



**Kenya Union of Domestic Workers, Hotels, Educational Institutions,
Hospitals and Allied Workers v Matuu Youth Polytechnic (Cause
E6533 of 2020) [2024] KEELRC 1907 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1907 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6533 OF 2020
BOM MANANI, J
JULY 25, 2024**

**BETWEEN
KENYA UNION OF DOMESTIC WORKERS, HOTELS, EDUCATIONAL
INSTITUTIONS, HOSPITALS AND ALLIED WORKERS CLAIMANT
AND
MATUU YOUTH POLYTECHNIC RESPONDENT**

JUDGMENT

Background

1. The Claimant is a registered Trade Union within the Republic of Kenya. It has filed the instant case on behalf and for the benefit of one Mary Wavinya Muteto, the Grievant.
2. The Claimant contends that the Grievant is its member number 2905. It contends that the Grievant is in good standing having been a regular remitter of union subscription fees.
3. The Claimant contends that the Grievant was employed by the Respondent in 1995 as one of its Garment Making Instructors. This engagement remained until 2018 when the Grievant's services were terminated.
4. The Claimant avers that sometime towards the close of the year 2017, the Respondent notified the Grievant and other members of staff that there had been low enrolment of trainees in the Garment Making department. As such, the department was overstaffed. However, the Respondent made no mention of the fact that it will be downsizing.
5. The Claimant contends that in January 2018 when the Grievant reported to work from her December break, she was issued with a letter terminating her services. It is the Claimant's contention that the



- Respondent did not issue the Grievant notice of termination of her contract. Neither was she subjected to the usual disciplinary process provided for in law prior to her release from employment.
6. The Claimant avers that the matter was referred to the Ministry of Labour and Social Services for arbitration. However, the Respondent ignored summons by the Ministry's officials thus necessitating this action.
 7. The Claimant contends that during the currency of her contract, the Grievant's monthly salary was Ksh. 10,000.00. However, she was not paid house allowance. It is the Claimant's further contention that the Respondent was underpaying the Grievant.
 8. Consequently, the Claimant prays for the following reliefs:-
 - a. Service gratuity for 22 years.
 - b. Pay in lieu of notice.
 - c. Underpayments for 3 years.
 - d. House allowance for 3 years.
 - e. Compensation for unfair termination of the Grievant's employment that is equivalent to her salary for 6 months.
 9. The Respondent entered appearance in the cause. However, it did not file a defense.
 10. The court record shows that the Claimant served the Respondent with a Hearing Notice for 8th April 2024 when this matter was slated for trial. There is an affidavit of service on record.
 11. Despite service of the Hearing Notice, the Respondent did not attend court on the trial date. As a result, the trial proceeded in its absence
 12. On the trial date, the Grievant gave oral testimony. She reiterated the averments in the Statement of Claim. She prayed for judgment in terms of the prayers in the Statement of Claim.

Issues for Determination

13. The issues for determination in the cause are:-
 - a. Whether the Grievant and Respondent had an employment relation.
 - b. If yes, whether the Respondent terminated the relation unfairly.
 - c. Whether the Grievant is entitled to the reliefs that she seeks through the Statement of Claim.

Analysis

14. The Grievant stated on oath that she was employed by the Respondent in 1995. She produced a contract of service dated 30th June 1995 between her and the Respondent. According to the contract, the Respondent hired the services of the Grievant as a Garment Making Instructor from 27th June 1995.
15. The parties (Grievant and Respondent) signed the aforesaid contract between them. As a result and considering the foregoing, I am satisfied that the two had an employment relation.
16. The evidence on record shows that on 5th January 2018, the Respondent wrote to the Grievant terminating her services. According to the letter, the Respondent cited "the prevailing circumstances



