



**Naftaley v Cooperative Society Ltd (Cause 475 of 2017)  
[2022] KEELRC 13332 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13332 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 475 OF 2017  
J RIKA, J  
NOVEMBER 30, 2022**

**BETWEEN**

**STANLEY NJATHA NAFTALEY ..... CLAIMANT**

**AND**

**COOPERATIVE SOCIETY LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim on 10<sup>th</sup> March 2017. He states that he was employed by the Respondent as a Recorder, on 13<sup>th</sup> December 2000. He was promoted to the position of a Quality Controller, on 30<sup>th</sup> October 2006 until his contract was terminated.
2. He was placed on compulsory leave, for 60 days, from 16<sup>th</sup> May 2016 to 25<sup>th</sup> July 2016 on account of investigations on milk irregularities. Compulsory leave was extended from 25<sup>th</sup> July 2016 to 13<sup>th</sup> August 2016. It was stated maliciously, that extension was until further notice.
3. He was issued a letter of termination dated 11<sup>th</sup> August 2016. Termination was effective from 13<sup>th</sup> August 2016. He was not issued a letter to show cause, or taken through a disciplinary hearing. He was not paid terminal dues.
4. His salary was Kshs. 53,099 monthly.
5. He prays for: -
  - a. Declaration that termination was unfair.
  - b. Salary for 13 days worked in August 2016 at Kshs. 26,549.
  - c. 1-month salary in lieu of notice at Kshs. 53,099.
  - d. Leave for 14.3 years at 21 days annually, at Kshs. 613,293.



- e. Service gratuity for 14 years, at 15 days' salary for each year, at Kshs. 428,877.
  - f. 12 months' salary in compensation for unfair termination at Kshs. 637,188.  
Total... Kshs. 1,759,188.
  - g. General and exemplary damages.
  - h. Certificate of Service.
  - i. Costs.
  - j. Interest.
  - k. Any other relief.
6. The Respondent filed its Statement of Response on 2<sup>nd</sup> May 2017. It is conceded that the Claimant was employed by the Respondent as pleaded. Extension of compulsory leave period was not malicious. It was inevitable to allow for proper investigations on milk irregularities. Termination was after the Respondent carried out thorough investigations on milk irregularities. The Claimant was accorded a fair hearing and found guilty. He acted negligently, contrary to Respondent's set of rules and regulations. He failed to obey the Respondent's policies, resulting in loss and damage to the Respondent. He was issued his Certificate of Service. The Respondent prays the Court to dismiss the Claim with costs.
7. The Claimant gave evidence and closed his case on 3<sup>rd</sup> December 2021. Human Resource Manager, Mercy Gatei, gave evidence for the Respondent on 6<sup>th</sup> July 2022, when the hearing closed. The Claim was last mentioned in Court on 30<sup>th</sup> September 2022, when Parties confirmed filing and exchange of their Submissions.
8. The Claimant adopted his pleadings, witness statement and documents as his evidence. Cross-examined, he clarified that he was Quantity, not Quality Controller. He was in charge of milk production section, overseeing milk collection and distribution. This was by way of data. Data was relayed to the Respondent through smart phone, to Respondent's server. He did not have access to the server. The smart phone gave summaries on daily basis. Irregularities were detected on route 6. The Claimant detected these, at the end of the month. He was looking at records daily. He was diligent. He dealt with more than 15,000 accounts. It would take some days to detect irregularities. He was not given an opportunity to respond. He was placed on compulsory leave of 2 months. He was not aware of investigations. The Security Officer asked him to detail how irregularities took place. This was not an opportunity to defend.
9. He had not received terminal dues from the Respondent, as at the time of the hearing. He received his pension contribution, of about Kshs. 500,000. He was 42 years old, at the time of giving evidence, and would receive the rest of his pension, on attaining the age of 60 years. He was offered Kshs. 158,000 by the Respondent. He could not take it. He was not aware that the Respondent lost about Kshs. 1 million, through milk fraud. Fraud was on route 6B. The Security Officer told the Claimant, that a Farmer disclosed that Farmers were coerced to enter into a deal with the Claimant, with a promise that the Claimant would protect them. It is not true that the Claimant colluded with the Grader to defraud the Respondent. The Claimant was not aware that Farmers disclosed what had been lost through the fraud. The Claimant was not paid his annual leave days. He seeks gratuity of about Kshs. 400,000. He did not know how the figure was arrived at. His Advocate did the computation for him. The Claimant denied that he was seeking to benefit from his wrongdoing.



