



**Karani v Sunflag Textile & Knitwear Mills Ltd (Cause 1199 of 2017)
[2022] KEELRC 4073 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4073 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1199 OF 2017
L NDOLO, J
SEPTEMBER 29, 2022**

BETWEEN

LEONARD OSEME KARANI CLAIMANT

AND

SUNFLAG TEXTILE & KNITWEAR MILLS LTD RESPONDENT

JUDGMENT

Introduction

1. On June 23, 2017, the claimant filed a claim against the respondent. The respondent, though duly served, did not file a response and by an order issued on November 22, 2018, Makau J. directed that the matter proceeds as an undefended claim.
2. The respondent's plea for leave to file its defence out of time was declined by Makau J. The matter therefore proceeded *ex parte*.

The Claimant's Case

3. The claimant states that he was employed by the respondent from March 1, 2011 until February 10, 2017, when he was summarily dismissed, on allegations of adulterating fuel for motor vehicle registration number KBL 146T.
4. While denying the allegations, the claimant states that the subject motor vehicle was fuelled at a designated petrol station and he had no role to play. He adds that he was not driving the motor vehicle on January 24, 2017 when it was mechanically damaged.
5. The claimant further states that no investigation was carried out and he was not subjected to any disciplinary process. He also states that he was not paid his terminal benefits.
6. The claimant now claims the following:



- a) Salary *in lieu* of notice.....Kshs 32,552
- b) Salary for January 2017.....16,276
- c) Leave allowance for 2009-2017.....130,208
- d) Leave travelling allowance.....45,000
- e) Loss of job expectation.....195,312
- f) Underpayment.....508,340
- g) General damages
- h) Costs

Findings and Determination

- 7. There are two (2) issues for determination in this case:
 - a. Whether the claimant has made out a case of wrongful dismissal;
 - b. Whether the claimant is entitled to the remedies sought.

Wrongful Dismissal?

- 8. The claimant was summarily dismissed by letter dated February 10, 2017 stating:

“Dear Leonard,

RE: Summary Dismissal

An incident report was issued to you on February 1, 2017, asking you to give your written explanation after it was established that the fuel in KBL 146T was mixed with kerosene, causing heavy emission of white smoke and subsequent mechanical breakdown of the motor vehicle.

You were asked to report to the undersigned on Thursday February 2, 2017 with your written explanation, showing cause why disciplinary action cannot be taken against you by the company.

Your written explanation dated February 1, 2017 though received today February 10, 2017, has been read, and is found totally unacceptable.

Analysis of diesel from where the vehicle was initially filled, indicate there was no adulteration.

In today’s meeting, which was held in the office of the undersigned, in the presence of the shopsteward, the HR assistant and the undersigned, you were unable to give an account as to how and at what point kerosene found its (sic) way into the fuel tank, after the vehicle was fully fuelled with pure diesel at Pate road. You are therefore notified that the offence amounts to gross misconduct, which justifies summary dismissal.

Take note that you are summarily dismissed from employment with immediate effect for gross misconduct, in accordance with section 44 sub-section 4 (g) of the *Employment Act* 2007.



Your terminal dues which are subject to statutory deductions are being processed and payment shall be made to you as follows:

1. Salary upto and including January 31, 2017
2. Accrued leave 2009/2010 – 26 days @ the rate of Kshs 7,946.00
3. Accrued leave 2010/2011 – 24 days @ the rate of Kshs 8,847.00
4. Accrued leave 2016/2017 – 24 days @ the current rate
5. Accounts to recover any dues owing to the company

Yours Sincerely

For Sunflag Textile & Knitwear Mills Limited

(signed)

Chris Mukung

Group human resource manager”

9. This letter accuses the claimant of adulterating fuel in the respondent’s motor vehicle registration number KBL 146T. The dismissal letter was preceded by an incident report dated February 1, 2017 by which the claimant was required to explain how diesel in the subject motor vehicle had been contaminated with kerosene.
10. The claimant, while denying the allegation of adulterating fuel in the motor vehicle, told the court that the motor vehicle was fuelled at a specific station designated by the respondent. He further testified that he did not have exclusive control over the motor vehicle.
11. The question for determination is whether the allegation of adulteration of fuel was proved against the claimant to the standard set by section 43 of the *Employment Act*, which provides as follows:
 43. Proof of reason for termination
 - (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.
12. In reaching its decision, the respondent relied on the findings of an unnamed mechanic. Significantly, the claimant was not involved in any investigations nor was he allowed to interrogate the findings of the mechanic. He was therefore condemned unheard contrary to the procedural fairness requirements set by section 41 of the *Employment Act*.
13. It is now firmly settled that termination of employment will be adjudged unfair if no valid reason is established and if due procedure has been violated (see Supreme Court in *Kenfreight (EA) Limited v Benson K Nguti* [2019] eKLR).
14. In the present case, the respondent not only failed to prove a valid reason for the dismissal but also violated due procedure, thus rendering the dismissal both substantively and procedurally unfair.



Remedies

15. I therefore award the claimant ten (10) months' salary in compensation. In making this award, I have considered the claimant's length of service plus the respondent's unlawful conduct in executing the dismissal.
16. I further award the claimant two (2) months' salary *in lieu* of notice in accordance with clause 12 of the memorandum of agreement between the respondent and the Tailors and Textiles Workers Union.
17. The claims for salary for January 2017 and accumulated leave pay were admitted in the dismissal letter and are therefore payable.
18. The claims for leave travelling allowance, loss of job expectation, underpayment and general damages were not proved and are dismissed.
19. In the ultimate, I enter judgment in favour of the claimant as follows:
 - a. 10 months' salary in compensation.....Kshs 162,760
 - b. 2 months' salary in lieu of notice.....32,552
 - c. Salary for January 2017.....16,276
 - d. Leave pay for 74 days (16,276/30*74).....40,147Total.....251,735
20. This amount will attract interest at court rates from the date of judgment until payment in full.
21. The claimant will have the costs of the case.
22. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 29TH DAY OF SEPTEMBER, 2022.

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JUDGE

Appearance:

Mr. Wakiaga for the Claimant

No appearance for the Respondent

