



**Kenya Plantation & Agricultural Workers Union v Groove Flowers Limited
(Cause 61 of 2021) [2022] KEELRC 13437 (KLR) (8 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13437 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 61 OF 2021
HS WASILWA, J
DECEMBER 8, 2022**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
GROOVE FLOWERS LIMITED RESPONDENT**

JUDGMENT

1. The claimant union has instituted this claim against the respondent vide the memorandum of claim dated November 25, 2021 alleging that one of their member, Ms Sarah Maeri Kwamboka has been unfairly terminated and sought for compensation for the said termination. The union sought for the following reliefs;
 - a. Pay for days worked in April, 2021 up to April 28, 2021.
 - b. 45 days pay in lieu of notice.
 - c. Pro-rated leave days earned and not taken up to April 28, 2021.
 - d. One way traveling allowance.
 - e. House allowance up to and including April 28, 2021.
 - f. Gratuity pay for 6 years served.
 - g. Six months' compensation for the unfair termination.
 - h. Interest on a, b, c, d, e, f & g above.
 - i. Damages for unlawful and unfair termination.
 - j. Certificate of service.



- k. Costs of this cause.
- l. Any other relief that the honourable court may deem fit to grant.

Claimant's Case.

2. The grievant was employed by the respondent as a general worker for about 6 years in the weeding section, earning a monthly basic salary of Kshs 8,927.
3. On April 25, 2021, the assistant supervisor, wanted to reallocate the grievant to other duties but since, she had commenced her day assignment, they agreed that the reallocation could be undertaken the next day.
4. It is stated that the next day, she was confronted by the production manager and the said supervisor that she had hauled insults at the supervisor, a fact which she denied.
5. That the allegation of insulting her supervisor and threatening him were never elaborated. She maintained that the actions of the respondent were triggered by resignation notice which she had tendered on the April 18, 2021.
6. She stated that the issues therein were conciliated upon and the respondent agreed to pay her days worked, pro-rata leave, overtime and issue her with certificate of service without all her other terminal benefits.
7. While she was serving her resignation notice, the respondent issued her with a termination letter on the April 28, 2021 before completing serving her resignation notice period.
8. That when she tendered her resignation notice on April 18, 2021, the respondent's management received the same on April 19, 2021 and promised to pay her all her terminal dues till the end of notice, which they are now going back on their word.
9. The grievant maintained that she was not granted due process in the said dismissal and her appeal was not properly considered. Therefore, that her termination was unfair in the circumstances.
10. During hearing, the grievant testified as CW-1 and adopted her witness statement dated November 25, 2021 which basically reiterated the claim.
11. Upon cross examination by Okoth advocate, the grievant testified that she resigned from employment by the letter of April 18, 2021. She testified that she was issued with a show cause letter and invited to disciplinary hearing on April 25, 2021 which was conducted in the presence of chief shop steward. She testified that her contract was to come to an end on May 13, 2021. Also that she did not clear with the respondent and has not been paid her terminal dues.
12. On re-examination, she testified that she resigned due to problems at home.

Respondent's Case.

13. The respondent entered appearance on February 4, 2022 and filed a response to claim on the March 4, 2022 admitting to employing the claimant as a general worker. It however denied the allegation of unfair termination.
14. According to the respondent, the circumstances leading to the termination was that on April 16, 2021, the grievant left her place of work at 12noon without any permission or reason and went home. That she did not report the next day only to show up on April 18, 2021 but was send home by the administration manager and directed to report on Monday April 19, 2021 at 10am. On the same day,



- the grievant tendered her resignation which was accepted by the management the next day on April 19, 2021.
15. That the management issued, the grievant with a show cause notice on April 19, 2021, on basis of leaving work before stipulated time but the grievant refused to respond claiming that she was resigning and the notice had already been accepted by the management.
 16. On April 25, 2021 the management allocated the grievant a different area to work at, while serving her resignation notice. The grievant requested to begin the new assignment the next day as she had already began working. The next day however she continued working in her old assignment areas in defiance of her supervisor's directions. When confronted on the reason for not taking up new assignment, she resorted to insults and even threaten her supervisor that she was going to hit her with a jembe. She was send to the Human Resource Office because her behavior was unbecoming.
 17. In the Human Resource office, the grievant refused to give an explanation of what happened in the fields and the HR officer, send her back home to cool off till the next day at 10 am. The next day she was served with another show cause letter for insulting her supervisor and threatening to hit him with a jembe. It is stated that a disciplinary meeting was convened the same day, where the grievant was accorded fair hearing in presence of two union officials but her explanation was not satisfactory.
 18. On April 28, 2021, the respondent resolved to terminate the grievants services in line with section 44(4)(c-e) of the [Employment Act](#), on account of being abusive, threatening to hit her supervisor with a jembe and failure to follow lawful instructions of the people in authority.
 19. An appeal was lodged by the claimant herein on behalf of the grievant and a meeting was convened on the May 6, 2021, however the respondent was satisfied with its decision and the appeal was dismissed after hearing.
 20. The claimant then reported a trade dispute at the labour office upon which all parties attended a conciliation meeting but they disagreed on the terminal dues payable as such a certificate of disagreement was issued by the conciliator leading to the filling of this case on court.
 21. The respondent stated that the grievant has never reported back to work to clear with the company in order to receive her terminal dues, therefore her dues have not been paid.
 22. During hearing the respondent called one witness, Kelvin Mutuku, the respondent's Human Resource manager as RW-1. He adopted his witness statement which reiterated the response to claim herein.
 23. Upon cross examination by Awino advocate, the witness testified that the grievant was issued with show cause letter for absenting herself from work from April 16, 2021 to April 18, 2021. He also testified that the grievant abused her supervisor on the April 26, 2021 when she was directed to take up new area of work. He testified that the grievant was invited for disciplinary hearing in presence of chief shop steward and assistant shop stewards. He also admitted that the grievant had not been paid her terminal dues as per the CBA because she had not cleared with the respondent.
 24. Parties were directed to file submission, however only the claimant's submission were on record at the time of writing this judgement.

