



Kedera v Kenya Seed Company Company (Employment and Labour Relations Cause 222 of 2018) [2022] KEELRC 13424 (KLR) (21 November 2022) (Judgment)

Neutral citation: [2022] KEELRC 13424 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 222 OF 2018
NJ ABUODHA, J
NOVEMBER 21, 2022**

BETWEEN

SALOME NOLEGA KEDERA CLAIMANT

AND

KENYA SEED COMPANY COMPANY RESPONDENT

JUDGMENT

1. The Claimant filed a Memorandum of Claim dated June 26, 2018 against the Respondent seeking for the following reliefs;
 - i. A declaration that the Claimant was wrongfully and unlawfully dismissed from duty
 - ii. Damages for unlawful dismissal
 - iii. An order for payment to the Claimant of her terminal dues being; one month salary in lieu of notice, payment of the 16 days unutilised leave, service pay and unpaid salary and allowances up to and including October 2, 2015.
 - iv. Cost of the suit and interest
 - v. Any other relief that this honourable court may deem fit to grant.
2. The Claimant avers that she was employed by the Respondent through the subsidiary company , Simlaw Seeds Company Limited as a counter sales person vide a letter of appointment dated November 25, 2003 where she was subsequently transferred to the Respondent's head office in Kitale to work as an assistant sales person in charge of the seed shop.
3. The claimant avers that she was charged with the responsibility of issuing seeds to customers and sales persons upon authorization by the management.



4. She averred that at no point was she charged with the responsibility of collecting money for the respondent a payment for the seeds purchased was done to the company cashier.
5. The Claimant stated that during her service, she was required at all times promote the interests of the company and to obey orders and directions issued by the claimant's supervisors and the managing director.
6. According to the Claimant during the 2013/2014 financial year and particularly early 2014, she was given a verbal mandate by the Marketing manager to release the seeds to the field sales officers so that the same could be sold on credit to the respondent's customers thereafter to reconcile the accounts.
7. The claimant averred that when the reconciliation was done at the end of the financial year 2013/2014, payment for the seed which had been sold on credit had not been made and that the marketing manager authorized the sales officers to give the names of the customers who had received the seeds on credit and that the credit balances were posted in the respective customer's account.
8. It was averred by the claimant that following the said posting of the credit balances in the respective customer accounts who owed the respondent, the respondent vide its letter dated May 14, 2015 interdicted the Claimant from duty to facilitate further investigations on allegations of serious malpractices in handling of some customer accounts.
9. The claimant stated that she was interdicted for 6 months without pay which pay has not been paid to date.
10. The claimant further stated that she was invited for a disciplinary hearing where she was accused of serious malpractices in the handling of the customer accounts, and that the invitation letters for the hearing were delivered to the claimant on the eve of the purported hearing hence denied her the opportunity to prepare adequately for the hearing.
11. The claimant stated that vide a letter dated October 2, 2015, the respondent dismissed the claimant from employment on the grounds that the Claimant was culpable for the charge of serious malpractices in the handling of the customer accounts.
12. The claimant contended that she appealed against the dismissal but her appeal was arbitrarily dismissed by the same committee which had dismissed her initially hence the said appeal was not handled in accordance with the rules of natural justice.
13. The claimant faulted the procedure adopted in dismissing her from employment and averred that the process flouted the requirements of the [Employment Act](#).
14. The Respondent filed a Memorandum of response on July 27, 2018 and denied the claim and averred that the Claimant was engaged in a serious malpractice in handling of customer accounts which led to loss of Kshs 3,645,421 by the company.
15. It was the Respondent's case that when the discrepancies were noted, in the respective customer accounts, the Claimant was called upon on several occasions to explain the discrepancies and generally the shortcomings in discharge of her duties at the work place and that she was lawfully interdicted on May 14, 2015 to pave way for proper investigations.
16. It was asserted that there was a valid reason to terminate the Claimant and due process was followed leading to the dismissal of the claimant from service by the Respondent.



