



**Bamrah v Foam Mattress Limited (Cause E067 of 2023)  
[2024] KEELRC 1179 (KLR) (8 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1179 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E067 OF 2023**

**S RADIDO, J  
MAY 8, 2024**

**BETWEEN**

**JAGDISH SINGH BAMRAH ..... CLAIMANT**

**AND**

**FOAM MATTRESS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. Jagdish Singh Bamrah (the Claimant) sued Foam Mattress Ltd (the respondent) on 20 August 2023, alleging unfair termination of employment and breach of contract.
2. The respondent filed a notice of preliminary objection contesting the Court’s territorial jurisdiction on 6 November 2023, and after taking brief oral submissions on 4 December 2023, the Court declined to uphold the objection because the Respondent’s head office is based in Kisumu within the jurisdiction of the Court.
3. The Respondent filed a Response on 10 January 2024, and Proposed Issues on 11 January 2024. The Court adopted the Issues on 31 January 2024.
4. The Cause was heard on 18 March 2024. The Claimant and a Human Resource Manager with the Respondent testified.
5. The Claimant filed his submissions on 4 April 2024, and the Respondent on 18 April 2024.
6. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

7. The claimant challenged the procedural fairness of the termination of his employment on the ground that the termination was verbal and was not proceeded by a show cause notice or disciplinary hearing.



8. During oral testimony, the claimant admitted that he was arrested at the workplace on 17 February 2023 and was arraigned in Court on 21 February 2023. The Claimant also testified that he was released on bond on 28 February 2023.
9. The claimant denied receiving a letter dated 17 March 2023 from the respondent giving him an ultimatum to report back to work or risk replacement. He also disowned the mobile numbers set out in the letter and purportedly used to send copies of the letter to him through WhatsApp and maintained that a named Director dismissed him verbally.
10. The respondent denied terminating the claimant's employment and contended that he absconded from work and only turned to work on 2 March 2023 to collect his salary.
11. The respondent's witness admitted that the claimant was arrested for reasons external to it and he also testified that when the claimant failed to report to work, the Labour Office was notified and a WhatsApp message was sent to him on 17 March 2020, and because he did not respond, it was not possible to conduct a disciplinary hearing.
12. It is common that the claimant was arrested by the police on or around 17 February 2023 while at work. It is also not in dispute that the Claimant was charged with criminal offences and was released on bond around 28 February 2023.
13. The claimant did not deny that he collected his salary on 2 March 2023. He maintained that a named director of the respondent verbally notified him of the termination of his employment on that date.
14. On or around 13 March 2023, the respondent wrote to the county labour officer notifying him that the claimant had not reported to work from 2 March 2023, and that attempts to reach him had not been successful and, therefore, it was deemed he had absconded from work.
15. On 17 March 2023, the respondent sent an ultimatum to the claimant to resume work on or before 20 March 2020.
16. The ultimatum referred to a phone conversation with the claimant earlier on the day and indicated the letter was served through WhatsApp. The Claimant denied receiving the ultimatum through WhatsApp.
17. The Claimant did not report to work and on 4 April 2023, his advocate sent a demand letter to the Respondent asserting that the Respondent's named Director had verbally terminated his employment on an undisclosed date in February 2023.
18. The Claimant's advocate did not disclose the exact date of verbal termination in the demand letter. During oral testimony, the Claimant stated he was verbally dismissed on 2 March 2023.
19. The Respondent's letters dated 13 March 2023 and 17 March 2023 giving the Claimant an ultimatum to report to work are not consistent with an assertion that the respondent's director verbally informed the claimant that his services were no longer required on 2 March 2023.
20. It was incumbent upon the Claimant to satisfy the threshold imposed on him by section 47(5) of the [\*Employment Act\*, 2007](#) that an unfair termination of employment occurred.
21. The Claimant did not satisfy the test of demonstrating that an unfair termination of employment occurred.
22. Compensation and salary in lieu of notice are thus not remedies available to the Claimant.



### **Breach of contract**

#### **Gratuity**

23. The Claimant prayed to be awarded Kshs 537,960/- as gratuity but he did not provide an evidential, contractual or legal foundation to this head of the claim and the relief is declined.

#### **Overtime**

24. The Claimant further claimed Kshs 430,399/- as overtime but again did not lay an evidential basis for the head of claim and relief is declined.

#### **Certificate of Service**

25. A Certificate of Service is a statutory entitlement and the Respondent should issue one to the Claimant if it was not issued.

#### **Conclusion and Orders**

26. From the foregoing, the court finds and declares that the claimant did not discharge the burden imposed on him by section 47(5) of the [Employment Act](#), 2007, and save for an order directing the respondent to issue a certificate of service within 21 days, the cause is dismissed with costs.

Delivered virtually, dated and signed in Kisumu on this 8<sup>th</sup> day of May 2024.

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**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Claimant Lugano & Achura Advocates

For Respondent COL Advocates LLP

Court Assistant Chemwolo

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