Claimant's Submissions.

25. The claimant submitted from the onset that the reason for termination was not substantiated because the allegations of insubordination and threats on the grievant's supervisor were not backed up with any evidence. He argued that the allegations only came up when the grievant tendered her resignation and the claims were thus aimed at denying the grievant her terminal dues provided for under the CBA.



It was argued that the work sheet for the period between 16th and April 18, 2021 were not availed in court to justify the allegations of absenteeism alleged. Furthermore, that the allegation of threatening to hit the supervisor with a jembe was not corroborated by any other witness as such they remain unsubstantiated allegation and thus the respondent has failed to justify the reason for termination as captured in section 47(5) of the Employment Act. To support this the claimant relied on the case of Titus Musau Ndivau v Waridi Limited [2012] eKLR and the case of Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR, where the court emphasized on the need by the employer to justify reasons for termination.

26. On that basis, the claimant submitted that the termination was unfair and urged this court to allow the claim as prayed for the grievant to be paid all her terminal dues in accordance with the CBA between the claimant and the respondent.
27. I have considered all evidence and submissions of the parties herein. It is evident that the claimant tendered her resignation from employment vide her letter dated April 18, 2021.
28. The letter was received by the respondent who on April 19, 2021 responded and acknowledged the same and accepted her resignation.
29. The resignation was to be effective on April 18, 2021. On November 19, 2021 however the claimant was issued with a show cause letter for apparently fighting at the work place and then on April 27, 2021.
30. She was subjected to a disciplinary hearing. She was apparently found culpable and summarily dismissed on April 28, 2021.
31. I have considered the fact that the grievant's disciplinary issues arose after she had tendered her resignation and which had been accepted.
32. From the minutes of the disciplinary hearing, there is no indication that the grievant was present in the meeting. There is no letter inviting her to any disciplinary hearing either.
33. It is apparent that the troubles for claimant emanated from her tendering a resignation which was already accepted.
34. The disciplinary hearing minutes are also not reflective of any disciplinary proceedings but are a narration of some report of what was reported to the respondent.
35. It is my finding that the disciplinary hearing is not a reflection of due process and there is no indication from the said meeting that valid reasons were established to warrant dismissal of the grievant.
36. Section 45 (2) of the Employment Act states as follows;
 45. (1).....
 - (2) A termination of employment 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".



37. Section 41 of the *Employment Act* 2007 also envisages that a proper disciplinary hearing should be conducted before any dismissal as follows;-

“41. Notification and hearing before termination on grounds of misconduct

- (1) 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.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make”.
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 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make”.
38. In the case of the claimant, I find that there is no proof of any valid reasons to warrant claimant’s dismissal and neither is there evidence that due process was conducted.
39. I therefore find the dismissal of the grievant unfair and unjustified and I declare it so.
40. In terms of remedies, I find for grievant and I award her as follows;-
1. 1 month’s salary *in lieu of* notice = 11/527/=.
 2. Pay for days worked in April 2021 up to April 28, 2021 = 11,527/=
 3. Pro rata leave days earned and not taken as per letter of acceptance of resignation up to April 28, 2021
 $31 \text{ days} = 31/30 \times 11,527 = 11,911/=$
 4. 6 years gratuity at the rate of 23 days salary for each year worked as per letter of acceptance of resignation
 $= 23/30 \times 11,527 \times 6$
 $= 53,024/=$
 5. 10 months’ salary as compensation for unlawful and unfair termination
 $= 11,527 \times 10 = 115,270/=$
- Total = 203,259/=



Less statutory deductions

6. The grievant be issued with a certificate of service
7. The respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

Dated, signed and delivered in open Court this 8TH day of DECEMBER, 2022.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Awino for Claimant – present

Respondents – absent

Court Assistant - Fred

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