10. Redirected, the Claimant told the Court that he was not accused of fraud. He was not called to disciplinary hearing. No Grader accused him of fraud. He was not presented with any Investigations Report.
11. Gatei adopted the Respondent's pleadings, documents and her witness statement. Cross-examined, she confirmed to the Court, that the Claimant worked for the Respondent from 13<sup>th</sup> December 2000 to 13<sup>th</sup> August 2016. There was milk quantity irregularity. The Claimant was sent on compulsory leave. He recorded a statement on investigation, on 14<sup>th</sup> May 2016, the same day he was sent away on compulsory leave. Leave was extended from 25<sup>th</sup> July 2016 to 13<sup>th</sup> August 2016. The extension letter also indicated extension was "until further notice." This indication was in error. Investigations revolved around Farmers who delivered milk to the Respondent. The Respondent's Board convened in May 2016 over the issue. Investigations were completed around August 2016. The Claimant's contract was terminated. He had a meeting with his Supervisor, preceding termination. There was a sitting on 14<sup>th</sup> May 2016. The Claimant was not given any other meeting. Compulsory leave was to allow investigations to take place. Termination letter only refers to extension of compulsory leave. In her statement, Gatei stated that Farmers appeared before the Board. The Farmers said that the Claimant was involved in fraud. The Claimant did not appear before the Board. The Farmers' statements to the Board, were not shared with the Claimant. He was not charged with fraud. He was not paid his terminal dues. He took annual leave. The computation of annual leave by the Respondent, indicates he was owed leave over a period of 14.3 years, the same as claimed by the Claimant. The Respondent did not exhibit Claimant's annual leave forms. The computation by the Respondent is erroneous. Gatei told the Court she has over 20 years' experience in Human Resource Management. She conceded that there was an omission on the part of the Respondent.
12. The issues are: whether termination of the Claimant's contract was fairly carried out, under Sections 41, 43 and 45 of the *Employment Act*; and whether he merits the remedies pleaded.

**The Court Finds :-**

13. The Claimant was employed by the Respondent Milk Cooperative Society as a Recorder, on 13<sup>th</sup> December 2000. He was promoted to the position of Quality Controller, through a letter dated 30<sup>th</sup> October 2006. He was placed on compulsory leave between 16<sup>th</sup> May 2016 until 13<sup>th</sup> August 2016, when his contract was terminated.
14. The letter of termination does not expressly state the reason for termination. It however alludes to milk irregularities over which the Claimant had been sent on compulsory leave.
15. Sections 41 and 45 of the *Employment Act*. The Claimant was sent on compulsory leave on 16<sup>th</sup> May 2016. He was advised this would be for a period of 60 days, ending 25<sup>th</sup> July 2016.
16. On 18<sup>th</sup> July 2016, the Respondent wrote to the Claimant advising that compulsory leave had been extended by 17 days to 13<sup>th</sup> August 2016. Confusingly, he was advised also that extension was, "until further notice." The extension was therefore indefinite.
17. This was a discernible flaw in the procedure. A period of compulsory leave, suspension, interdiction or other administrative leave, must be definite. Where it is left open-ended, it becomes indistinguishable from termination of the contract. Mutuality of obligations becomes blurred. It was incumbent upon the Respondent to communicate to the Claimant unequivocally, the number of days over which he had been placed on compulsory leave.



