



**Nyaga v County Sacco Society Ltd (Cause E006 of 2022)
[2022] KEELRC 13133 (KLR) (31 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13133 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E006 OF 2022
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN

JANE NJOKI NYAGA CLAIMANT

AND

COUNTY SACCO SOCIETY LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a claimant's Statement of Claim dated 8th February, 2022. It does not disclose an issue in dispute on its face.
2. The Respondent in a Respondent's Response to the claimant's statement of claim dated 23rd March, 2022 denies the claim and prays that the same be dismissed with costs.
3. The claimant's case is that she was employed by the Respondent in 1997 as an office messenger and subsequently rose through the ranks to the position of Branch Manager, a position she held all this time at Karurumo branch.
4. The claimant's further case is that on 14th January, 2022 she was served with a show cause letter indicating that she had reported to the head office without ensuring the branch was opened at 800 hours as is the course but instead opened at 921 hours.
5. The claimant's other case is that she answered the show cause letter and put her position across but was suspended indefinitely on allegations of temporary closure of the business place and (not) opening the branch late as indicated in the show cause letter. These allegations are not known to the claimant.
6. The claimant further avers that on 1st February, 2022, she was issued with a notification of disciplinary inquiry on allegations of temporary closure of a place of business and negligence. This she avers is contrary to the Collective Bargaining Agreement which provides for suspension on half pay.



7. Her further case is that the claimant was elected as Chairperson/Chief Shop Steward in the year 2015 by unionisable workers to act as a representative in matters of welfare and grievances with the Respondent and she was re-elected in the year 2021 and duly accredited by the union, Banking, Insurance & Finance Union (Kenya) as required by the Union's Constitution and the Labour Relations Act, 2007 and she hold that position to date. On several occasions, the Respondent has expressed reservations about her firmness in representing workers' issues at their workplace.
8. The claimant further avers that she had been elected a shop steward and involved in trade union activities which created a grudge with the establishment. This is as follows;
 13. That the Respondent's ant-union manoeuvres and suspending shop stewards without due process have been only curtailed by this court in ELRCC/E693/2020 wherein the Respondent is in contempt of court. The Respondent as a result has suspended disciplinary hearing of Robert Nyaga Joshua until the court gives the final verdict and lifts the order. (Refer Exhibit marked JNN-9 at pages 29)
 14. That the claimant has been a target of frustration, witch-hunting and intimidation because her union activities in that:
 - i. The Respondent wrote a letter to the claimant dated 15/06/2021 as a shop steward instead of the union stopping staff salary annual increments as per annexure marked JNN-10 at pages 30.
 - ii. The Respondent was categorical in their letter dated 16/06/2021 that despite being unionisable, the claimant should not have been elected as workers representative. (Refer annexure marked JNN-6 at pages 25)
 - iii. By a letter dated 24/07/2021, the claimant raised union members complaints on eight (8) issues which includes; intimidation, failure to pay annual increment, failure to pay responsibility allowance, lack of access to loans, remittance of union dues, withdrawal of provident fund, change of permanent and pensionable terms to temporary terms and refusal to pay service gratuity as per annexure marked 10 at pages 31-32.
 - iv. The claimant was transferred by a letter dated 23/8/21 from Chuka branch to Karurumo branch without notice and payment of transfer allowance. The claimant's concerns as per her letter dated 7/9/2021 has never been addressed to date. (Annexure marked JNN-1 11 at pages 33-36)
 - v. The Respondent has unilaterally withdrawn staff medical allowances as per annexure marked JNN -12 at pages 37.

She prays as follows;

- i. That the court do order the Respondent to unconditionally lift the suspension of the claimant from employment and order immediate reinstatement and/or resumption of duty.