- as pertains to teaching and the workload per class” as the reason for its decision. On the face of it, it is difficult to comprehend what the Respondent was proffering as the reason for its decision.
17. The record does not show that the Grievant was taken through a disciplinary process as required under section 41 of the *Employment Act*. If her contract was terminated for operational reasons of the Respondent, there is no evidence that she was taken through the redundancy process as stipulated under section 40 of the *Employment Act*.
 18. In effect, it is apparent that the Respondent did not adhere to the law in terminating the contract of service between it and the Grievant. As a consequence, the Respondent’s decision is declared unlawful.
 19. The Grievant has prayed for a plethora of reliefs. These include: house allowance; service pay; underpaid salary; notice pay; and compensation for unlawful termination of her contract.
 20. It is noteworthy that the Grievant had served the Respondent for more than twenty years when her contract was terminated. Yet, she has claimed for unpaid house allowance for three years only.
 21. Although the Grievant has prayed for house allowance for three years, she has not provided evidence to indicate in respect of which years this benefit was withheld. As such, the court has no cogent basis upon which it can grant the relief.
 22. The Grievant has also prayed for underpaid salary. However, she did not tender evidence on the subject. In the absence of preliminary evidence on the subject, the court has no basis on which to consider the prayer.
 23. The Grievant has prayed for service pay for twenty two years. Between 1995 when she was hired and 2018 when her services were terminated, she had served the Respondent for approximately twenty two years.
 24. Although the contract of service between the parties indicates that the Grievant was entitled to contributions towards her National Social Security Fund, there is no evidence to demonstrate that the Respondent fulfilled this obligation. As such, the Grievant is entitled to claim service pay by virtue of section 35 of the *Employment Act*.
 25. The relief under this sub-heading is normally computed in terms of the salary for the employee for fifteen days for every year worked. In the instant case, this works out to Ksh. 5,000.00 x 22 years = Ksh. 110,000.00.
 26. The Grievant has also prayed for pay in lieu of notice to terminate her contract. According to the clause on termination of engagement in the contract between the parties, either of them was at liberty to terminate the contract subject to giving the other notice of one month to that effect. A look at the letter of termination of contract dated 5th January 2018, albeit declared irregular, shows that the Respondent gave the Grievant one month’s notice to terminate the contract. Therefore, the Claimant’s argument that the notice requirement was disregarded is unmerited.
 27. As mentioned earlier, the record does not show that the Respondent complied with the procedure for termination of contract provided for either under section 40 or section 41 of the *Employment Act* before it terminated the Grievant’s employment. As such, the Grievant is entitled to compensation for unfair termination of her employment.
 28. The evidence on record shows that the Grievant worked for the Respondent for more than twenty years before her contract was terminated. At the same time, there is no evidence to suggest that her conduct contributed to the decision to terminate her employment. In the premises, I award her compensation



for the unfair termination of her services which is equivalent to her salary for six months, that is to say, Ksh. 10,000.00 x 6 = Ksh. 60,000.00.

29. The amount awarded above attracts interest at court rates from the date of this decision.
30. The Grievant is allowed to recover the actual disbursements incurred in prosecuting the case but not costs as contemplated under the Advocates Act.
31. The award is subject to the applicable statutory deductions.

Summary of the Award.

32. After evaluating the evidence on record, the court makes the following findings and attendant orders:-
 - a. The court finds that the Grievant and Respondent had a valid employment relationship.
 - b. The court finds that the Respondent unlawfully terminated the said relation.
 - c. The Respondent is ordered to pay the Grievant compensation for unfair termination of her contract of service which is equivalent to the latter's salary for six months, that is to say, Ksh. 60,000.00.
 - d. The Respondent is ordered to pay the Grievant service pay of Ksh. 110,000.00.
 - e. The claims for: house allowance; pay in lieu of notice to terminate the contract; and underpaid salary are declined.
 - f. The Grievant is awarded interest on the amount awarded at court rates from the date of this decision.
 - g. The award is subject to the applicable statutory deductions.
 - h. The Grievant is allowed to recover the actual disbursements incurred in prosecuting the case but not costs as contemplated under the Advocates Act.

DATED, SIGNED AND DELIVERED ON THE 25TH DAY OF JULY, 2024

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M. MANANI

JUDGE

