



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1176 OF 2013

AGNES JEBICHII LIMO CLAIMANT

VERSUS

KENYA PIPELINE COMPANY LIMITED RESPONDENT

Claimant in person

Mr. Aguara for Respondent

JUDGMENT

Background

1. The Claimant was employed as a support staff Job Grade 14 by the Respondent on 2nd January 1996. She worked continuously for seventeen (17) years until when she was summarily dismissed from employment on 14th January 2013.
2. At the time of dismissal her monthly gross salary was Kshs.104,386/= made up of Kshs.68,186, basic pay, Kshs.26,200/= house allowance and Kshs.10,000/= committee allowance.

At the time of dismissal, she was housed by the Respondent and paid Kshs.12,000/= monthly rent.

2. **Statement of claim**

The Claimant filed this suit on 25th July 2013 seeking the following reliefs;

1. reinstatement to her job without loss of benefits and position forthwith;
2. alternatively, the Court orders the Respondent to pay the Claimant terminal benefits as follows;
 - a) salary for days worked in March 2012 in the sum of Kshs.60,999.60.
 - b) retirement Gratuity for seventeen (17) years calculated at five (5) months' salary per year in the sum of Kshs.8,022,810/=;
 - c) five (5) months' pay in lieu of notice, in the sum of Kshs.471,930/=;

- d) payment in lieu of nineteen (19) days leave at Kshs.82,785.20;
- e) leave travelling allowance for 2013 in the sum of Kshs.24,000/=;
- f) twelve (12) months maximum compensation for unfair termination in the sum of Kshs.1,132,632/=;
- g) general damages calculated at 15% of the total amount in the sum of Kshs.8,307,523.30.

Total claim Kshs.18,081,080.10.

- h) Costs of the suit
- i) Provision of certificate of service.

3. The Claimant filed an interlocutory application on a certificate of urgency seeking an injunction restraining the Respondent from evicting her from the company house pending hearing and determination of the suit.

4. The Claimant got temporary relief on 26th July 2013 but was eventually evicted from the house following the setting aside of the Court orders on 12th August 2013. The Claimant states that during the eviction, her household property got stolen and has claimed replacement value of the lost household property.

5. **Dismissal**

By a letter dated 8th October 2013 the Claimant was invited to appear before the Central Region Staff Disciplinary Committee meeting on 11th October 2012 to answer allegations of using abusive language at the work place and threatening to harm the Senior Procurement Office (L) on 20th February 2012.

The hearing did not take place until the 1st November 2012.

The Claimant was advised to bring an employee or a shop floor representative of choice to the disciplinary hearing.

6. By a letter dated 14th January 2013, written by Mrs H. A. Osiako for the Managing Director, the Claimant was informed that, the Central Region Staff Disciplinary Committee held on 1st November, 2012 had established that the claimant had used abusive language at the work place and threatened to harm her supervisor when she inquired from the Claimant about a missing file. That this constituted gross misconduct on the part of the Claimant in ***contravention of Section 40(d) of the CBA and Section 44(4)(d) and (e) of the Employment Act, 2007*** whose penalty is summary dismissal.

7. The letter informed her further that the company had decided to summarily dismiss the Claimant from service with effect from 15th January 2013.

She was to be paid;

1. Salary up to and including 15th January 2013;
2. Payment in lieu of 14 days earned leave and pension in accordance with the Kenya Pipeline Retirement benefits Scheme Regulations.

8. **Testimony by the Claimant**

The Claimant denied under oath that she had abused or threatened her supervisor regarding a missing file.

She told the Court that she had served the Respondent diligently until the year 2012 without any problem at all.

That the circumstances leading to this dispute arose from a file that went missing. She told the Court that her records showed that she had handled the file and dispatched it as per procedure.

9. Her supervisor, Mrs Nancy Rono enquired for the file from her and she explained the matter to her.

The supervisor directed the Claimant to look for the file further but upon thorough search, she did not find it.

10. Mrs Nancy Rono wrote a show cause letter to her to which she responded explaining that she had handled the file and dispatched it to the next officer.

According to her, Nancy Rono was hiding the file in order to frustrate her.

Mrs Rono had told her before that she was to get rid of all 'Moi-era' remnants in the company.

11. By a letter dated 24th February 2012, written by procurement Manager Mr. Nicholas Gitobu, the Claimant was accused of abusing Nancy Rono and was asked to show cause within 24 hours why she should not be punished for abusing M/s Nancy Rono and Mrs Clementine Lotodo and failing to produce the missing file. Her response is marked exhibit 3(b) dated 27th February 2012 in which she denied the charges.

12. The matter came to a close but the Claimant was asked to show cause again by a notice done by Mrs Rose Osiako in September 2012, eight (8) months down the line to which she responded on 8th October 2012. She was summoned to a Disciplinary Committee. The disciplinary proceedings took place on 1st November 2012. She attended in the company of a union member.

