



**Ongeri v Rianyamwamu Tea Factory Ltd (Cause E045 of 2023)
[2024] KEELRC 1095 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1095 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E045 OF 2023**

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

BETWEEN

DENIS MARANGA ONGERI CLAIMANT

AND

RIANYAMWAMU TEA FACTORY LTD RESPONDENT

JUDGMENT

1. Denis Maranga Ongeri (the Claimant) sued Rianyamwamu Tea Factory Ltd (the Respondent) on 22 June 2023, alleging unfair termination of employment.
2. The Respondent filed a Response on 28 September 2023 and the Cause was heard on 4 March 2024 and 16 April 2024.
3. The Claimant and a Factory Manager with the Respondent testified.
4. The Claimant filed his submissions on 27 April 2024 and the Respondent on 12 May 2024.
5. The Court has considered the pleadings, evidence and submissions.

Unfair termination of employment

Procedural Fairness

6. The Respondent issued a letter dated 14 October 2022 to the Claimant referenced Staff Rationalisation. The letter informed the Claimant that he would be released with effect from 31 October 2022.
7. The reason given in the letter for releasing the Claimant was unsustainable high labour costs.
8. It is clear that the Respondent was releasing the Claimant for operational reasons. It was a declaration of redundancy.



9. The redundancy process is guided by section 40(1) of the *Employment Act*, 2007. The proviso requires an employer to give the employee (trade union if the employee is a member) and Labour Officer written notice of at least 30 days.
10. 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.
11. The Respondent did not produce any evidence that it alerted the Labour Office about the intended redundancy and on that ground the Court finds that the redundancy process was procedurally tainted.

Substantive fairness

12. 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.
13. The reason given by the Respondent for terminating the Claimant's employment was unsustainable high wage costs.
14. 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.
15. The Court finds that the Respondent did not prove the valid and fair reasons for terminating the Claimant's employment.

Compensation

16. 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.
17. The Respondent employed the Claimant in 2011 and the parties separated in 2022, a period of about 11 years.
18. Considering the above, the Court is of the view that the equivalent of 6 months' gross wages as compensation would be just (gross salary was Kshs 88,625/-).

Salary in lieu of notice

19. 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

20. The Respondent paid the Claimant gratuity of Kshs 779,252/- and severance pay of Kshs 649,377/- and the Claimant did not demonstrate the computations were wrong. Nothing, therefore, turns on these heads of the claim.

Service pay

21. The Claimant claimed Kshs 1,063,500/- as service pay.
22. The 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 531,750/-

25. The award to attract interest at court rates from the date of judgment if not paid within 30 days.

26. For clarity, the other heads of claim are dismissed.

27. The Claimant is awarded costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 15TH DAY OF MAY 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Ondabu & Co Advocates

For Respondent Kiogora Mutai & Co. Advocates

Court Assistant Chemwolo

