



Masha v Kazuri London Crocodile Farm Ltd (Employment and Labour Relations Claim 60 of 2018) [2022] KEELRC 4871 (KLR) (27 September 2022) (Judgment)

Neutral citation: [2022] KEELRC 4871 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
EMPLOYMENT AND LABOUR RELATIONS CLAIM 60 OF 2018
BOM MANANI, J
SEPTEMBER 27, 2022
FORMERLY MOMBASA ELRC NO 156 OF 2018

BETWEEN

STEPHEN MASHA CLAIMANT

AND

KAZURI LONDON CROCODILE FARM LTD RESPONDENT

(FORMERLY MOMBASA ELRC NO 156 OF 2018)

JUDGMENT

Introduction

1. This is a claim for compensation for alleged unlawful termination. The claim has been resisted by the respondent company which filed a statement of defence.

Claimant's case

2. The claimant states that he was hired by the respondent in March 2015 to manage the respondent's crocodile farm presumably within Kilifi County. That his starting salary was Ksh 30,000/=.
3. According to the claimant things did not work as he had expected in this new engagement. It is his case that shortly after he was engaged, he ran into a series of disagreements with the respondent's management on matters that related mainly to management of the farm.
4. First, the claimant contends that his professional advice to the respondent to redesign some of the holding pens on the farm was not taken. As a result, there were frequent incidences of crocodiles escaping from the farm. Second, the claimant asserts that he was once unfairly surcharged for animal loss on the farm even when it was clear that the said loss was not attributable to him but to poor decision



- making by the farm's management. The claimant contended that his attempts to have these and other matters addressed were met with insults and name calling by some of the respondent's management.
5. Eventually, the claimant alleges that the respondent's management issued him with a letter dated November 3, 2016 terminating his services on account of purported gross misconduct. It is the claimant's case that this termination was without valid cause.
 6. It is the claimant's case that the termination letter was handed to him at a police station following his arbitrary arrest instigated by the respondent's management. It was the claimant's case that the respondent's management used the police to force him to sign acknowledgment of the said letter of termination of employment.
 7. In the premises, it is the claimant's contention that his termination was driven by ill motive on the part of the respondent's management. Hence his prayer for compensation for unlawful termination.

Respondent's case

8. On its part, the respondent, through its management stated that the claimant was lawfully terminated. It was the respondent's case that it had valid reasons to summarily terminate the claimant's services. Further, the respondent contended that it observed the requirements of due process while processing the claimant's release.
9. The respondent called three witnesses. In a nutshell, the import of the evidence by these witnesses was that from the point the claimant was hired, he appeared not to want to take instructions from the management regarding the running of the farm. The respondent mentions a series of episodes that allegedly pointed to the claimant's insolence. These include: the claimant's persistent refusal to train other staff on appropriate crocodile husbandry notwithstanding instructions by the respondent that he mounts these trainings; his rude, arrogant and aggressive disposition towards other staff and management of the respondent; and his persistent, unauthorised and unexplained absence from duty. As a result of the claimant's alleged misconduct and negligence, the respondent experienced some instances of escape of crocodiles from the farm.
10. It was the respondent's case that it took all possible remedial measures to try and get the claimant change his behaviour without success. These included issuing the claimant with a number of warning letters.
11. The last straw that broke the camel's back was the alleged claimant's attack on one of the respondent's directors and founder, one Mildred Parker on November 2, 2016. This is after the said director had allegedly confronted the claimant over his persistent misbehaviour at work.
12. According to the respondent's witnesses, the claimant physically accosted the said director threatening to kill her. That this forced the said director to seek protection from the nearby police station out of fear for her life. That following this incident, the police arrested the claimant and temporarily held him at the police station on the same day, November 2, 2016.
13. That while at the police station, the police initiated dialogue between the two warring parties. That upon their request, the police released the claimant to enable the parties seek an amicable resolution of the matter. Meanwhile, they were asked to report back to the station the following day to indicate their election whether the police should open criminal charges against the claimant or whether the parties would have settled the dispute.



14. According to DW1, the respondent's director elected not to press charges against the claimant so long as the claimant agreed to give up his employment. This was because the parties could no-longer work together because of the toxic relation between them.
15. It was the respondent's evidence that the respondent offered and the claimant voluntarily agreed to sign off his release from employment against receipt of his salary for October 2016 amounting to Ksh 30,000/= . That the claimant was paid this money at the local police post on November 3, 2016 and signed a voucher waiving any further claims against the company. In the respondent's view, this development closed the matter. Thus, the current claim by the claimant is without merit and should be dismissed with costs.

