



**Meme v Solution Sacco Society Limited (Cause E001 of 2022)
[2022] KEELC 14632 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 14632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E001 OF 2022
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

NIMROD MEME CLAIMANT

AND

SOLUTION SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of a Statement of Claim dated 10th March, 2022. The issues raised therein are;
Unlawful termination of Employment Contract; and Damages
2. The Respondent by a Respondent's Statement of Response dated 30th March, 2022 denies the claim and prays that this be dismissed with costs.
3. The claimant's case is that at all material times he was employed by the Respondent as a Finance Manager. He was employed on the 13th day of June, 2020 and was terminated on the 30th day of November, 2021. He earned Kshs.250,000.00 per month.
4. The Claimant's further case is that the decision by the Respondent to terminate his services was unlawful as no notice or even service was issued to him. He also was not given reasons for termination.
5. The claimant's other case is that he performed dedicatedly and his troubles started when he raised issues with some actions of the Chairman and CEO of the Respondent. He was shocked by his termination letter dated 30th November, 2020.
5. It is his further case that he was never afforded a hearing nor reasons for dismissal, therefore, making the termination unconstitutional, unlawful, un-procedural and actuated by malice in the part of the Respondent. He cites the following as particulars of unfair termination;



- a. Failure to give the claimant notice prior to the termination;
 - b. Failure to give the claimant an opportunity to be heard before termination of his employment;
 - c. Failure to pay the claimant 12 (twelve) months' salary in compensation for unlawful termination.
6. He prays thus;
- a. A declaratory order that the termination letter dated 30th November 2020 was unfair and unlawful.
 - b. A declaratory order that the Respondent grossly violated the Employment Act, 2007 and claimant's labour rights.
 - c. An order compelling that the Respondent to pay the claimant in compensation for discrimination violation of his rights under Article 27(1), 41 and 47 of the Constitution of Kenya, 2010.
 - d. An order compelling the Respondent to pay to the claimant;
 - i. Kshs.3,000,000 being 12 (twelve) month's gross salary at Kshs.250,000 per month in compensation for the unfair termination of employment.
 - ii. General damages
 - iii. Costs of the claim
 - iv. Interest on (i) and (ii) above
 - v. Any other order the court may deem fit to grant
 - e. In the alternative, an order to compel the Respondent to unconditionally reinstate the claimant to his office with his full remuneration and all benefits and rights thereof.
7. The Respondent's case is that the claimant took up the offer of his office on 15th July, 2020 and not 13th June, 2020 to 30th November, 2021 which allegation is denied in toto.
8. The Respondent's further case is that in response to paragraphs 3 and 4 of the claimant's statement of claim and in addition to paragraphs 3, 4 and 5 of the Response here above, the Respondent states, and will prove that the claimant herein reported for duty at the Respondent's premises on the 15th July, 2020 and was relieved of his duties on 30th November, 2020 barely four and a half (i.e. 4 ½) months into office and while still on probation after he failed to satisfactorily deliver on his job responsibilities to the Respondent in terms of the position that he had been offered to serve.
9. The Respondent other case is that the decision by the Board not to confirm the claimant in the position which had been offered to him, was properly arrived at due to the claimant's poor performance and incompetence during the probationary period which he did not even complete and that some of the reasons that informed the Respondent's Board not to confirm the claimant were, but not limited to;
- i. Presenting inaccurate and inconsistent finance reports to the strategic committee, the Board and management committee meetings.
 - ii. Various tendencies of insubordination and pride.
 - iii. Being temperamental and un co-operative whenever requested to clarify an issue.



- iv. Looking down on his superiors and colleagues alike.
 - v. Failure to cultivate and/or maintain a healthy working relationship with colleagues, fellow managers and staff.
 - vi. By conduct, behaviour and deeds, creating tension and unnecessary anxiety amongst colleagues and staff of the Respondent.
 - vii. Bad attitude and poor inter-personal relationship skills while with colleagues and other staff.
 - viii. Inability to cope with and/or manage the positive work pressure, demand and timelines that come with the position of a Finance Manager in a busy financial institution.
 - ix. Rudeness and general lack of courtesy when addressing fellow managers as well as when responding to any queries from his superiors.
 - x. Lack of impetuosity in performance and generally incompetent for the position of a Finance Manager at the Respondent's institution.
10. He always knew and was informed that he was to serve his probation period satisfactorily.
 11. It is the Respondent's other case that indeed, she has no case to answer. She has complied with the law and process of discharging an officer during probation due to disability and incompetency with the performance of the duties assigned.
 12. The claimant was not entitled to a letter of termination as no termination indeed occurred.
 13. The issues for determination therefore are;
 1. Whether there was a termination of the employment of the claimant by the Respondent.
 2. Whether the termination, if at all, was wrongful, unfair and unlawful.
 3. Whether the claimant is entitled to the relief sought.
 4. Who bears the costs of this cause.
 14. The 1st issue for determination is whether there was a termination of the employment of the claimant by the Respondent. The claimant in her written submissions undated brings out a case of unlawful termination of employment which is denied by the Respondent. This is in reiteration of his case as expressed in the pleadings, witness statement and lists of documents.
 15. The Respondent denies termination or unlawful termination as claimed. It is her case that the claimant failed to execute his duties due to competency issues. He was not terminated from employment but relieved on the same in accordance with the law on probation.
 16. This matter tilts in favour of the Respondent. That the claimant was relieved of his duties 4 ½ months down employment is an indicator that this was during probation. The Respondent's case, which remains uncontroverted is that the claimant is not able to effect his office. I therefore find a case of no termination of the employment of the claimant by the Respondent and hold as such.
 17. On the finding above issues number 2 and 3 fall by the wayside. There can never have been unlawful termination of employment in a situation where there was no termination. Two, in such circumstances, the claimant becomes disentitled to the reliefs sought. This is on ground of loss by not being able to sustain his case.
 18. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.



DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER, 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss. Owuor holding brief for Mr. Magerere instructed by Magerere Co.Advocates for the Claimant
2. Miss. Masaba instructed by Mithega & Kariuki Advocates for the Respondent.

