



**Bikeri v Kiamokama Tea Factory Ltd (Cause E044 of 2023)  
[2024] KEELRC 1248 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1248 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E044 OF 2023**

**S RADIDO, J  
MAY 15, 2024**

**BETWEEN**

**WYCLIFFE MAKINI BIKERI ..... CLAIMANT**

**AND**

**KIAMOKAMA TEA FACTORY LTD ..... RESPONDENT**

**JUDGMENT**

1. Wycliffe Makini Bikeri (the Claimant) sued Kiamokama Tea Factory Ltd (the Respondent) on 22 June 2023, alleging unfair termination of employment.
2. The Respondent filed a Response on 27 September 2023, and the Cause was heard on 25 January 2024 and 15 April 2024. The Claimant and a Manager with the Respondent testified.
3. The Claimant filed his submissions on 27 April 2024 and the Respondent on 12 May 2024.
4. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

**Procedural fairness**

5. The Respondent issued a notice of intended redundancy dated 1 September 2022 to the Kenya Plantation & Agricultural Workers Union. The notice was copied to the County Labour Officer. On 7 October 2022, the Respondent issued a notice to the Claimant referenced Staff Rationalisation. The letter informed the Claimant that he would be released with effect from 31 October 2022.
6. The reason given in the letter for releasing the Claimant was unsustainable high labour costs.
7. It is clear that the Respondent was releasing the Claimant for operational reasons. It was a declaration of redundancy.



8. The redundancy process is guided by section 40(1) of the [Employment Act, 2007](#). The proviso requires an employer to give the employee (or trade union, if the employee is a member) and Labour Officer written notice of at least 30 days.
9. The Respondent did not give the Claimant the 30-days' notice. Instead, it asserts that because it paid the Claimant the equivalent of 2 months' salary in lieu of notice, it complied with the requirement on notice.
10. The Court finds that the redundancy process was substantially procedurally fair since the requisite notices were given to the Claimant's trade union, the Claimant and the County Labour Officer.

#### **Substantive fairness**

11. Sections 43 and 45 of the [Employment Act, 2007](#) impose a burden on the employer to prove valid and fair reasons for terminating an employment contract.
12. The reason given by the Respondent for terminating the Claimant's employment was unsustainable high wage costs.
13. Apart from pleading and making the assertion, the Respondent did not place before the Court any records or material to support the contention of unsustainable high wage costs.
14. The Court finds that the Respondent did not prove the validity or fairness of the reasons for terminating the Claimant's employment.

#### **Compensation**

15. The Respondent paid the Claimant his terminal dues including severance pay, gratuity, salary in lieu of notice, accrued leave, and Provident Fund contributions amongst others.
16. The Respondent employed the Claimant in 2003 and the parties separated in 2022, a period of about 19 years.
17. Considering the above, the Court is of the view that the equivalent of 10 months' gross wages as compensation would be just (gross salary was Kshs 85,605/-).

#### **Salary in lieu of notice**

18. The Respondent paid the Claimant 2 months' salary in lieu of notice but the Claimant sought 3 months' salary in lieu of notice. The Claimant did not provide an evidential basis for claiming the 3 months' salary in lieu of notice.

#### **Gratuity and severance pay**

19. Amongst the terminal dues paid to the Claimant were the severance pay equivalent 25 days' pay for each year served and gratuity in terms of the collective bargaining agreement in place totalling Kshs 2,690,537/-.
20. The Claimant acknowledged payment of the dues, and nothing, therefore, turns on these heads of the claim.

#### **Service pay**

21. The Claimant claimed Kshs 1,712,100/- as service pay.



22. Evidence placed before the Court indicates that the Claimant was a member and contributor to a Provident Fund as well as the National Social Security Fund.
23. By dint of section 35(5) and (6) of the *Employment Act*, 2007, the Claimant is not eligible for the payment of service pay.

### **Conclusion and Orders**

24. From the foregoing, the Court finds that the termination of the Claimant's employment was unfair and the Claimant is awarded:
  - (i) Compensation Kshs 856,050/-
25. The award to attract interest at court rates from date of judgment if not paid within 30 days.
26. For clarity, the other heads of claim are dismissed.
27. The Claimant has partially succeeded and he is awarded costs on half-scale.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15<sup>TH</sup> DAY OF MAY 2024.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

### **Appearances**

For Claimant Ondabu & Co Advocates

For Respondent Kiogora Mutai & Co. Advocates

Court Assistant Chemwolo