Issues of determination

16. After analysing the evidence on record, I am of the view that only two issues arise for determination in the cause. These are:-
 - a. Whether the claimant was unfairly terminated.
 - b. Whether the claimant is entitled to the reliefs sought in the statement of claim.
17. On the first issue, I note that there is no meeting of the minds between the parties on what exactly occasioned their parting of ways. Whilst the claimant asserts that his termination was without cause, the respondent's case is that the claimant was terminated for gross misconduct following several acts of insolence on his part.
18. The law requires that an employer justifies termination of his employee by: -
 - a. Providing valid reasons in support of the termination; and
 - b. Ensuring due process in processing the employee's release.
19. Whilst an employee alleging unlawful termination is required to present to the court prima facie evidence pointing to the unlawfulness of the decision to terminate him, the burden of justifying the validity of termination of employment as a matter of law, rests with the employer. Consequently, where the employer is not able to provide evidence to support the lawfulness of the decision to terminate an employee, the law presumes in favour of the unlawfulness of the decision to terminate. The provisions of statute that anchor the foregoing are sections 41, 43, 44, 45 and 47 of the *Employment Act*.
20. In the case before me, whilst the claimant would like the court to believe that his termination was without cause, I note that there is evidence by the respondent that points to the claimant as having presented a difficult character whilst at work. Both DW1 and DW2 gave evidence pointing to the claimant as a generally uncooperative employee. This evidence was supported by two warning letters issued to the claimant on May 10, 2016 and August 11, 2016. The letters were produced as defence exhibits.
21. The two letters show that the claimant had been warned as early as May 2016 about his conduct at work. Issues relating to his: refusal to train other employees on management of the farm; absence from duty without permission that affected his output; late reporting to work; and lack of respect for other members of staff were all raised in the letters. This evidence demonstrates persistence by the claimant in acting in a manner that was injurious to the welfare of his employer's business. The claimant's conduct undermined the very purpose of the employer-employee relationship between the parties.
22. Considered against the foregoing background, I am inclined to believe the respondent's version of the events of November 2, 2016 that resulted in the arrest of the claimant. Importantly, DW3, the



- police officer who was involved in the process of resolving the dispute between the claimant and the respondent's founder on November 3, 2016 corroborates the respondent's version of evidence that the claimant had become generally uncooperative and violent at his work place.
23. Having regard to the totality of the above evidence, I find that the claimant's conduct at his work place constituted acts of gross misconduct within the meaning of section 44 of the [Employment Act](#). Consequently, I find that the Respondent has demonstrated that it had a valid reason for terminating the claimant as is contemplated under section 43 of the [Employment Act](#).
 24. On whether the respondent afforded the claimant due process while processing his release, the primary provisions of law to be considered are articles 41 and 47 of the [Constitution](#) on the rights to fair labour practise and fair administrative action as read with sections 41 and 45 of the [Employment Act](#). These provisions of law protect the employee's right to due process before he is terminated from employment. They provide the procedural strictures an employer must uphold in releasing an employee from employment. To restate the law, it is a requirement that before an employer terminates an employee, he: notifies the employee of the charge against him; affords the employee a hearing at a disciplinary session; permits the employee to be represented and to call witnesses during the disciplinary session; and renders and promptly communicates to the employee his decision.
 25. In the current case, it does appear to me that what the respondent's director did on November 2, 2016 was to report a suspected crime of assault involving the claimant to the police. In a sense, the respondent was by this action invoking the usual criminal jurisdiction to punish crime. This process which is external to the employer is not the same as the internal disciplinary process which may be invoked by an employer to address transgressions by an employee (see [Joseph Kipkoeb Sirma v Kenya Pipeline Limited & another](#) [2018] eKLR).
 26. The significance of keeping the two processes distinct is in order not to conflate the issues that are to be addressed in either of the forums. It is difficult to describe the police process that was overseen by DW3 as a disciplinary proceeding under section 41 of the [Employment Act](#). There is no evidence that the police notified the claimant that the process they were undertaking was a disciplinary process that would possibly result in the claimant's summary dismissal. Similarly, no determination to terminate or retain the claimant in employment was made by the police if indeed they had converted themselves into a disciplinary panel.
 27. On the contrary, it is clear from the minutes of the proceedings at the police station that the decision to terminate the claimant had already been made by the respondent even before the meeting begun. This is because apparently the respondent's representative already had the termination letter for the claimant prepared and ready as the meeting begun. This explains why she says that she gave the claimant the letter to sign it immediately the meeting begun.
 28. What happened at the police station was perhaps some form of mediation which is not the same thing as a disciplinary session. Importantly, when the police are left to preside over such disputes, the employee is left in a vulnerable position that spews a sense of coercion into accepting a particular position or risk arrest and prosecution. It is difficult to say that the employee was enjoying absolute freewill to make whatever decision that he desired in such circumstances. These circumstances do not lend themselves to the requirement to uphold due process as required under section 41 of the [Employment Act](#).
 29. It is in this context that I would like to also consider the voucher allegedly executed by the claimant. With the possibility of a criminal prosecution hanging over him, it is difficult to state that the claimant freely and voluntarily executed the discharge voucher.



30. Whilst it is clear to me that the respondent has demonstrated that it had valid reasons to terminate the claimant, it has not demonstrated that it ensured due process in processing his release from employment. I appreciate the fact that the respondent's founder may have been operating under difficult circumstances with the claimant perhaps threatening her life. However, this cannot have offered the police the license to intrude into the dispute not for purposes of investigating a possible crime but apparently for purposes of requiring the claimant to settle the matter by signing off his employment. Consequently, I declare that the claimant's termination was unlawful but only on account of the procedure adopted in processing his release from employment.

Reliefs

31. Having found the claimant's termination as unfair on account of the respondent having failed to accord the claimant fair process in his release but acknowledging that the respondent had valid grounds to terminate the claimant, I am minded not to issue orders that will tend towards rewarding a party that is equally not without blemish. Doing everything that I can in the circumstances, I award the claimant compensation equivalent to his gross salary for three months. This is equivalent to Ksh 90,000/=. The amount shall attract interest at court rates from the date of judgment till payment in full.

32. I award the claimant costs of the case.

33. I order that the respondent issues the claimant with a certificate of service.

34. The above award shall be subject to statutory deductions where applicable.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF SEPTEMBER, 2022

B. O. M. MANANI

JUDGE

In the presence of:

No appearance for the Claimant

No appearance of the Respondent

Order

In view of the directions by the Chief Justice on online hearings, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B O M MANANI

JUDGE