- ii. That the court do order Respondent to pay the claimant all withheld remunerations and/or salary during the period of suspension.
 - iii. That the court do make an order of injunction restraining the Respondent either by themselves, employees, servants and/or agents from terminating/dismissing the claimant from employment.
 - iv. That the court do compel the Respondent to withdraw threats of envisaged disciplinary inquiry action against the claimant as no offences have been proven.
 - v. Costs of this claim.
 - vi. Any other relief the court may deem necessary and just to grant.
9. The Respondent avers that it was the claimant's responsibility of opening the Karurumo branch. She puts it thus;
- 3. The Respondent admits the contents of paragraph 4 of the claim and avers that the claimants responsibilities as the Branch Manager Karurumo Branch included opening the branch premises at 7.45 AM through deactivating the alarm system to the main door, which responsibility cannot be delegated without written authority from the Operations Manager of the Respondent.
10. The Respondent further case is that the claimant was supposed to open the branch first and thereon seek permission from her seniors to be away from her place of work which she did not. The banking hall was opened at 931 hours instead of 830 hours thereby inconveniencing customers and in contravention of the regulations of the respondent she was given a notice to show cause. The trip to the headquarters was without permission or authority.
11. Again, the Respondent letter dated 31st January, 2022 was only a letter of suspension detailing the grounds of suspension and with half pay.

The issues for determination therefore are;

- 1. Whether the suspension of the claimant from employment pending disciplinary action ought to be lifted.
- 2. Whether the claimant is entitled to withheld salaries during the period of suspension.
- 3. Who bears the cost of the cause.
- 12. The 1st issue for determination is whether the suspension of the claimant from employment pending disciplinary action ought to be lifted. The claimant in her written submissions dated 18th May, 2022 submits a case of unlawful suspension without pay and prays that this be lifted by this court. The Respondent denies this and posits a case of payment of her salary during the pendency of suspension.
- 13. The claimant further submits a case not being absent from work but merely opening the branch late for good reasons. She relies on the authority of *Cabiakman v Industrial Alliance Life Insurance Co. [2004]* as quoted in the case of *Donald C. Avude v Kenya Forest Service [2015]* eKLR, where the court held thus;

“In the *Cabiakman* case the court set the criteria for administrative suspension as follows; sufficient link between the reproached act and the type of employment; the nature of



the accusation; the existence of reasonable grounds to believe that maintaining, even temporarily, the employment relationship would be prejudicial to the employer or to his reputation; the existence of immediate, important inconveniences that cannot be practically countered by alternate measures (for example: assigning the employee to another post); and, the necessity of protecting the public.”

The court went on to hold that:-

“I find the disciplinary action premature as the basis of the disciplinary process has not been established. Even if established, it would not be necessary to suspend the claimant/Applicant as there would be no investigations necessary to establish the facts that cannot be carried out while the claimant is at work.”

14. The Respondents did not file any written submissions.
15. Overall, this matter tilts in favour of the claimant. I agree with her case that suspension is not warranted in the circumstances. This is because the issue in dispute is simplistic and would not require an elaborate method of process to configure and thrash out.
16. Again, the claimant has set out a case of bad blood between herself and the establishment due to her continued union office and activities. This is not controverted by the Respondent. It does not come out in the Respondent favour either. Legitimate labour relations must be the clarion call for all parties. Any attempts to thwart and frustrate this is not a plus. I therefore find a case for lifting the suspension in the circumstances.
17. The 2nd issue for determination is whether the claimant is entitled to withheld salaries during the period of suspension. She is. Having won on a lifting of the suspension, she becomes entitled to withheld salaries occasioned by the suspension.
18. I am therefore inclined to allow the claim and order relief as follows;
 - i. That the suspension of the claimant by the Respondent be and is hereby lifted and invalidated ab initio.
 - ii. That the Respondent be and is hereby ordered to release all withheld salaries arising out of this suspension to the claimant.
 - iii. That the claimant be allowed to resume work unconditionally on 1st November, 2022 at 800 hours.
 - iv. That the costs of the claim shall be borne by the Respondent.

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

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr.Isaiya Munoru for the Claimant.
2. Mr. Kathungu instructed by Joe Kathungu & Co.Advocate for the Respondent.

