



**Onsando v Christ is the Answer Ministries (CITAM) (Cause 1892 of 2014)  
[2022] KEELRC 13295 (KLR) (24 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13295 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1892 OF 2014  
L NDOLO, J  
NOVEMBER 24, 2022**

**BETWEEN**

**SETH B ONSANDO ..... CLAIMANT**

**AND**

**CHRIST IS THE ANSWER MINISTRIES (CITAM) ..... RESPONDENT**

**JUDGMENT**

1. Trial opened in this case on January 23, 2020 when ON Makau J took the claimant's testimony as well as the testimony of two of the respondent's witnesses.
2. I became seized of the matter from September 28, 2021 and on several subsequent dates, adjournment was granted to allow the respondent time to secure its third witness. On September 27, 2022, I declined to grant any further adjournment and proceeded to close the respondent's case after which I directed the parties to file final submissions. At the time of writing this judgment, only the claimant had filed submissions.

**The Claimant's Case**

3. The claimant states his case in a statement of claim dated October 27, 2014 and filed in court on October 28, 2014. He pleads that he was employed by the respondent on November 6, 2000, as a caretaker earning a monthly salary of Kshs 11,473. At the time of leaving employment, the claimant's salary had risen to Kshs 29,016.72.
4. The claimant states that he was maliciously and falsely accused of having an extra marital relationship with some young girls in the church, which allegations he denied.
5. The claimant avers that following the allegations of indecency made against him, he was suspended and subsequently summarily dismissed. He terms both the suspension and dismissal as wrongful, unlawful and unfair for reasons that:



- a. Both the suspension and summary dismissal were based on framed allegations by some of the respondent's members who the claimant believes had a personal vendetta against him;
  - b. During the disciplinary hearing, the alleged complainants or the young girls from whom the disciplinary action originated were never called to testify and prove their claim against the claimant;
  - c. The persons who falsely accused the claimant of having extra marital sexual relationships were the ones who sat in the disciplinary committee to decide the claimant's fate, hence he was not afforded a fair hearing;
  - d. There was no evidence adduced during the disciplinary hearing that linked the claimant to the allegations made against him;
  - e. The claimant had maintained a high moral standard throughout the period of his employment (15 years) and the respondent ought to have given him the benefit of doubt.
6. The claimant holds the respondent liable for wrongful, unlawful and unprocedural summary dismissal. He therefore claims the following:
- a. A declaration that the termination of his employment was unlawful
  - b. Notice pay.....Kshs 29,016.72
  - c. Leave pay.....29,016.72
  - d. Severance pay.....308,880.00
  - e. Overtime (1367 days).....1,353,330.00
  - f. Holidays (110 days).....108,900.00
  - g. Interest

### **The Respondent's Case**

7. The respondent filed a statement of response dated May 20, 2015. The respondent admits having employed the claimant but denies that the claimant was maliciously and falsely accused of having extra marital relations with some young girls in the church.
8. The respondent admits that the claimant was suspended and subsequently dismissed but maintains that the said suspension and dismissal were executed lawfully and procedurally.
9. The respondent denies the claimant's averment that the dismissal was wrongful, unlawful and unfair. The respondent further denies that the dismissal was actuated by ill motive.
10. The respondent states that it conducted investigations into allegations of impropriety made against the claimant and arrived at findings which were deliberated upon by the respondent's disciplinary committee, with a report dated March 21, 2014 being produced.
11. The respondent denies the claimant's entire claim and states that the claimant was paid his terminal dues in full as follows:
  - a. One month's pay *in lieu* of notice.....Kshs 31,511.00
  - b. 24 days' leave pay.....31,511.00



c.	9 days' pay (April 2014).....	9,453.30
d.	Half pay for 3 months (Jan-March 2014).....	47,266.50
e.	Leave allowance due.....	3,781.32
	Gross total due.....	123,523.12
	Less PAYE due.....	30,989.34
	Net Pay due.....	92,533.78

### Findings and Determination

12. There are two (2) issues for determination in this case:
  - a. Whether the termination of the claimant's employment was lawful and fair;
  - b. Whether the claimant is entitled to the remedies sought.

### The Termination

13. The termination of the claimant's employment was communicated by letter dated April 9, 2014 stating:

“RE: - Termination Of Employment Contract

Greetings in the Precious Name of our Lord Jesus Christ.

