



**Langat v Kenya Pooled Water Fund & another (Cause 232 of 2018)
[2022] KEELRC 4041 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4041 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 232 OF 2018
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

ADRIANNA JOY LANGAT CLAIMANT

AND

KENYA POOLED WATER FUND 1ST RESPONDENT

ROBERT BUNYI 2ND RESPONDENT

JUDGMENT

1. The claimant filed her statement of claim, on February 27, 2018.
2. She states, she was employed by the respondents on September 1, 2017, as a relationship manager.
3. Her terms and conditions of employment were spelt out in a letter of employment dated August 7, 2017.
4. She states, she was head-hunted by the 2nd respondent, who is sued in his capacity as the chief executive officer, of the 1st respondent. She was enticed to leave a secure job. the 2nd respondent obtained her CV from a 3rd party, before recruitment, which she states, violated her right to privacy.
5. The contract was for a period of 2 years, with a probationary period of 6 months. she was to receive a monthly gross salary of Kshs 400,000. She states, she accepted the contract, and affixed her signature on the document.
6. She expected she would receive a formal contract and a comprehensive job description, upon employment. She complains that she was not availed a formal contract and comprehensive job description, and was subjected to degrading treatment as a woman. She was made to work beyond the hours, and perform roles which were not in consonance with her docket. She alleges that the respondents breached her rights under articles 28, 29, 31, and 47 of the *Constitution* of Kenya.



7. She requested the 2nd respondent to avail to her a comprehensive job description on or about October 13, 2017. The 2nd respondent angrily told the claimant, that he intended to terminate her contract. He went ahead and convened a Kangaroo disciplinary hearing, where the 2nd respondent's friend was assigned the role of recording minutes.
8. Her contract was subsequently terminated on November 16, 2017.
9. She prays for judgment against the respondents for: -
 - a. Declaration that she was entitled to a formal contract.
 - b. Declaration that she was entitled to a comprehensive job description.
 - c. Declaration that lack of a formal contract breached the claimant's legitimate expectation to job security for a minimum of 2 years.
 - d. Declaration that the disciplinary meeting was in bad faith, malicious and that termination was unlawful.
 - e. Declaration that the claimant is entitled to anticipatory salary.
 - f. Payment of Kshs 9 million for loss of benefits.
 - g. Damages for breach of fundamental rights.
 - h. Any other suitable relief.
10. The respondents filed their statement of response on July 25, 2013. Their position is that around July 2017, the 1st respondent decided to hire a team to join the 1st respondent. The position of relationship manager was among the positions to be filled. The 2nd respondent received several referrals including the claimant's, from a sector contact. The claimant had shared her CV with the said contact. She was interviewed and willingly accepted the terms and conditions of employment by signing the contract.
11. She was required to undergo probation of 6 months. Although under probation, she engaged in misconduct, which included lateness to work; constant use of her phone while on duty; and engaging in heated discussions with respondent's clients, which damaged the respondent's image. She was taken through a disciplinary hearing, as captured in the minutes of the meeting held on October 27, 2017. A decision was taken to terminate her contract, effective November 16, 2017.
12. Termination was by the 1st respondent. The 2nd respondent is wrongly enjoined, and prays that he is discharged from the proceedings with costs. The claimant cleared from the respondent on January 17, 2018, and in the presence of her advocate, signed discharge form, acknowledging payment of full and final dues.
13. The respondents pray for dismissal of the claim with costs.
14. Parties agreed to have the claim considered and determined under rule 21 of the *[Employment and Labour Relations \[Procedure\] Rules, 2016](#)*. They confirmed filing and exchange of submissions, at the last appearance in court, on June 23, 2022.
15. The issues as broadly understood by the court, are whether the claimant's contract was terminated unfairly; whether her constitutional rights were violated; whether she discharged the respondents from further liability; and whether she merits the remedies pleaded?



