



**Amalgamated Union of Kenya Metal Workers Union v Ryce East Africa Limited
(Cause 959 of 2016) [2022] KEELRC 13447 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13447 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 959 OF 2016
L NDOLO, J
DECEMBER 8, 2022**

BETWEEN

**AMALGAMATED UNION OF KENYA METAL WORKERS
UNION CLAIMANT**

AND

RYCE EAST AFRICA LIMITED RESPONDENT

JUDGMENT

1. The claimant is a trade union registered in Kenya to represent workers' interests in the Motor Trade Sector. The claimant brings this action on behalf of its member, Harun Okach Were (the grievant), who was an employee of the respondent.
2. The claim is condensed in a memorandum of claim dated May 24, 2016 and amended on March 11, 2020. The respondent filed a memorandum of defence on July 13, 2016.
3. At the trial, the claimant called the grievant and the respondent called its Human Resource Manager, Elosy Micheni. At the time of writing this judgment, only the claimant had filed final submissions.

The claimant's Case

4. The claimant's case is that the grievant's employment was terminated unfairly.
5. In setting out the chronology of events leading to the termination, the claimant states that the grievant was served with an inquiry letter dated May 4, 2016 to which he responded on May 5, 2016. Soon thereafter, he was issued with a show cause letter to which he responded on the same day.
6. On May 6, 2016, the grievant was issued with a second show cause letter to which he responded on even date and on the same day, he attended a disciplinary meeting. The grievant declined to sign the minutes of the disciplinary meeting because according to him, the record had been manipulated in favour of the respondent.



7. On May 11, 2016, the grievant was issued with another show cause letter to which he responded on the same day and on May 13, 2016, he attended a second disciplinary meeting. On May 16, 2016, the grievant wrote to the respondent challenging the veracity of the minutes produced on account of the disciplinary meeting. On May 17, 2016, he was issued with a termination letter.
8. The claimant accuses the respondent of witch hunt against the grievant. The claimant states that the grievant was not accorded a fair hearing in the two disciplinary meetings as in each case, the minutes were manipulated and the notice was too short.
9. The claimant asks the court to order reinstatement of the grievant without loss of benefits or in the alternative, to award him 12 months' salary in compensation.
10. The claimant also asks for payment of the grievant's terminal dues as contained in the termination letter and release of his tool box.
11. Finally, the claimant asks for costs of the case.

The respondent's Case

12. In its memorandum of defence dated July 12, 2016 and filed in court on July 13, 2016, the respondent states that on May 11, 2016, the grievant was issued with a show cause letter on account of failing to attend a meeting called by the human resource manager on May 9, 2016, failing to comply with his last warning letter and entertaining a visitor at his work station during working hours, without authorisation from his supervisor.
13. On May 11, 2016, the grievant responded to the show cause letter denying the allegations levelled against him. On May 12, 2016, he was invited to a disciplinary hearing scheduled for May 13, 2016. The grievant is said to have attended the disciplinary meeting accompanied by Messrs Mukabana, Mwangi and Odhiambo.
14. On May 17, 2016, the grievant's employment was terminated on accusations of continuously failing to comply with the Company's regulations by constantly calling for informal meetings during working hours, despite being warned.
15. By his letter dated April 25, 2016, the grievant appealed against the termination and on June 6, 2016, the respondent wrote to him informing him that his appeal had been considered and the decision to terminate his employment upheld.
16. The respondent maintains that it had a valid reason for terminating the grievant's employment and that due procedure was observed in executing the termination.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the termination of the grievant's employment was lawful and fair;
 - b. Whether the remedies sought are merited.

The Termination

18. On May 17, 2016, the respondent wrote to the grievant as follows:

“Dear Sir,



RE: Termination Of Contract Of Service

Further to your appointment contract, we regret to inform you that your employment has been terminated on disciplinary grounds of continuously and knowingly failing to comply with the Company requirements with regards to Company rules and Regulations, in relation to continuously calling for informal meetings severally during working hours despite being warned and failure to respect authority hence leading to lack of accountability and poor performance.