Reference is made to letter dated January 7, 2014 Ref PF/0215/1/103, where you were suspended from work to pave way for investigation concerning an allegation that you were involved in extra-marital sexual relations and inappropriate relationships with daughters of BMM (the Assembly Caretaker); DK and FK. D and F are both under 18 years old, D completed Standard 8 last year and F has just completed Standard 8 in November 2013. Further allegations leveled against you are that you have been giving money to both D and F which you agreed, with a plan to lead F into sexual relations with you.

Further reference is made to your personal representation to the Disciplinary Committee meeting that was held on March 21, 2014. After looking at both the investigation report and your presentation, the disciplinary committee and the management found no reason to absolve you from allegation given that you knowingly gave money to the above mentioned without the knowledge of their parents/guardian.

Subsequently, it was decided that the suspension be lifted and you be and are hereby terminated from the service of Christ is the Answer Ministries with effect from the date of this letter on account of gross misconduct as provided under CITAM HR Policy Manual, CITAM Code of Ethics and [Employment Act](#) 2007.

Subject to clearance with the CITAM, you will be entitled to terminal benefits applicable to your terms of service such as accrued salary, payment *in lieu* of notice, and payment of accrued leave days.

Payment will be made less ay liabilities to CITAM as reflected in the clearance form.

Please expedite clearance to facilitate payment of your final dues, if any.

In the meantime we take this opportunity to wish you all the best in your future endeavors.



(Signed)

Mrs Edna K Kiptoon

Head of Human Resource”

14. This letter accuses the claimant of engaging in sexual relations and inappropriate relationships with minors. Prior to the termination, the claimant had been put on suspension by letter dated January 7, 2014.
15. The question before the court is whether the respondent had a valid reason for terminating the claimant’s employment as contemplated under section 43 of the *Employment Act*. No doubt, the allegations made against the claimant were gross but were they proved at the shop floor as required by law?
16. On January 8, 2014, the Head of HR, Edna K Kiptoon issued instructions to the head of security and the head of internal audit to carry out investigations into the allegations levelled against the claimant. Pursuant to this, a report was issued on February 11, 2014.
17. This court is aware that in interrogating the veracity of a reason for termination of employment, the court is required to apply the reasonable responses test, which dictates that where the employer has acted reasonably, the court ought not to interfere (see *Reuben Ikatwa & 17 others v Commanding Officer British Army Training Unit Kenya & another* [2017] eKLR).
18. In the case before me, the employer not only failed to facilitate a face-off between the claimant and his accusers but also omitted to present the investigators during the disciplinary hearing. The claimant therefore had no opportunity to question his accusers and the allegations levelled against him were not verified at the shop floor as required under section 41 of the *Employment Act*.
19. I have had occasion to read the investigation report, which I note was not signed. Further, according to the record, there was not a single instance at which the claimant was allowed the opportunity to meet his accusers. A reading of the minutes of the disciplinary proceedings conducted on March 21, 2014 reveals that there were underlying grievances between the claimant’s family and the family of the minors the claimant is alleged to have violated. The claimant’s averment that he was framed is therefore not far-fetched.
20. On the whole, I find that the respondent not only failed to establish a valid reason for terminating the claimant’s employment as required by section 43 of the *Employment Act* but also did not attain the procedural fairness threshold set by section 41 of the *Act*.
21. The court therefore concludes that the termination of the claimant’s employment was substantively and procedurally unfair and he is entitled to compensation.

## Remedies

22. I therefore award the claimant twelve (12) months’ salary in compensation for unlawful and unfair termination of employment. In making this award, I have taken into account the claimant’s long service as well as the respondent’s unlawful conduct in effecting the termination.
23. From the evidence on record, the claimant was paid notice pay and leave pay. The claims thereon are therefore misplaced.
24. The claimant did not leave employment on account of redundancy and he is therefore not entitled to severance pay. The claims for overtime and holidays were not proved and are disallowed.



25. Ultimately, I enter judgment in favour of the claimant in the sum of Kshs 378,132 being 12 months' salary in compensation for unlawful and unfair termination of employment.
26. This amount will attract interest at court rates from the date of judgment until payment in full.
27. The claimant will have the costs of the case.
28. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Ntabo for the Claimant

Mr. Ombati for the respondent