Evidence

17. CWI, Salome Nolega Kedera testified on November 29, 2021 and relied on her witness statement and the documents filed in support of her case as her evidence in chief. She stated that she was dismissed unlawfully from employment by the Respondent and that further, she was not paid her terminal dues. The claimant stated that she was employed by the Respondent as a counter sales person on November 25, 2003 on permanent and pensionable terms.
18. She testified that she was in charge of seed shop and her work entailed issuing seeds to customers and sales people upon authorization by management. She explained that the sales were either by credit or cash and that sometimes
19. The Claimant averred that she was issued with an interdiction letter dated May 14, 2015 on accusation of serious malpractices in handling customers account for goods she released to four customers where they made part payment. According to the Claimant, she was paid ½ salary during the interdiction period and was later invited for a disciplinary hearing on August 31, 2015.
20. The Claimant contended that she was not given adequate time to prepare for the said hearing as she was served for the hearing scheduled for August 31, 2015 on August 28, 2014 and that the disciplinary committee made a finding to have her dismissed from employment where she appealed against the said finding. She stated that the appeal was heard by the same committee which upheld the decision to dismiss her.
21. The Claimant maintained that she was not paid her terminal dues.
22. On cross examination, she conceded that she was charged in Kitale Criminal Case No 3380 of 2018 where she was convicted and fined. She stated that she had preferred an appeal before the High Court in Criminal Appeal no 27/2020 which appeal is yet to be determined.
23. The Respondent called Stephen Malakwen who testified as RW1. He relied on his witness statement recorded on October 31, 2019, the defence exhibit 1-14 filed in court as well as the Respondents documents on December 6, 2019 as his evidence in chief.
24. RW1 stated that the Claimant was terminated because of irregularities detected in the performance of her duties. He further stated that the Claimant was taken through a disciplinary process before she was terminated. According to RW1, the Claimant was invited for the hearing on August 28, 2015 for the hearing scheduled for August 31, 2015.
25. It was averred that the Claimant attended the hearing, defended herself and later on the committee found her guilty and recommended her dismissal.
26. It was further averred by RW1 that the Claimant appealed against the decision of the disciplinary committee which appeal was dismissed.
27. RW1 maintained that the Claimant was paid her terminal dues upon termination
28. On being cross examined by Counsel Teti, RW1 conceded that the last letter inviting the claimant from disciplinary hearing was delivered to her on a Friday on August 28, 2015 for a hearing scheduled for August 31, 2015, the next Monday.
29. With that evidence the parties closed their respective cases and the court directed for filing of written submissions. The Respondent's submissions were filed on October 3, 2022 while the Claimant's submissions were filed on October 4, 2022. I have considered the submissions by the parties.



Determination

30. From the onset, I must mention that this court's mandate in a case as the one before me is primarily concerned with two major issues, that is, whether the termination of a person from employment is justified and therefore lawful and also, whether due process was followed before such a termination was effected. It therefore immaterial on what really transpired between the employer and the employee and as, mentioned, this court will only concern itself with the aforementioned issues.
31. From the pleadings on record, the evidence of the parties and the submissions filed, the issues that arise for determination in this case are as follows: -
- i. Whether the Claimant's employment was terminated unlawfully
 - ii. Whether the procedure followed was in accordance with section 40 of the *Employment Act*.
 - iii. Whether the reliefs sought are merited
32. In the instant case, the Claimant has stated that her employment was terminated unlawfully on the grounds of serious malpractices in the handling of the customer accounts which malpractices was never explained to her on what the said malpractices entailed. In fact, the Claimant averred that she was not aware of the reasons that led to her termination.
33. Section 43 of *Employment Act* 2007 ;
- ' 43. Proof of reason for termination
- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee'.
34. The Respondent has maintained that the Claimant was summarily dismissed from employment after it was established that she was engaging in transactions that occasioned financial loss to the company and that she was eventually charged with stealing by servant in Kitale Criminal Case No 3380 of 2018.
35. I therefore find that the Respondent was justified in terminating the Claimant's employment as theft by servant is a valid reason for termination of employment.
36. The next issue that I need to address myself to is whether due process was followed before the Claimant was terminated from employment.
37. Section 41 of the *Employment Act* provides:-
- ' Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.'



38. The Claimant averred in her claim that due process was not followed in the termination of her employment. Her bone of contention was that she was interdicted on half a salary for 6 months and that she was not given time to adequately prepare for her defence. The claimant has alleged that she was invited for a disciplinary hearing scheduled for August 31, 2015 vide an invitation letter delivered to her on August 28, 2015. This evidence was not controverted by the Respondent's witness when he took to the stand.
39. I have perused the record at length and particularly the Respondent's exhibits 8 a, b & c. It is worth noting that the claimant was first invited for a disciplinary hearing vide a letter dated August 7, 2015 for a meeting to be held on August 12, 2015. The said meeting was postponed and vide a letter dated August 19, 2015, she was invited for a meeting to be held on August 28, 2015. This meeting was also postponed to August 31, 2015.
40. Can it then be said that the Claimant did not adequately prepare for his defence? I do not think so. In my own view, the claimant ought to have prepared herself for the disciplinary hearing immediately she got the 1st invitation letter.
41. As to the allegation that the appeal was handled by the same committee that dealt with the initial disciplinary hearing, I find this not to hold any water.
42. It therefore follows that the Claimant was also subjected to a fair disciplinary process and I make a finding that the dismissal of the Claimant was fair and just in the circumstances
43. In the end, I find that the claim by the Claimant is not merited and is therefore dismissed with no orders as to costs.
44. It is so ordered

DATED AND DELIVERED AT ELDORET THIS 21ST DAY OF NOVEMBER, 2022

Abuodha Nelson Jorum

Judge ELRC