The Court Finds:-

16. The claimant voluntarily entered into a contract of employment dated August 7, 2017. She was employed by the 1st respondent. She has not established why the 2nd respondent, who was the CEO of the 1st respondent, is enjoined to the claim. The 2nd respondent, while involved as the CEO in her recruitment, was not her employer. He was, like the claimant, an employee of the 1st respondent. The contract indicates, the 2nd respondent signed the letter of employment on behalf of the 1st respondent and /or its assignees. The Claim against the 2nd respondent is dismissed from the outset, with costs to be paid to the 2nd respondent, by the claimant.
17. The claimant was under probation, when her contract was terminated. Clause 5 placed her on 6 months of probation. Having been employed effective from September 1, 2017, her contract was terminated on November 16, 2017. She worked for a period of 2 ½ months. She was not even midway through her probation.
18. Clause 5 allowed both parties to disengage during probation, by giving 7 days' written notice or payment of 7 days' salary *in lieu* of notice.
19. This clause is in tandem with section 42 [4] of the [Employment Act](#), and with the decisions of this court, in among others, [Caroline Nyambura Thiga v Oxfam](#) [2013] eKLR and [Danish Jalang'o & another v Amicabre Travel Services Ltd](#) [2014] eKLR.
20. All the 1st respondent was required under the contract, and the law to do, was issue the claimant 7 days' notice or pay 7 days' salary *in lieu* of such notice.
21. The court in petition No 94 of 2016, [Monica Munira Kibuchi & others v Mt Kenya University; Attorney-General \[interested party\]](#), [2021] e-KLR, declared that employers are required to give employees on probation a hearing, before termination. The court however ordered that it would not declare that in terminating the petitioners' probationary contracts, the respondent violated their constitutional rights and section 41 of the [Employment Act](#), since the respondent relied on section 42 [1] of the Act.
22. The claimant in this dispute was taken through a disciplinary hearing, though not entitled to such a hearing, under the law, at the time of termination.
23. The letter of offer was a complete contract of employment, satisfying all the formal and substantive requirements of a contract of employment, under sections 9 and 10 of the [Employment Act](#). It contained all the *essentialia negotii* and was voluntarily executed by the parties. Indication that it was 'subject to contract,' did not make it less binding. The indication could only mean, in the view of the court, that the parties would perhaps, review the terms and conditions of employment after the claimant was confirmed. Employers normally rewrite the contract upon completion of probation, to reflect that the employee has completed probation and graduated to regular employment. Normally, such rewriting does not change the *essentialia negotii*. The 1st respondent was not bound to issue another contract while the claimant was still under probation, or even after probation.
24. The [Employment Act](#) does not mandate employers to provide employees with job description. Job description is an important human resource tool in managing labour. It is a practical tool, but not prescribed by the law. The claimant knew what her role as a relationship manager entailed, when she applied to discharge the role. She discharged the role for 2 ½ months. It was not mandatory she is availed a job description. The court does not agree with her, that the absence of a job description, amounted to any breach of the law and /or contract.



25. The court has not encountered a constitutional moment in this dispute. The claimant pleads about violation of her right to dignity as a woman under article 28 of the *Constitution*; violation of article 29 which prohibits torture; and violation of right to privacy under article 31 [d]; violation of article 47 on right to fair administrative action.
26. How was the simple act of terminating a 2 ½ year- probationary contract, in violation of any constitutional right?
27. Lastly, even if the court were to find that these violations took place, the claimant had, in the company of her advocate, discharged the 1st respondent from further claims arising out of her employment. She was paid Kshs 600,000 comprising 7 days' salary; salary for days worked in November 2017; and full salary for October 2017. Having signed acknowledgement and discharge in the presence of her advocate, what is the basis of lodging this claim? The claim is ill-advised.

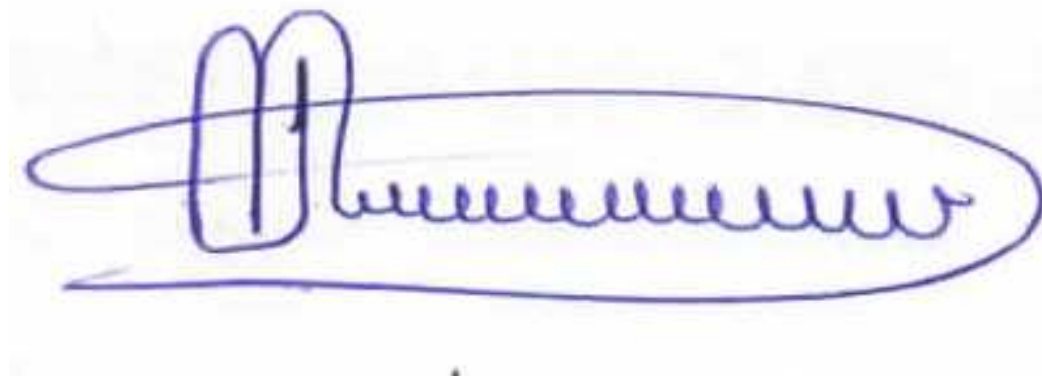
It Is Ordered:-

- a. The claim against the 2nd respondent is dismissed from the outset, with costs to the 2nd respondent.
- b. The claim against the 1st respondent is dismissed with no order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.

James Rika

Judge

A handwritten signature in blue ink, consisting of a stylized initial 'JR' followed by a series of connected loops, all enclosed within a large, horizontal oval stroke.