



**Kenya Union of Commercial Foods and Allied Workers v Kenya Credit Traders Limited
(Cause E033 of 2022) [2022] KEELRC 13568 (KLR) (15 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E033 OF 2022
ON MAKAU, J
DECEMBER 15, 2022**

BETWEEN
**KENYA UNION OF COMMERCIAL FOODS AND ALLIED
WORKERS CLAIMANT**
AND
KENYA CREDIT TRADERS LIMITED RESPONDENT

JUDGMENT

Introduction

1. The claimant is a registered Trade Union and it brings this suit on behalf of its member Josephat Njege Njiri (hereinafter called ‘the grievant’). The gist of the suit is that the grievant was employed by the respondent as a Shop Assistant from August 5, 2014 until April 28, 2021 when her employment was terminated for gross misconduct. The claimant avers that the termination was unfair and seeks the following reliefs;

- i. That the grievant to be reinstated back to his position without loss of benefits.
- ii. That the grievant to be paid all the salaries he could have earned since his unlawful termination to date.

In alternative and where the reinstatement will not be tenable the grievant to be paid the following as his terminal benefits.

- i. One-month Notice =19,460.00
- ii. Accrued Annual leave for 2021 =17,373.80
- iii. Unpaid salary for April 2021 =19,640.00
- iv. Maximum Compensation for unlawful



Termination=19,640x 12 months =235,680.00

Total Claim =292,333.80

- v. Any other or further relied that the court deems fit and just to grant in the circumstance met justice.
 - vi. Cost of the suit in favour of the claimant.
2. The respondent never filed defence after service of summons and therefore the suit proceeded by way of formal proof on November 2, 2022.
 3. The grievant testified as CW1 and reiterated that he was employed by the respondent from August 2014 earning Kshs 12,000.00 per month. His services were terminated on April 28, 2021 without a valid reason. As at that time his salary was Kshs 16,910.00 plus Kshs 2,550.00 Housing Allowance. In total he served for 6 years and 8 months.
 4. In his written statement, the grievant stated that on April 20, 2021 he together with his colleague were suspended pending investigations on the allegation that they had created a fake Hire Purchase account while stationed at Kiambu Branch of the respondent. On April 27, 2021 the Operations Manager called them and told them to report at the Headquarters the following day.
 5. On arrival at the office, they were interrogated and shown some Hire Purchase documents then they were accused of creating fake account which was used to sell a Washing Machine. Upon denial of the accusations, they were told to wait for a verdict outside and after three hours, they were issued with termination letters. He contended that he was not given a hearing or chance to defend himself before the dismissal.
 6. The matter was referred to conciliation and the conciliator recommended for reinstatement and payment of compensation but the respondent ignored the same hence this suit. He maintained that the termination of his employment was unfair because he was not given hearing as required by section 41 of the *Employment Act*.
 7. After the hearing the claimant filed written submissions reiterating that the termination of the grievant's employment was unfair and unlawful because there was no valid reason and the grievant was not accorded a fair hearing before the termination. Therefore, it was submitted that the claimant is entitled to the relief sought including reinstatement to his employment with back-pay, and in the alternative he be paid Kshs 292,153.80 made up of salary in lieu of notice, accrued leave, salary for April, 2021 and 12 months salary as compensation for the unfair termination.

Analysis

8. There is no dispute that the claimant was dismissed by the respondent on April 29, 2021. The issues for determination are;
 - a. Whether the termination was unfair and unlawful.
 - b. Whether the reliefs sought to are warranted.

Unfair termination

9. Section 45 of the *Employment Act* provides that;

“Termination of employment by an employer is unfair if the employer fails to prove-



- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.”
10. The claimant maintained that the reason for the dismissal was not valid and that fair hearing was not accorded to the grievant. The claimant produced proceedings from the conciliator showing that the conciliator found in favour of the grievant.
11. The respondent has failed to file defence and tender evidence to rebut the claimant's evidence. The grievant told the court that he was only interrogated about the alleged fake account but there was no fair hearing accorded to him as provided under Section 41 of the *Employment Act*. Therefore the respondent has not discharged the burden of proving that reason for the termination was fair and that a fair procedure was followed.
12. Without any evidence to rebut the evidence by the claimant I find and hold that the claimant has proved its case on a balance of probability. The termination was therefore unfair within the meaning of section 45 of the *Employment Act*.

Reliefs

13. In view of the foregoing holding the claimant is entitled to relief under section 49 of the Act. The claimant seeks for order of reinstatement but has not made any efforts to demonstrate that the said relief is practicable and that the circumstances of the case are so special that reinstatement is warranted. Consequently, I will award him damages under section 49(1) of the Act.
14. I award him Kshs 19,460.00 being one month salary in lieu of notice plus 4 months salary as compensation for the unfair termination. In granting the said award, I have considered that the grievant served the company for more than 6 years and the employer did not prove that he caused the separation through misconduct.
15. The claimant is awarded salary for April, 2021 because he served for 28 days. The claim for leave has not been proved and it is dismissed.
16. In conclusion, I enter judgment for the claimant in the following terms:-

Notice Kshs 19,460.00

April 2021 salary Kshs 19,460.00

Compensation Kshs 77,840.00

Total Kshs 116,760.00

The award is subject to statutory deductions but in addition to costs and interest at Court rates from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF DECEMBER, 2022.

ONESMUS N. MAKAU

JUDGE



ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

