



REPUBLIC OF KENYA



**KENYA LAW**  
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**Omollo v Equator Bottlers Ltd (Cause 11 of 2020)  
[2022] KEELRC 13227 (KLR) (16 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13227 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 11 OF 2020  
S RADIDO, J  
NOVEMBER 16, 2022**

**BETWEEN**

**BENEDICT OMOLLO ..... CLAIMANT**

**AND**

**EQUATOR BOTTLERS LTD ..... RESPONDENT**

**JUDGMENT**

1. Benedict Omollo (the claimant) sued Equator Bottlers Ltd (the respondent) on 6 February 2020, alleging unfair termination of employment and breach of contract.
2. The respondent filed a response on 25 February 2020, and on 5 March 2020, the claimant filed an amended memorandum of claim.
3. On 11 March 2021, the claimant filed what he called response to the respondent's reply, and the cause was heard on 30 May 2022 and 19 September 2022. The claimant and a human resource business partner with the respondent testified.
4. The claimant filed his submissions on 19 October 2022 (should have been filed and served before 7 October 2022), and the respondent on 1 November 2022 (should have been filed by 31 October 2022).
5. The claimant set out 3 Issues for adjudication:
  - (i) Whether the claimant was subjected to a fair hearing?
  - (ii) Whether the claimant's employment was unfairly terminated?
  - (iii) Whether the claimant is entitled to the reliefs sought?
6. The court has considered the pleadings, evidence, and submissions.



## Unfair termination of employment

### Procedural fairness

7. The claimant asserted that the disciplinary process was a sham and a violation of the rules of natural justice because the complainant was not called during the hearing, his witnesses were harassed, and the respondent was the accuser, investigator, and judge in its own cause.
8. Sections 35(1) and 41 of the *Employment Act*, 2007, speak to procedural fairness when an employer contemplates terminating an employment contract.
9. The respondent issued a show cause notice dated 16 September 2019 to the claimant. the notice outlined the allegations against the claimant and called on him to make a written response which he did, and on 19 September 2019, he was notified of an oral disciplinary hearing.
10. The invitation advised the claimant of the right to be accompanied and to present evidence.
11. The claimant attended the hearing with a witness who turned out not to be privy to the subject of the disciplinary allegations.
12. The respondent, after that, notified the claimant of summary dismissal through a letter dated 25 September 2019.
13. The witnesses presented by the claimant were not privy to the allegations against the claimant. the minutes suggest that the claimant was intent on briefing them during the actual hearing.
14. Was there a need to call a director of the respondent's client who complained to testify during the disciplinary hearing? The court does not think so, as a disciplinary hearing is not meant to be a mini-court.
15. Further, within the context of a disciplinary process, it is the employer or its agents who investigate and lead the disciplinary process. For an allegation of conflict to pass, the employee must place sufficient evidence before the court.
16. The claimant did not present any evidence of conflict of interest or impartiality.
17. Considering the above, the court is satisfied that the disciplinary hearing was not a sham and that the Respondent was in substantial compliance with the statutory requirements of procedural fairness.

### Substantive fairness

18. Pursuant to sections 43 and 45 of the *Employment Act*, 2007, the respondent had the burden of proving as valid and fair the reasons for dismissing the claimant.
19. The allegation against the claimant was the failure to handle PET pack stocks within optimal quantities at Kailashnath Ent Ltd.
20. The respondent produced documents to show that on 13 September 2019, a director of Kailashnath Enterprises Ltd wrote a complaint letter on short-expiry products.
21. The respondent also produced an email sent to the claimant by his immediate supervisor indicating that he had called the claimant and given him certain instructions, which he did not fully comply with.
22. In the written response to the show cause, the claimant admitted that he did not advise the occd to return the stocks.



23. The evidence placed before the court shows that the claimant did not comply with the respondent's operating procedures and instructions. The respondent thus suffered a loss which the claimant conceded to during the disciplinary process.
24. In the circumstances, the court finds that the respondent had and has proved valid and fair reasons to dismiss the claimant.

#### **Constructive dismissal/unfair labour practices**

25. The claimant pleaded that the respondent had made the work environment deplorable and unfavourable.
26. However, the claimant did not lead any evidence or sufficient evidence to enable the court to make a finding of constructive dismissal or unfair labour practices.

#### **Breach of contract/statute**

#### **Unpaid leave allowance**

27. The claimant prayed to be granted unpaid leave allowance for the period of employment. An extract of the appointment letter produced by the claimant did not provide for leave allowance, and the head of the claim is declined.

#### **Service pay**

28. The claimant produced copies of his payslip. The same indicates that he was contributing to the National Social Security Fund.
29. By dint of section 35(5) & (6) of the [Employment Act](#), 2007, the Claimant is not entitled to service pay.

#### **Conclusion and orders**

30. From the foregoing, the court finds no merit in the cause, and it is dismissed with no order on costs.

**DELIVERED VIRTUALLY FROM LAMU, DATED, AND SIGNED ON THIS 16<sup>TH</sup> DAY OF NOVEMBER 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

#### **Appearances**

**For Claimant Ms Ochieng instructed by E.A. Ochieng & Co. Advocates**

**For Respondent Ms Mulongo, instructed by Kiragu Wathuta & Co. Advocates**

**Court Assistant Chrispo Aura**

