



**Otieno v Coca-Cola Equator Bottlers Ltd (Cause 300 of 2018)  
[2022] KEELRC 14674 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 14674 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 300 OF 2018  
S RADIDO, J  
SEPTEMBER 21, 2022**

**BETWEEN**

**TOBIAS OMONDI OTIENO ..... CLAIMANT**

**AND**

**COCA-COLA EQUATOR BOTTLERS LTD ..... RESPONDENT**

**JUDGMENT**

1. This Cause was heard on 1 March 2021 when Tobias Omondi Otieno (the Claimant) testified and on 22 March 2022, when a Human Resource Coordinator with Coca-Cola Equator Bottlers Ltd (the Respondent) testified.
2. The Claimant had initially sued Coca-Cola Beverages Africa, but the claim against it was marked as withdrawn on 16 September 2019 (An amended Memorandum of Claim had been filed on 7 December 2018).
3. The Claimant filed his submissions on 24 June 2022, and the Respondent on 1 September 2022.
4. The Claimant identified 3 Issues for adjudication:
  - (a) Whether the Claimant was subjected to a fair hearing?
  - (b) Whether the Claimant's employment was unfairly terminated?
  - (c) Whether the Claimant is entitled to the reliefs sought?
5. The Court has considered the pleadings, evidence, and submissions and isolated the Issues in dispute as examined hereunder.



## Unfair termination of employment

### Procedural fairness

6. Procedural fairness during a disciplinary hearing is guided by sections 35(1) and 41 of the [Employment Act, 2007](#).
7. The Claimant challenged the process leading to the termination of his employment on the grounds that the disciplinary committee was composed of his accusers and that he was not allowed an opportunity to defend himself together with his witness(es), thus breaching the rules of natural justice.
8. The Respondent issued to the Claimant a show-cause notice dated 30 November 2016, and the allegation was soliciting money from a customer in order to provide her with a cooler, contrary to the rules in place.
9. The show-cause requested the Claimant to make a written response, and he did respond through email on the same day.
10. The Respondent thereafter invited the Claimant to attend an oral hearing on 1 December 2016. The invitation informed the Claimant of the right to be accompanied.
11. The Claimant attended the hearing with the colleague, but when the colleague indicated that he was not privy to the allegations against the Claimant, he was asked to be a mere observer. The colleague could, therefore, not turn into a witness to testify as suggested by the Claimant in his submissions.
12. The minutes of the hearing indicates that the Disciplinary Committee comprised the Human Resource Manager, Human Resource Assistant, General Sales Manager, Sales Representative, the complainant, and the Claimant.
13. The Court, therefore, does not buy into the Claimant's argument that his accusers were the judges of the allegations he was asked to confront. The said persons were part of the hearing by virtue of their offices.
14. The Respondent requested the Claimant to make a written response and later granted him an opportunity to make oral representations and to be accompanied.
15. The Court is satisfied that the Respondent complied with the statutory requirements of procedural fairness.
16. The Court finds the assertions on failure to provide minutes immaterial, for the minutes merely confirm the correctness of proceedings or a meeting.

### Substantive fairness

17. The Respondent had the burden of proving that the reasons for the termination of the Claimant's employment were valid and fair.
18. The burden is placed on employers by sections 43 and 45 of the [Employment Act, 2007](#).
19. The allegation against the Claimant was soliciting for money from a client of the Respondent.
20. The Claimant admitted in his written response that he received Kshs 3,500/- from the client through mpesa but explained that the money was for supplying the client with crates of soda.



21. The client testified before the Disciplinary Committee and maintained that the Claimant had informed her that she had to pay for the cooler.
22. During the same hearing, the Claimant affirmed that he knew the procedures for supplying distributors with coolers and that the procedures had not been followed (admitted he did not do an evaluation or put the client's request on the waiting list as there were other applicants ahead of her, ignoring the Sales Representative for the area in question and accepting money for the supply of soda when it was not part of his role to sell stock).
23. The Claimant also admitted that he had not delivered the soda by Monday despite receiving the money from the complainant on a Friday.
24. On the state of the evidence, the Court is satisfied that the Respondent had and proved valid and fair reasons to terminate the Claimant's employment.
25. Therefore, compensation and pay in lieu of notice are not remedies available to the Claimant.

#### **Breach of contract/statute**

#### **Service pay**

26. Copies of the Claimant's pay slips produced in Court show that he contributed to the National Social Security Fund and a pension scheme. By virtue of section 35(5) & (6) of the [\*Employment Act, 2007\*](#), he is not entitled to service pay.

#### **Conclusion and Orders**

27. Arising from the above, the court finds the cause without merit, and it is dismissed with costs to the respondent.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2022.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

#### **Appearances**

For Claimant E.A. Ochieng & Co. Advocates

For Respondent Kiragu Wathuta & Co. Advocates

Court Assistant Chrispo Aura

