



**Wekesa v Aqua Plumbing Company Limited (Cause 818 of 2014)  
[2024] KEELRC 1298 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1298 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 818 OF 2014  
B ONGAYA, J  
MAY 29, 2024**

**BETWEEN**  
**KENNEDY NAMIRANDA WEKESA ..... CLAIMANT**  
**AND**  
**AQUA PLUMBING COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the Memorandum of Claim dated 16.05.2014 through Soita & Saende. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the termination of employment was unfair and unlawful.
  - b. Compensation as set out above and/or as set out in the written memorandum of claim.
  - c. Costs of the suit.
  - d. Any other relief and order that this Honourable court may deem just and fit to grant.
2. The claimant alongside his claim filed his statement. His case was as follows;
  - a. That he was employed by the respondent around January 2006 and was normally assigned different sites with other co-workers for the day's work.
  - b. That on or about the 07.11.2012 he fell sick and was admitted in hospital to which he reported to their foreman who undertook to inform the director and recovered after 7 days then reported back to work.
  - c. That he was barred from working on the day he reported back and later asked to avail official documentation from Kenyatta National Hospital to which he explained that he had not been treated there since his NHIF card had no money.



- d. That he went to the hospital he had been treated at and got documentation for his diagnosis and treatment which were dismissed by the director and he was asked to leave.
3. The respondents' response to claim was dated 13.05.2015 drawn and filed by the director of the respondent company and its case was as follows;
- a. That it employed the claimant as a casual worker before he was confirmed as a plumber on regular employment in February 2006 and he was the subsequently registered as a member of NSSF.
  - b. That the claimant did not earn 13,434/= per month as alleged but that was money earned at the time of termination of employment on account of dismissal.
  - c. That the claimant is entitled to 24 days annual leave and same should be approved and applied without any party being disadvantaged or prejudiced. The said leave was not denied to the claimant at any point but only divided into different parts and taken at different intervals that was confirmed and evidenced by the claimant.
  - d. That the claimant failed to report on duty for seven days without permission as required per section 44(4) (a) of the Employment Act 2007.
  - e. That the claimant did not work on public holidays and has not provided or adduced any evidence to warrant the monies and compensation being sought.
  - f. That the claimant failed to produce supporting evidence from a registered medical practitioner immediately he was attended to as is required by section 30 of the Employment Act, 2007 and equally failed to give satisfactory reasons and explanation during the disciplinary hearing on 15<sup>th</sup> and 16<sup>th</sup> November, 2012.
  - g. That the claimant has not established a basis as why he has to be paid as particularized in his memorandum of claim and that the respondent acted within the law and urged the court that the claim herein be dismissed with costs.
4. The respondent did not call a witness and did not file final submissions. The claimant testified to support his case and final submissions were filed for the claimant. The Court returns as follows:
- a. The parties were in a contract of service. The respondent employed the claimant as a plumber from sometimes in February 2006 to sometimes in November 2012.
  - b. It appears that in November 2012 the claimant was unwell and did not report on duty for about 7 days. Upon resuming duty he failed to promptly avail medical evidence of his ill health. He was subsequently terminated from employment. In his statement the claimant states he had informed his supervisor about his ill-health. It was on 07.11.2012. seven days later (14.11.2012) he resumed duty. The Director Deepak Halai asked him to avail the medical evidence of ill-health. He states that the Director found the medical record invalid. By his statement, it was after the medical record was demanded and he went for treatment and brought it. To confirm that position, the medical record exhibited is dated 14.11.2012. The Court finds that the claimant was absent for 7 days and it was after the Director demanded for the evidence from hospital that the claimant went to hospital and got the exhibited record of 14.11.2012. The Court finds that the Director was correct in finding that the medical record as was exhibited was invalid in explaining the absence of the 7 days starting on 07.11.2012. The claimant fully contributed to his termination. The reasons are found valid per section 43 of the Employment



Act and were fair per section 45 of the Act. The claim for compensation for unfair termination will collapse as unjustified.

- c. The Court finds that the claimant has failed to show the basis and evidence for claims of rest days, public holidays, annual leave, 3-months' pay in lieu of notice, and 12-months' compensation. They will fail for want of justification and due evidence. The respondent did not file submissions or call a witness and each party to bear own costs of the suit.

In conclusion, judgment is hereby entered for the respondent for dismissal of the suit and each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 29<sup>TH</sup> MAY 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

