



Kenya Shoe and Leather Workers Union v Crown Industries Limited (Cause 1966 of 2017) [2022] KEELRC 12816 (KLR) (6 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 12816 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1966 OF 2017
L NDOLO, J
OCTOBER 6, 2022**

**BETWEEN
KENYA SHOE AND LEATHER WORKERS UNION CLAIMANT
AND
CROWN INDUSTRIES LIMITED RESPONDENT**

JUDGMENT

Introduction

1. This dispute arises from the termination of the employment of John Munuve (the Grievant) by the respondent on December 7, 2016. The claim is documented by a Statement of claim dated September 28, 2017 and filed in court on October 2, 2017. The respondent filed a reply on September 24, 2021.
2. At the trial, the claimant grievant testified on his own behalf and the respondent called its human resource manager, Anna Maragia. Both parties also filed written submissions.

The claimant's case

3. The claimant states that John Munuve, the grievant in this case, was employed by the respondent on June 20, 2006, in the position of machine attendant.
4. The grievant worked for the respondent until November 26, 2016, when his employment was terminated. At the time of termination, he earned a basic monthly salary of Kshs 12,425 plus a house allowance of Kshs 1,863.
5. According to the claimant, the grievant who was the chairman of the Savings and Credit Cooperative Society (SACCO) in which the respondent's employees were members, was accused of publishing a notice of a meeting of the SACCO, without authority from the respondent's management.



6. The claimant states that the notice was signed by the grievant and the secretary of the SACCO. The meeting was to be held outside the respondent's premises, on November 27, 2016, which fell on a Sunday, a rest day for the respondent's employees.
7. The claimant further states that at a disciplinary meeting held on December 3, 2016, it was alleged that the grievant and 40 other employees had confronted the respondent's managing director, an allegation denied by the grievant.
8. The claimant reported a dispute to the cabinet secretary for East African Community, Labour and Social Protection upon which a conciliator was appointed. The dispute was not resolved at the conciliation stage hence this claim.
9. The claimant seeks reinstatement of the grievant or in the alternative:
 - a. 1 month's salary *in lieu of* notice.....Kshs 12,425
 - b. Gratuity for 10 years.....62,125
 - c. 12 months' salary in compensation.....149,100
 - d. Certificate of service
 - e. Costs plus interest

The respondent's Case

10. In its reply dated June 16, 2021 and filed in court on September 24, 2021, the respondent admits having employed the grievant from September 1, 2011 in the position of machine attendant. At the time of separation, the grievant earned a monthly basic salary of Kshs 12,425 plus a house allowance of Kshs 1,863.75.
11. The respondent states that the grievant's employment was characterised by insubordination and disregard of his duties.
12. The respondent avers that the grievant was summarily dismissed on December 7, 2016 on account of gross misconduct, after he was accorded an opportunity to defend himself.
13. The respondent contends that the grievant was issued with a notice to show cause why disciplinary action should not be taken against him for misconduct by convening a SACCO education meeting, which was to be held on November 27, 2016 at 8.30 am outside the respondent's premises, without authority from the management.
14. The grievant responded to the show cause notice indicating that he had notified the management of the meeting which was to be attended by members who had completed their shift the previous day plus those who were to report to work in the evening of November 27, 2016.
15. According to the respondent, most employees did not report to work on November 27, 2016, thereby affecting the day's production, thus occasioning loss to the respondent. The respondent maintains that it runs on 24-hour basis with shifts.
16. The grievant is said to have admitted that the meeting invitation was not clear on who was to attend the meeting.



17. The respondent states that in the course of the disciplinary process regarding this misconduct, the grievant with 40 other employees confronted the director of the company at the parking yard in the morning of November 29, 2016.
18. After the second offence, the grievant was required by way of notice, to show cause why disciplinary action should not be taken against him. He was further advised in the notice to bring along a representative to represent his interest during the disciplinary hearing.
19. The respondent avers that a disciplinary meeting was held on December 3, 2016 after which it was agreed that the decision would be made by the management. The grievant is said to have apologised for confronting the Director.
20. The grievant was summarily dismissed on December 7, 2016 for confronting the director.
21. Regarding the grievant's employment record, the respondent states that he had been issued with two warning letters in 2012 and 2014, for being careless while on duty and failing to obey a lawful command respectively.
22. The respondent's case is that the grievant's dismissal was justifiable and was executed procedurally.

Findings and determination

23. There are two (2) issues for determination in this case:
 - a. Whether the grievant's dismissal was lawful and fair;
 - b. Whether the grievant is entitled to the remedies sought.

The Dismissal

24. The grievant was dismissed by letter dated December 7, 2016 which states as follows:

“Dear Sir,

Sub: Summary dismissal of your services

This has reference to our previous correspondences and subsequent disciplinary hearing committee meeting which took place on December 3, 2016.

During the said disciplinary hearing committee which you were also in attendance together with your representative, the issue of confronting the director together with forty (40) workers was discussed at length and apart from your apologetic statement you denied having planned and mobilized the said workers. This is a gross misconduct which cannot be allowed to go unpunished to avoid a similar occurrence in future.