13. The meeting was chaired by Mrs Rose Osiako who was also the author of the Notice to show cause. In attendance was her supervisor Mrs Nancy Rono, Gloria Ketata and the procurement Manager Mr. Nicholas Gitobu.

14. She told the Court that there was only introduction at the meeting and she was then told to go out and await the outcome. That she was not allowed to explain herself and to question her accusers at the meeting.

15. She said that she did not have a warning letter prior to the dismissal. That her record was excellent and it was unfair to summarily dismiss her after serving for so long. She said that this was a conspiracy to get rid of her.

16. She appeared in person and told the Court that her union had declined to represent her, though she was a union member and official at the shop floor.

She seeks relief as outlined in the statement of claim.

17. She produced an inventory of the property removed from her house, which she claims was stolen which has been valued at Kshs.2,661,468/=.

18. **Respondent's Response**

The Respondent filed a memorandum of Response dated 21st June 2013 on the same date in which is denied all the particulars of claim.

19. The Respondent avers that the Claimant was summarily dismissed on 14th January 2013 for gross misconduct following her use of very abusive language at her workplace and threatened to harm her supervisor in the course of her duty.

20. That it was not the first time the Claimant was being disrespectful and abusive to her supervisors and her employment records clearly demonstrate that she had previously been disciplined in respect of the same acts which resulted to her transfer from Eldoret Station to Nairobi. The Claimant had equally abused her supervisor and threatened to physically assault the supervisor in Eldoret.

21. **Evidence**

The Respondent called RW1, Stephen Komen, who works at the Respondent's Security Department as security Officer II. He had supervised the removal of the Claimant from the company house following the lifting of the interim orders by the Court.

He described the manner of the eviction and told the Court that all the property of the Claimant was safely removed.

10. The Claimant requested him to take the household property to her colleague and relative within the company estate Mrs Nancy Kipsang. That the goods were safely taken to the house. That the claim by the Claimant that any of the property was mishandled, broken or stolen is false and should be rejected by the Court.

11. The witness withstood well, very close questioning by the Claimant and largely came across as a witness telling the truth.

RW2 was Nancy Chepkemai Rono. She told the Court that she worked for the Respondent as a Senior Procurement Officer. She had worked for about seven and a half years (7^{1/2}).

The witness told the Court that she knew the Claimant well since the Claimant worked under her supervision from 3rd July 2006, until she left in January 2013.

She told the Court that a file for serialized sales went missing.

12. The records showed that the file was last handled by the Claimant and she was supposed to dispatch it to one Nancy Githinji.

That the Claimant did give the file to Nancy Githinji but it went missing the following day.

The file was in respect of a procurement exceeding half a million shillings and it required evaluation by a committee appointed by the Chief Executive Officer upon obtaining not less than three (3) quotations.

13. The Claimant's work was to route the files as per the company practice.

14. RW2 on the material day requested the file to be taken to the depot Manager but the Claimant said she could not trace it.

RW2 could not trace the file either and the Claimant became hostile when pressed to produce the file.

15. On 16th February 2012, RW2 wrote a show cause memorandum to the Claimant which she

produced as exhibit I. She recalled that this was a Friday.

16. On Monday morning, the Claimant walked to her office and abused her very badly in her mother tongue pointing at her with her car keys.

17. RW2 reported to her supervisor, the depot Manager. She made a formal complaint on the matter.

18. On 29th February 2012, the union wrote to RW2 asking her to withdraw the complaint against the Claimant.

19. The Claimant, told the staff, that she would deal with RW2, and there is nothing she could do to her. RW2 had copied the letter of complaint to the Human Resource Department who then followed up the matter, and instituted a disciplinary hearing against the Claimant.

20. RW2 thought the matter was over but was invited to the hearing in November 2012. She narrated her side of story to the committee.

She told the Court that she had no grudge against the Claimant and had opted to forgive her though the matter was already out of her hands.

21. RW2 said that she was not present when the Claimant appeared at the disciplinary committee.

RW2 told the Court that the Claimant threatened to harm her when they met in a matatu after her dismissal. That she still lived under fear due to the threats by the Claimant.

22. RW2 was intensively cross examined by the Claimant but she was consistent in her testimony on the material aspects of the case. The Court believes her testimony.

23. RW3 was Rahab Nyambura, a Senior clerical Officer in the Procurement Department of the Respondent.

She narrated that on 20th February 2012, while at the office at around 8 a.m. in the morning, her colleague, the Claimant came in and said "*nimetukana Nancy Rono, ataniona*".