18. The reason why he was placed on compulsory leave was to allow the Respondent investigate milk irregularities. The Respondent stated that investigations took place, involving Farmers who implicated the Claimant.
19. The Claimant was not properly engaged in the investigations. He was not availed the statements recorded by the Farmers. He did not know what the Farmers said before the Board. There were allegations of a deal struck between the Farmers, the Grader and the Claimant, to perpetrate irregularities. Details of the investigations were not availed to the Claimant.
20. Even after the Respondent presumably concluded its investigations, there was no letter to show cause issued upon the Claimant, calling on him to explain any role the investigations may have found him to have played in the fraud. There were no specific charges, laid out against the Claimant regarding milk irregularities. He was not invited to any disciplinary hearing. He was not heard as prescribed by Section 41 of the *Employment Act*. He was issued a letter of termination effective on 13<sup>th</sup> August 2016, a date when he had equivocally been advised would be the last day of extended compulsory leave. There was no hearing in any form, during or after the period of compulsory leave.
21. In her evidence, the Human Resource Manager Gatei, conceded that procedure was flawed. There were omissions, she told the Court. She stated that the Claimant was advised, compulsory leave was until further notice, through error. There was no disciplinary hearing. The investigations report was not availed to the Claimant. He did not appear before the Board. Farmers who implicated him did. Their statements before the Board were not availed to the Claimant. The evidence from the Respondent supported the Claimant's position that procedure was unfair.
22. Sections 43 and 45 of the *Employment Act*. These provisions underscore that termination must be based on valid reason or reasons. The Respondent, as observed above, did not give an express reason, to justify termination. The letter of termination alludes to "the letter dated 18<sup>th</sup> July 2016, extending your compulsory leave following investigations on milk irregularities." It is not stated whether investigations had been completed, and what the findings were, and how the Claimant was implicated by the findings.
23. There was no disciplinary hearing as stated above with specific charges against the Claimant. There was no fraud established against the Claimant. There was no other employment offence, established by way of a hearing, to justify termination. It was not established what the Claimant did, that ended in loss and damage to the Respondent. The Respondent alluded to loss of over Kshs. 1 million. Details were not given of this loss in any Investigation or Audit Report. The Respondent did not establish reason or reasons, to justify termination, under Sections 43, 45, and 47[5] of the *Employment Act*.
24. Remedies. The Claimant worked for 15 years and 8 months, from 13<sup>th</sup> December 2000 to 13<sup>th</sup> August 2016. There was no record of poor performance or poor discipline, exhibited before the Court, save for the allegations which led to termination, and which have not been established. He had been promoted from a Recorder, to Quality Controller. He did not contribute to the circumstances that led to termination of his contract. Termination was flawed both on procedure and in substance. His contract was term-indefinite. He expected to serve until retired. He was paid a net total of Kshs. 511,250 by the Respondent's Dairy Farmers Cooperative Staff Provident Fund. He was advised he had deferred benefits of Kshs. 157,614. The Respondent states it offered to the Claimant terminal benefits of approximately Kshs. 158,000 which he did not take.



25. The Court would agree with the Claimant that his long years of service, and other reasons shown above, warrant compensation for unfair termination, equivalent of 12 months' salary, which the Court allows, at Kshs. 637,188.
  26. Notice pay is granted at Kshs. 53,099.
  27. Salary for 13 days' in employment, in August 2016 is granted at Kshs. 26,549.
28. The Respondent acknowledged in its computation of Claimant's final dues, that it owed annual leave of 18.3 days [2013], 25 days [2014], 25 days [2015] and 43 days [2016]. The claim for annual leave of 14.3 years appears to the Court too remote in time, and the Claimant appears to have slumbered for too long, before he laid claim to some of the annual leave days. The Court would uphold the number of days stated by the Respondent in its computation, which add up at 111.3 days, translating to annual leave pay, at Kshs. 227, 304.
29. The prayer for service/ gratuity is misplaced. It is not founded on the Claimant's contract, the law or any established policy. The Claimant was a member of the Respondent's Staff Provident Fund. He was paid his provident dues. He was also actively subscribed to the N.S.S.F. He is not eligible for service pay, under Section 35[6] of the Employment Act.
30. The Respondent has exhibited Certificate of Service issued in the Claimant's name, dated 29<sup>th</sup> August 2016. If the Claimant has not received it, he is aware it is ready for pickup, and does need an order of the Court to retrieve his Certificate of Service.
31. Costs to the Claimant.
32. Interest is allowed at court rates from the date of Judgment, till payment is made in full.

**In Sum, It Is Ordered**

- a. It is declared that termination was unfair.
- b. The Respondents shall pay to the Claimant: compensation equivalent of 12 months' salary, in compensation for unfair termination at Kshs. 637,188; notice at Kshs. 53,099; annual leave at Kshs. 227,304; and 13 days' salary for August 2016, at Kshs. 26,549 – total Kshs. 944,140.
- c. Costs to the Claimant.
- d. Interest allowed at court rates from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30<sup>TH</sup> DAY OF NOVEMBER 2022.**

**JAMES RIKA**  
**JUDGE**

