



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1411 OF 2016

BETWEEN

JANE VULIGWA.....CLAIMANT

VERSUS

THE GOOD EARTH [GROUP] LIMITED.....RESPONDENT

Rika J

Court Assistant: Emmanuel Kiprono.

Mumia & Njiru Advocates for the Claimant

Kimani & Muriithi Associates, Advocates for the Respondent

JUDGMENT

1. The Claimant filed her Statement of Claim on 18th July 2016. She avers that she was employed by the Respondent as a Procurement Manager on 5th October 2015. Her salary was Kshs. 125,000 monthly. Parties executed a contract of employment, on 5th October 2015.
2. The contract required the Claimant to serve an initial probationary period of 3 months. On 15th December 2015, the Respondent wrote to the Claimant, extending probation by an additional 3 months, commencing 5th January 2016.
3. At the end of the extended period, she received a letter of termination from the Group Human Resource Manager, Jacinta Njeru, dated 1st March 2016.
4. She states that she did not discuss her performance while on probation, with the Operations Director, and was never appraised, before termination. She was never given a job description. She was made to carry out functions she did not have expertise in. She was for instance compelled to do accounts, an area she was not trained or experienced in.
5. She was not given specific targets. She was compelled to sign discharge voucher to receive final dues. The Respondent has an Employee Handbook, which was not followed in terminating her contract. Unilateral extension of probationary period offended Section 42 [2] of the Employment Act. She was never placed on Performance Improvement Plan.
6. The Claimant argues that if she had been engaged in misconduct, the Respondent was obliged to take her through a disciplinary hearing, following the quashing of Section 45[3] of the Employment Act by the High Court. She ought to have been heard in accordance with Section 41 of the Employment Act.
7. She prays the Court to grant her Judgment against the Respondent as follows: -
 - a. Declaration that termination was unfair and unlawful.
 - b. Certificate of Service to issue.

c. Alternatively,

[i] 8.75 accrued annual leave days at Kshs. 36,458.

[ii] 3 months' salary in lieu of notice at Kshs. 375,000.

[iii] 12 months' salary in compensation for unfair termination at Kshs. 1,500,000.

d. Costs.

e. Any other relief.

8. The Respondent filed its Statement of Response on 12th August 2016. It is conceded that the Claimant was employed by the Respondent, as a Procurement Manager, through a contract executed by the Parties on 5th October 2015. Her performance was unsatisfactory. She met with Respondent's Operations Director, on 10th December 2015. Her probation was extended for another 3 months. She did not challenge extension. She continued working.

9. Her contract was terminated on account of poor performance, through a letter dated 1st March 2016. Extension was upon consultation with the Operations Director. The Claimant was not assigned other roles, and termination was restricted to her role as a Procurement Manager. She was hired on the basis of her representations, that she was qualified to discharge the functions of Procurement Manager.

10. The Respondent followed termination procedure under the Employee Handbook. She was paid terminal dues, including 7 days' salary in lieu of notice. Sections 41 and 45 of the Employment Act did not apply to her contract. She received terminal dues, and signed discharge voucher freely, on 31st March 2016.

11. The Respondent prays the Court to dismiss the Claim with costs.

12. The Claimant gave evidence, and closed her case, on 1st July 2020. Operations Director Priyan Kolopara, gave evidence for the Respondent, closing the hearing on 3rd June 2021. The Witnesses restated what is in the Parties' Pleadings and Witness Statements, in their respective evidence.

13. They confirmed filing and exchange of their Submissions at the last mention before the Court, on 8th July 2021. Judgment was reserved for 25th November 2021 but is ready for delivery earlier, on the date shown below, and Parties have accordingly been notified.

The Court Finds: -

14. The main facts in this dispute are not contested. The Claimant was offered employment by the Respondent, as a Procurement Manager, through a contract executed by the Parties on 5th October 2015. It is common ground that the contract required the Claimant to serve probation of 3 months. The clause states that the Claimant would undergo appraisal during probation, and depending on the results, the Respondent could terminate the contract, or extend the period of probation at its sole discretion.

15. During probation, either Party could terminate the contract by giving 1-month notice or pay 7 day's salary in lieu of notice. Upon successful completion of probation, the clause states, employment would be confirmed in writing.