In relation to the above, your final dues shall be settled as follows:

1. Salary for the 17 days worked in the month of May 2016
2. Three months salary in lieu of notice period
3. 12 days leave earned but not taken
4. Gratuity pay under pension scheme for the 15 years of service
5. Less any statutory deductions and/or loans owed to the company.

Please arrange to see the undersigned to execute your discharge certificate after handing over all company property in your possession by virtue of your employment.

Yours Faithfully

For Ryce East Africa Ltd

(signed)

Terry Mburu

Human Resource & Admin Manager”

19. This letter accuses the grievant of failure to comply with company rules and regulations, by continuously convening unauthorised informal meetings during working hours. On his part, the grievant accuses the respondent of witch hunt.
20. It is on record that the grievant was a union representative, holding the position of shop steward within the respondent’s establishment. In this capacity, the grievant had contact with the respondent’s unionisable employees.
21. It would however appear that the respondent was uncomfortable with the grievant’s approach in discharging his union responsibilities at the work place. Specifically, the respondent accused the grievant of unauthorised engagement with employees thus diverting them from their duties.
22. I have closely examined the actions taken by the respondent towards addressing the issues it had with the grievant; a summary of these events is necessary:
 - a. On May 5, 2016, the grievant was issued with a letter of inquiry and a show cause letter to which he responded on the same day;
 - b. On May 6, 2016, he was issued with a second show cause letter to which he responded on the same day and on that very day, he attended a disciplinary meeting;
 - c. On May 11, 2016, the grievant was issued with another show cause letter to which he responded on the same day;



- d. On May 12, 2016, he was invited to a second disciplinary meeting scheduled for 13th May 2016;
 - e. On May 17, 2016, the grievant was issued with a termination letter.
23. One of the hallmarks of a fair disciplinary process is clarity in setting out the actual charges against an employee and adequate time for the employee to respond.
24. In its decision in *Rebecca Ann Maina & 2 others v Jomo Kenyatta University of Agriculture and Technology [2014] eKLR* this court stated the following:
- “...in order for an employee to respond to allegations made against them, the charges must be clear and the employee must be afforded sufficient time to prepare their defence. The employee is also entitled to documents in the possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witnesses to buttress their defence.”
25. In the present case, the procedure adopted by the respondent was so hurried and muddled up that in the end, it was not clear what exactly the grievant was accused of. Further, the grievant was not allowed adequate time to prepare his defence; in some instances, he was required to respond within the same day.
26. On the whole, I find and hold that the charges levelled against the grievant were not proved at the shop floor, as required by section 41 of the *Employment Act*. The corollary finding is that the respondent failed to establish a valid reason for terminating the grievant’s employment to the standard set by section 43 of the *act*.

Remedies

27. The claimant asks the court to order reinstatement of the grievant as a primary remedy. However, in light of the lapse in time post termination, reinstatement would not be an appropriate remedy in this case. Instead, I award the claimant twelve (12) months’ salary in compensation. In arriving at this award, I have taken into account the grievant’s long service, spanning over 15 years, plus the respondent’s unlawful conduct in the termination transaction.
28. The grievant is also entitled to the following terminal dues as admitted by the respondent in the letter of termination:
- a. 3 months’ salary in lieu of notice;
 - b. Salary for 17 days worked in the month of May 2016;
 - c. 12 days’ leave pay;
 - d. Gratuity for 15 years of service.
29. Ultimately, I enter judgment in favour of the grievant in the following terms:
- a. 12 months’ salary in compensation.....Kshs 671,652
 - b. 3 months’ salary in lieu of notice.....167,913
 - c. Salary for 17 days worked in May 2016.....31,717
 - d. Leave pay for 12 days.....22,388
- Total 893,670



30. This amount will attract interest at court rates from the date of judgment until payment in full.
31. I further direct the respondent to tabulate and pay to the grievant his gratuity for the years served, within the next thirty (30) days from the date of this judgment.
32. The respondent will also pay the costs of the case.
33. These are the orders of the court.

DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF DECEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr Ondiege (Union Representative) for the claimant

Miss Obonyo for the respondent