The said matter constitutes justifiable grounds for the summary dismissal of your services and the management does not hesitate to do so with immediate effect.

You are instructed to report to the cash office for payment of days worked and leave due if any.

For Crown Industries Limited.

(signed)

Head of HR.”



25. The genesis of the grievant's issues with his employer was a notice issued to all members of the Crown Adix Savings and Credit Society Limited inviting them to attend an education day on Sunday, November 27, 2016. The notice which was signed by the grievant as the chairman and Erick Orange as the secretary, was placed on the notice board at the respondent's shop floor.
26. The respondent's complaint against the grievant is that he did not seek the authority of management before placing the said notice on the notice board. The respondent claims that as a result of the notice, some of its employees failed to report for their duty shift on the material day.
27. On his part, the grievant states that he had sought prior authority from the Human Resource Manager before placing the subject notice on the notice board. The grievant also denies that any employee had failed to show up for duty on account of the meeting of 27th November 2016.
28. By a show cause letter dated November 29, 2016, the grievant was required to provide a written explanation on account of the charge of issuing the notice calling for the meeting of November 27, 2016.
29. In his response of the same day, the grievant stated that he had taken the precaution of informing the human resource manager of the meeting. The grievant further stated that the meeting had not affected the respondent's production in any way.
30. The respondent issued the grievant with a second show cause letter dated November 30, 2016 stating that his response of November 29, 2016 was unacceptable for the following reasons, which I set out verbatim:

“You informed Mr Mwangi (HR) of the meeting on November 25, 2016 as an invite since he is a member but not to seek authority from the office on your behalf. True or false? Please comment.

You were not authorised to hand/put notice bills of the meeting on the work floor, if you were authorized who authorized you?

In your said reply letter you have stated that the meeting was meant to be attended by the members/employees who had completed their night shift on Sunday morning and others who were to report for duty in the evening (Sunday) for the night shift. Your notice memo did not specify that, it requested all members to attend and not to miss the occasion. Please comment further on this.”

31. In his further response dated November 30, 2016, the grievant stated as follows:

“I John Munuve being the chairman of the Crown adix Sacco I took the precaution to inform the management i.e (H.R) but it seems that he did not understand my point therefore I apologise for any inconvenience caused.

In my notice it was not clear that the meeting was to be attended by the members who were to report on night shift and those who had just completed the shift. Therefore I apologise for that matter.

The meeting did not affect the production in any way because in day shift those who were to report on duty reported without failure.”



32. The respondent went further to accuse the grievant of mobilising 40 of his colleagues to confront the respondent's director, with a view to averting the disciplinary process. From the dismissal letter, it is evident that this second charge is what led to the grievant's dismissal from employment.
33. The dismissal was preceded by a letter dated December 2, 2016, by which the grievant was invited to a disciplinary hearing on December 3, 2016. The letter states in part:
- “...a disciplinary hearing committee has been scheduled to take place on December 3, 2016 at 9.00 AM in the general manager's office, whereby you are instructed to appear before the said committee which will deliberate on your misconduct (ie) hanging notice bills on the work floor calling for sacco meeting without authority & confronting the managing director with forty (40) other employees on November 29, 2016).”
34. The question before the court is whether the respondent had a valid reason for dismissing the grievant as contemplated under section 43 of the *Employment Act*.
35. By the dismissal letter issued to the grievant on December 7, 2016, the respondent appears to have abandoned the charge of unauthorised placing of a notice on the notice board. The only surviving charge therefore is the one relating to alleged confrontation of the respondent's managing director, by the claimant and 40 other employees.
36. The grievant denied any involvement in the alleged confrontation and no evidence was adduced either at the shop floor or before the court to support this allegation.
37. What is more, this charge was only introduced at the tail end of the disciplinary process with the grievant being given less than 24 hours to appear before the disciplinary committee to defend himself. This summary procedure did not meet the procedural fairness requirements set by section 41 of the *Employment Act*.
38. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology* [2014] eKLR this court held as follows:
- “...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”
39. In the present case, the respondent bungled the disciplinary process by violating the required disciplinary procedure and thus failed to establish a valid reason for dismissal. The ensuing dismissal was therefore wrongful and unfair and the grievant is entitled to compensation.

Remedies

40. I therefore award the grievant ten (10) months' salary in compensation. In making this award, I have considered the grievant's length of service, his employment record and the respondent's unlawful conduct in processing the dismissal.
41. I further award the grievant one (1) month's salary *in lieu of* notice.
42. No basis was laid for the claim for gratuity which therefore fails and is disallowed.
43. In the end, I enter judgment in favour of the grievant as follows:



- a. 10 months' salary in compensation.....Kshs 142,880
- b. 1 month's salary in lieu of notice.....14,288
- Total.....157,168

- 44. This amount will attract interest at court rates from the date of judgment until payment in full.
- 45. The grievant is also entitled to a certificate of service.
- 46. The respondent will meet the costs of the case.
- 47. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF OCTOBER, 2022.

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JUDGE

Appearance:

Mr. Julius Maina (Union Representative) for the claimant

Mrs. Ochieng for the respondent

