



**Wanyoro v Orient Sacco Society Limited (Cause 273 of 2017)
[2019] KEELRC 2544 (KLR) (16 January 2019) (Judgment)**

Mary Wanjiru Wanyoro v Orient Sacco Society Limited [2019] eKLR

Neutral citation: [2019] KEELRC 2544 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE 273 OF 2017
NZIOKI WA MAKAU, J
JANUARY 16, 2019**

BETWEEN

MARY WANJIRU WANYORO CLAIMANT

AND

ORIENT SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The Claimant herein sued the Respondent seeking recompense for unlawful termination and refusal to pay terminal dues. The Claimant averred that she was an accounts clerk from 19th August 2008 till 17th May 2017 when she was dismissed without notice. She averred that on 22nd March 2017 when she was accused of misappropriating funds amounting to Kshs. 600,000/- on 4th March 2016. Her salary at the time of dismissal was Kshs. 55,000/- a month. She averred that she provided deposit slips that proved that she deposited the Kshs. 600,000/- into the Respondent's mobile banking account. The Claimant avers that she was not given her terminal dues being salary arrears for one month – Kshs. 55,500/-, compensation in lieu of leave days – Kshs. 999,000/-, house allowance @ 15% of the basic pay for 110 months – Kshs. 915,750/- and compensation for unlawful dismissal from employment – Kshs. 666,000/-. She also sought her certificate of service, interest on the sums claimed and the costs of the suit.
2. The Respondent in its statement of defence averred that the Claimant acted carelessly and negligently causing loss to the Respondent. It averred that between 12th February 2015 and 4th November 2016, being a member and serving the front office banking officer of the Respondent obtained a sum of Kshs. 793,536/- purportedly for loading into the mobile platform but never did so. The Respondent avers that when the Claimant was asked to account for the said loss she became uncooperative, rude and hostile to the Board of Management leading to her dismissal. The Respondent averred that the dispute



should be heard and determined by the Co-operatives Tribunal and would therefore raise a preliminary objection to the suit as the jurisdiction of the court to hear and determine the suit was in question.

3. The objection was not taken and the Claimant was heard and the decision of the court is rendered as follows. The Claimant asserted that no investigations were carried out to verify the truth of the allegations of misappropriation and no charges were preferred against anyone. The Claimant submitted that the Respondent did not give notice as required under Section 35(1)(c), 35(3) and 41(1) of the Employment Act which make it mandatory for a notice to be issued before termination. The Claimant cited the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR where Ndolo J. held there must be both substantive justification and procedural fairness. The Claimant submitted that the dismissal was neither justified nor procedurally fair and that she was abruptly terminated from employment without cause. The Claimant placed reliance on the case of *Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu* [2012] eKLR where the court found that where no evidence is called the court would find the averments made as unproved. The Claimant thus sought the payment of her terminal dues.
4. The Claimant was dismissed after some accusations of misappropriation of funds were leveled against her. No evidence of a hearing in terms of Section 41 of the Employment Act were held. In the case of *Walter Ogal Anuro v TSC* (supra) the learned Judge (Ndolo J.) held that there must be both substantive justification and procedural fairness. Substantive justification has to do with the establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination. In this case both elements were missing as there was no proof of the reasons for termination and the procedure adopted was in contradiction with the law. The Respondent did not avail any witness or attend the hearing of the matter and in keeping with the reasoning in *Linus Nganga Kiongo & 3 Others v Town Council of Kikuyu* (supra) there was no proof of the averments by the Respondent in its defence. The Court thus finds in favour of the Claimant. She however compounded all her claims including those that were time barred. She sought dues in excess of what the court can give as Section 90 of the Employment Act limits a claim to 3 years. In the final analysis only the sums that could be due in the preceding 3 years from the date of accrual of action to the filing of the suit would be awarded. These are as follows:-
 - a. Kshs. 299,700/- as unpaid house allowance for 3 years
 - b. Kshs. 55,500/- being one month in lieu of notice
 - c. Kshs. 222,000/- being 4 months compensation for unlawful and unfair termination
 - d. Costs of the suit
 - e. Interest at court rates on the sums in a), b), c) above from date of judgment till payment in full
 - f. A certificate of service.

It is so ordered.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF JANUARY 2019

NZIOKI WA MAKAU

JUDGE

