



**Awere v Sibbo Water & Sanitation Co Ltd (Cause 52 of 2019)  
[2022] KEELRC 13047 (KLR) (2 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13047 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 52 OF 2019  
S RADIDO, J  
NOVEMBER 2, 2022**

**BETWEEN**

**EDWINA ATIENO AWERE ..... CLAIMANT**

**AND**

**SIBBO WATER & SANITATION CO LTD ..... RESPONDENT**

**JUDGMENT**

1. Edwina Atieno Awere (the claimant) was offered the position of Human Resource & Administration Manager through a letter dated 24 November 2014 by Sibbo Water & Sanitation Co Ltd (the respondent).
2. On or around 23 May 2018, the respondent issued a show cause to the claimant setting out 8 allegations and calling upon her to make a written response before 30 May 2018.
3. The claimant responded on 25 May 2018, and on 2 July 2018, she was suspended from duty pending further investigations and an appearance before a disciplinary committee.
4. The respondent invited the claimant through a letter dated 17 July 2018 to attend a hearing before the Human Resource Advisory Committee.
5. The claimant attended the hearing, and she was after that informed of summary dismissal through a letter dated 4 November 2018.
6. The claimant appealed through a letter dated 11 December 2018, and she was informed through a letter dated 1 February 2019 that the appeal was unsuccessful.
7. The claimant moved the court on 13 June 2019, alleging unfair, unlawful dismissal, and the respondent filed a response on 27 November 2019.
8. The claimant filed a reply to the response on 16 January 2020.



9. The cause was heard on 7 December 2021 and 22 June 2022. The claimant and a Human Resource Manager with the respondent testified.
10. The parties' submissions were not on record by the agreed timelines.
11. The court has considered the pleadings and evidence.

## **Unfair termination of employment**

### **Procedural fairness**

12. The respondent notified the claimant of contemplated disciplinary action through a show cause. The show cause set out the allegations against the claimant and requested her to make written representations.
13. The claimant made the written representations, and she was, after that, invited to attend an oral hearing which she did.
14. The claimant appealed, and the appeal was considered.
15. The court is satisfied that the respondent complied with the procedural fairness tenets as envisaged by sections 35(1) and 41 of the [Employment Act](#), 2007.

### **Substantive Fairness**

16. By virtue of sections 43 and 45 of the [Employment Act](#), 2007, the respondent had the burden of proving the reasons for terminating the claimant's employment as valid and fair.

17. The reasons given by the respondent for dismissing the claimant were:

As the in charge of water bowser and exhaustor for SIBO Water and Sanitation company, you failed to enumerate the banking figures in conformity with the banking slips and work tickets for the services rendered by the water bowser and exhaustor. It was noted that the total revenue collection was KES 2,029,860, but you banked KES 1,698,470, leaving a balance of KES 331,990 unexplained. It is, therefore, clear that you misappropriated the above amount. This is in contravention of the [Public Finance Management Act](#), 2012 and sections 16.7(g) and 16.8(1) of SIBOWASCO Human Resource Policy Manual.

Payroll management is one of the key responsibilities of the Human Resource Manager. However, as the Human Resource Manager, you failed to avail the payrolls related to July 2015 to February 2017, thus, the propriety of payments could not be confirmed. In addition, you paid salary arrears to respective employees without proper approvals. This amounts to neglect of your duties which is a serious case of gross misconduct as per the SIBOWASCO Human Resource Policy Manual.

18. The respondent called its Human Resource Manager to testify to discharge the burden.
19. To justify the alleged misappropriation of Kshs 331,900/-, the respondent produced a copy of an extract of an audit report by the Director of internal audit.
20. The audit established that out of the Kshs 2,029,860/- revenue collected, only Kshs 1,698,470/- was banked, leaving a balance of Kshs 331,390/- unaccounted for.
21. The claimant had, in her response to the show cause, contended that the revenue of Kshs 2,143,033/- collected during the material period had been banked at the respondent's Cooperative Bank Ltd account (number given).



22. The claimant did not produce a copy of the bank account statement to support her assertions that all the revenue collected was banked. She did not issue a notice to the respondent to produce a copy of the bank statement.
23. The claimant did not controvert the audit report. the report was prepared as part of the normal duties of the Internal Auditor. There was no suggestion that the audit report was incorrect.
24. The court, therefore, has no basis for discounting the audit report as all it has are the claimant's unsupported claims that all the revenue was banked.
25. The court finds that since the claimant was responsible for the water bowser/exhauster revenue collection at the material time and she could not account for all the revenue, the respondent had a valid and fair reason to dismiss her.
26. The second reason for the claimant's dismissal was the failure to avail the payroll for July 2015 to February 2017.
27. The audit report indicated that the claimant availed payroll for March 2017 to October 2017. The claimant's answer to the allegation was that payroll management was the function of the finance & accounts department and she only stated managing the payroll in March 2017.
28. She also explained that the Finance Manager had left with the payroll.
29. The respondent's witness did not deny that the payroll management was only transferred to the Human Resource department in March 2017, after the Finance Manager disappeared with the records.
30. The court finds the payroll ground was not a valid and fair reason to dismiss the claimant.

### **Conclusion and Orders**

31. The court has found that the respondent complied with the statutory test of procedural fairness and further that it proved a valid and fair reason to dismiss the claimant.
32. The cause is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 2<sup>ND</sup> DAY OF NOVEMBER, 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

### **Appearances**

For Claimant Kimanga & Co. Advocates

For Respondent Mugoye & Associates

Court Assistant Chrispo Aura/Everlyne Nyaboke