24. She repeated the insults, which RW3 said were too vulgar to repeat. Another colleague by the name Linda Njoka, asked her to stop repeating these insults in the office. The Claimant however, continued to repeat the insults to other people over her phone loudly. She used Kiswahili language then. RW3, told the Court that she testified before the disciplinary committee over the matter.

The insults are captured in the proceedings though, the Court does not find it appropriate to recall the same in this judgment.

RW3 came across as candid and telling the truth.

25. RW4, was Clementine Chepkemoi Lotondo. She told the Court that she worked for the Respondent as a procurement officer. She told the Court that she had known the Claimant for five (5) years as a colleague at work. They worked in the same office and their desks were next to each other.

26. That she had no personal issues with the Claimant and were in fact friends. She recalled a previous incident when the Claimant insulted her. RW4 had inquired from the Claimant about some alterations in a procurement file. The Claimant instead abused her in Kiswahili. The Claimant did not speak to RW4 again. The witness was not present when the incident between the Claimant and Nancy Cheronu occurred.

27. RW5 was the Human Resource Officer I, Mr. Charles Kibyegon Chepkwon. He had served the Respondent for eight (8) years. He had received the complaint from Nancy Rono regarding abusive

language used against her by the Claimant.

28. A show cause letter was written to the Claimant on 17th September 2012 to which she responded on 19th September 2012. A Disciplinary Committee was convened thereafter and RW5 participated in its proceedings.

29. He recorded the minutes which are on page 133 of the application dated 7th August 2013. He produced the same as exhibit 2.

30. The Claimant appeared before the committee with a union representative called Fredrick Machio. The Claimant gave her testimony before the committee and so did other witnesses including Nancy Githinji, Nancy Rono, Clementine Lotondo and others. The committee found the Claimant guilty of misconduct.

31. RW5 was asked to step out, when the abusive words were repeated at the disciplinary hearing.

The committee recommended summary dismissal of the Claimant.

The witness appeared forthright and candid in his testimony and withstood the cross examination by the claimant well. The Court believes his testimony on the material facts.

32. **Determination**

The Claimant laments that she was unlawfully and unfairly summarily dismissed from work.

33. The evidence before Court, contrary to her sworn testimony, demonstrates that she had used very abusive language against her supervisor Mrs Nancy Rono. She had repeated the insults severally in front of her colleagues, some of whom have testified before this Court.

34. This was conduct, unbecoming of an employee and constituted dismissible offence in terms of **Section 44(4)d** of the **Employment Act** as read with **Clause 41** of the Collective Bargaining Agreement (CBA) operational at the time.

35. The testimony by the Claimant, denying the offence was inconsistent, elusive and the Claimant came across as one not telling the truth. The evidence against her was overwhelming.

36. The Court did not also believe her testimony on the issue of the household property, which she alleged was partly destroyed and partly stolen by agents of the Respondent.

37. It is clear from the evidence of RW1 that the eviction was carried out in an orderly and lawful manner and the evidence by the Claimant in this regard is patently false.

38. In any event, the memorandum of claim was not amended to include particulars of destruction and or theft of the Claimant's household effects.

39. The Court is also satisfied that the Claimant has not discharged her onus in terms of **Section 47(5)** which Section places the burden of proving that a wrongful dismissal had occurred.

40. To the contrary the Respondent has discharged its onus by showing that it had a valid reason to summarily dismiss the Claimant and therefore, the dismissal was justified in terms of **Section 45(2)(a)** as read with **Section 47(5)** of the **Employment Act**.

41. Regarding the procedure followed to dismiss the Claimant, the testimony by RW2 - 5 shows that notice to show cause, was given to the Claimant to which she had responded.

42. A disciplinary hearing was held at which the Claimant was given opportunity to explain her case in the presence of a union representative of her choice. Though it had taken some months to conclude the matter, the Court finds that the disciplinary case was handled in a fair manner.

44. In the final analysis the Court finds that the requirements under **Section 45(1)** and **45(2) (a)** and **(c)** were met as stated above in that the dismissal of the Claimant was for a valid reason and was done in terms of a fair procedure.

Consequently the suit by the Claimant fails in its entirety except that the Claimant is entitled to;

- (i) salary for the days worked from 1st to 15th January 2013;
- (ii) payment for fourteen (14) days in lieu of leave;
- (iii) provision of certificate of service;
- (iv) payment of pension dues as per the terms and conditions of service.

The Respondent is to compute and file the award within thirty (30) days from date of this judgment.

45. Given that the summary dismissal meant that the Claimant lost most of her terminal benefits, the Court finds it fair and just, taking into consideration her long service, not to make an order as to costs in this matter.

Each party is therefore to meet their own costs of the suit.

Dated and Delivered at Nairobi this 21st day of November 2014

MATHEWS N. NDUMA

PRINCIPAL JUDGE