from their competitors – Jonathan Mutua. He says the Claimant attended disciplinary hearing on 7/9/2015 and Claimant made verbal presentations.
15. He says the committee found Claimant guilty of gross misconduct and was issued with a summary dismissal letter. The witness during cross examination said Claimant was accused of failing to account for chemicals. He says Claimant was given fair hearing. He says workers collect money and cheques on behalf of the company.
16. The court considered the submissions by the client and by the Respondent. The Claimant in his submissions urges the court to consider the judgment delivered by Justice Stella Rutto in the case of *Peter Mutinda Ngei vs Rentokil Initial K Ltd* (2022) eKLR. Apparently Mutinda was terminated



alongside this Claimant. Justice Stella Ruto observed that the allegations against the Claimant were speculative and were not substantiated at all. As a result the Claimant did not discharge this burden under section 43(1) of the Act and as such it has not prove that there was substantive justification to warrant the dismissal of the Claimant.

17. At the same time the client says the Respondent failed to follow the procedure set out section 41 of the *Employment act* as provided hereunder

41.

- (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part,
- (2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- (3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.
- (4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:-
  - (a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
  - (b) during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
  - (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;
  - (d) an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;
  - (e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to



obey, issued by his employer or a person placed in authority over him by his employer.

- (f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
- (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

18. The claimant says the claimant was not invited for disciplinary proceedings and was terminated verbally. He says that he was therefore unfairly and unlawfully terminated and deserves the reliefs prayed and costs.

### **Respondent's submissions**

19. The Respondent states in his submissions that they had given the Claimant warning letters for various offences which amounted to gross misconduct. He says in the disciplinary hearing of 5<sup>th</sup> September 2015 the Claimant admitted to having offered pest control services to a private customer.

20. The Respondents also says on the issue of procedural fairness the Claimant was called to attend disciplinary hearing. They say that the Respondent attended the disciplinary hearing and after representing his defence the committee found him guilty of misconduct and gave him dismissal letter. He says Claimant's case should be dismissed with costs to the Respondent.

#### Decision

- a. The issues for determination are whether the Claimant was fairly and procedurally terminated.
- b. Is he entitled to the reliefs sought?

21. The relevant provisions of the [Employment act](#) that provide for proof of validity of terminating the Claimant's employment is Section 45 of the [Employment Act](#). The same provides that:-

45.

- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove—
  - (a) that the reason for the termination is valid;
  - (b) that the reason for the termination is a fair reason—
    - (i) related to the employees conduct, capacity or compatibility; or
    - (ii) based on the operational requirements of the employer; and



- (c) that the employment was terminated in [www.kenyalaw.org](http://www.kenyalaw.org) The [Employment Act](#), 2007 51 accordance with fair procedure.
- (3) An employee who has been continuously employed by his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.
- (4) A termination of employment shall be unfair for the purposes of this Part where - (a) the termination is for one of the reasons specified in section 46; or (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee .
- (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour Officer, or the Industrial Court shall consider –
  - (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
  - (b) the conduct and capability of the employee up to the date of termination;
  - (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
  - (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and [www.kenyalaw.org](http://www.kenyalaw.org) The [Employment Act](#), 2007 52
  - (f) the existence of any previous warning letters issued to the employee.

Also section 47(5) which also provide:

- (5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

The Claimant was served with two warning letters one dated August 4, 2014 and the second one on October 28<sup>th</sup> 2014. The final one was April 22 2015. On 3<sup>rd</sup> September 2015 he received a letter inviting him for a disciplinary meeting which took place on 5<sup>th</sup> September 2015. The disciplinary meeting took place on 5<sup>th</sup> September 2015 and apparently he claimant was found culpable as charged and was terminated.

- 22. The minutes were generated dated September 7, 2015. The Claimant is said to have admitted having offered pest control services to two of his contacts. No other details are given as to who those contracts are and the conditions he offered the pest control. The persons he is said to have offered Pest control are not indicted in the termination letter.



23. In the disciplinary meeting the names of people he sold the pest control are not included and the claimant has not signed the minutes. That is despite being noted that he accepted that he sold pest control to some of his contacts. In the response the names of four contacts are indicated and some are shown to have sent money to claimant's mpesa account but then there is no clarification as to whether the said money was related to the Respondent's products. There are many other transactions in the mpesa statement and is hard to isolate a few and connect them to sale of Respondent's pest control products. Unless the payees could verify they bought the said pest control and paid the Claimant.
24. In that case, I find the reasons given by the Respondent are not authentic and are more of speculative. There are numerous accusations against him as per the warning letters but no tangible evidence to connect the Claimant on any wrong doing. The Respondent fails the fairness test envisaged in the case of *Walter Ogal Omoro vs Teachers Service Commission* (2016) eKLR where court held that:-
- “for termination of employment to pass the fairness test there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination unlike procedural fairness addresses the procedure adopted by the employer to effect the termination.
25. The court finds that indeed the reason given for termination of the Claimant were not authenticated and so failed the fairness test. Under the circumstances I enter judgment in favour of the Claimant.
26. Equally the procedure followed was flawed as the Claimant was not given sufficient time to prepare for his hearing. His letter to invite him for the disciplinary hearing was written on September 3, 2015 and the hearing took place on September 5, 2015. He was informed he could have his representative but is not clear if he had an opportunity to call such a witness. He did not confirm if the minutes represented accurate proceedings and he did not sign the same.
27. The provision for the procedure in terminating the employee is provided in section 41 of the *Employment Act*. The same Section 41 states as follows:-
- 41.
- (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part,
- (2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- (3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.
- (4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily



under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if:-

- (a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
- (b) during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
- (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;
- (d) an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;
- (e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer.
- (f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
- (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

28. The court finds even in the procedure respondent it did not comply as per law required.

29. In that case the totality of my consideration is the Claimants' case succeeds and the respondent's is declared to have terminated the claimant unfairly.

30. The following remedies are availed to the claimant.

- (i) one month salary in lieu of notice kshs 27,669/-
- (ii) Severance pay is not payable as Claimant was not declared redundant and there is no proof that NSSF dues were not remitted.
- (iii) Compensation for untaken leave from the documents in the file to total days indicated as untaken are  
2014 = 16 days  
2015 = 8 days



Total = 24

So equivalent is 27,669/15/-

- (iV) Compensation for unlawful termination will be 3 months considering the letter of employment from 2012 and termination 2015 Kshs 83,000.45/-

Total award 138,345/75

- (V) Costs are awarded to the Claimant.
- (vi) Interest to accrue at court rates from the date of judgment till full payment.
- (vii) Certificate of service to be availed to the Claimant with 14 days hereon.

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 4<sup>TH</sup> AUGUST 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