16. It is not disputed that on 15th December 2015, the Respondent wrote to the Claimant, advising her that her performance was unsatisfactory, and probation had been extended by 3 months, beginning 5th January 2016 to 5th April 2016. The letter states that it had been agreed notice period would be 1 month. The letter was signed by the Claimant and Kolopara.

17. On 1st March 2016, the Respondent issued the Claimant a letter of termination. It was communicated to the Claimant that she was not successful on her extended probation. The Respondent charged that the Claimant was continuously tardy and unreliable. She was offered 7 days' salary in lieu of termination notice, and accrued annual leave days. She was reminded that certain contractual obligations remained in force, notwithstanding termination. These included obligations to protect confidential information and intellectual property the Claimant may have become privy too, in the course of her employment.

18. It is common ground that the Claimant received Kshs. 35,599 from the Respondent after termination, which is expressed in the discharge document, as an *ex gratia* payment. She does not dispute that she signed discharge, stating she did not have any claims against the Respondent, now or in the future. The discharge is dated and signed by the Parties on 13th April 2016.

19. In *Coastal Bottlers v. Kimathi Mithika [2018] e-KLR*, the Court of Appeal held that discharge vouchers constitute binding contracts between the Parties. All the Court is required to do, where discharge is executed free of misrepresentation, duress, undue influence, coercion or fraud, is to give effect to the intention of the Parties.

20. There is no evidence from the Claimant to suggest that she did not execute discharge voluntarily. There was no fraud, misrepresentation, duress, and no mistake. The only mistake apparent on the face of the discharge document, was at paragraph 1, where it was stated that the Claimant had terminated her contract of employment. She corrected this before signing, in her own handwriting, to read that it was the Respondent, who terminated her contract of employment. Other contents can only be presumed to have been correct and in line with the

intention of the contractors. She did not make any other comment on the document, which would suggest she did not act of her own free will.

21. Other decisions such as *Thomas De La Rue [K] Limited v. David Opondo Omutelema [2013] e-KLR*; and *Trinity Prime Investments Limited v. Lion of Kenya Insurance Company Limited [2015] e-KLR*, underscore that discharge vouchers are binding on Parties, where they are freely and willingly executed, and where the Employee is seized of all relevant information and knowledge. The Claimant was a Procurement Manager, not an Employee residing in the lower echelons of the Respondent's organogram, unaware about the effect of the contracts she executed at the workplace. She was in a position of information and knowledge, when she executed the discharge contract. In this Court's decision *Vincent Kebari v. Gikera & Punit Vadgama t/a Gikera & Vadgama Advocates [2020] e-KLR*, it was held that the Claimant, an Advocate of the High Court of Kenya, having executed discharge voucher in favour of the Respondent, his previous Employer, confirming receipt of all terminal dues, could not turn around and demand for payment of terminal dues from the Respondent. It was held that the Advocate was in a position of information and knowledge. The Claimant herein, Jane Vuligwa was similarly in a position of information and knowledge, at the time she discharged the Respondent.

22. It is not necessary therefore, for this Court, to go beyond the discharge document dated 31st March 2016. There is no need to examine if the Claimant's probation was extended unlawfully; whether her contract was unfairly and unlawfully terminated; and whether she merits the remedies sought. She compromised her right to make further claims. "*I have no any other claims against The Good Earth [Group] Ltd, now or in the future, in respect of this matter,*" she covenanted. She must be held to her word.

23. Lastly, the Court must point out that the prayers made by the Claimant appear to lack clarity. Prayer 1 seeks an order declaring termination unfair and unlawful. Prayer 2 seeks Certificate of Service. Prayer 3 is in the alternative, seeking the bulk of the Claim, including accrued leave, notice of 3 months and 12 months' salary in compensation. Barring the discharge voucher, would the Claimant have been satisfied with grant of the first 2 prayers- declaration that termination was unfair and unlawful, and grant of Certificate of Service- the third being pleaded as an alternative prayer? Parties need to think through their prayers, where they are pleaded alternatively, taking into account what judicial authorities have stated, about alternative prayers.

IT IS ORDERED: -

a. The Claim is dismissed.

b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 15TH DAY OF OCTOBER 2021.

JAMES RIKA

JUDGE