



**Ndolo v Seb Estates Limited (Cause 1950 of 2014)
[2024] KEELRC 2031 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2031 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1950 OF 2014**

**L NDOLO, J
JULY 25, 2024**

BETWEEN

JUSTUS KYALO NDOLO CLAIMANT

AND

SEB ESTATES LIMITED RESPONDENT

JUDGMENT

1. By his Memorandum of Claim dated 24th October 2014 and filed in court on 3rd November 2014, the Claimant sued the Respondent for constructive termination of employment and failure to pay terminal benefits. The Respondent filed a Memorandum of Response dated 24th November 2014.
2. At the trial, the Claimant testified on his own behalf while the Respondent chose not to call any witnesses. Both parties filed final submissions.

The Claimant’s Case

3. The Claimant states that he was employed by the Respondent as a security guard, with his duties being training, feeding and taking care of the Respondent’s security dogs. He claims to have earned a monthly salary of Kshs.10,000.
4. The Claimant avers that while at work on 14th November 2012, he was arrested on allegations of stealing a water tank and other items at Blue Safaricom Housing Estate. The Claimant states that the site of the alleged theft was not his assigned place of work.
5. The Claimant was charged with the offence of stealing contrary to Section 268(1) as read with Section 275 of the Penal Code, with the alternative charge of neglect to prevent a felony contrary to Section 393 of the Penal Code. He was subsequently acquitted under Section 210 of the Criminal Procedure Code.



6. The Claimant's case is that upon his arrest, the Respondent constructively terminated his employment, without notice. He adds that he was not paid his salary for November 2012.
7. The Claimant's claim is as follows:
 - a. Salary for the month of November 2012;
 - b. General damages for unlawful termination of employment;
 - c. Terminal benefits including NSSF contributions;
 - d. Certificate of service;
 - e. Costs of the case.

The Respondent's Case

8. In its Memorandum of Response dated 27th November 2014, the Respondent admits having employed the Claimant, as pleaded in the Memorandum of Claim, but denies the allegations of constructive termination of employment.
9. The Respondent states that the Claimant did not report back to work after being acquitted of the criminal charges. The Respondent denies the Claimant's entire claim and puts him to strict proof.

Findings and Determination

10. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought.

Unlawful Termination?

11. In its final submissions dated 13th May 2024, the Respondent states that there was no employment relationship between the parties. The only thing I will say about this contention is that it is a feeble attempt to pursue a line of defence that is not supported by the Respondent's own pleadings.
12. I say so because in its Memorandum of Response dated 27th November 2014, the Respondent admits the Claimant's pleading on the existence of an employment relationship, as stated in the Memorandum of Claim. In addition, the Respondent goes further to blame the Claimant for failing to report back to work after his acquittal by the criminal court.
13. It is a cardinal principle of law that parties are bound by their pleadings (see *Nathan Ayany Wao v South Nyanza Sugar Co. Ltd* [2018] eKLR). The Respondent cannot therefore alter its case in final submissions.
14. That said, it is evident that the Claimant was arrested and charged in court following allegations of theft. It is also factual that he was acquitted of the criminal charges levelled against him. The Respondent states that the Claimant did not report back to work after his acquittal. The Respondent did not however adduce any evidence in support of its assertion. If indeed the Claimant had failed to report back to work, the Respondent ought to have issued a notice to him, which it did not do. In the result, the Claimant's claim that his employment was unlawfully and unfairly terminated was uncontroverted and the Court has no reason to disbelieve him.



Remedies

15. None of the parties disclosed the effective date of the Claimant's employment and the Court could not therefore use the length of service as a factor in assessing compensation. I have therefore taken into account the fact that the Claimant did not contribute to the termination and the Respondent's failure to observe due process in effecting the termination.
16. Flowing from this, I award the Claimant six (6) months' salary in compensation. I further award the Claimant salary for days worked in November 2012.
17. The claim for terminal benefits including NSSF contributions was not proved and therefore fails.
18. Ultimately, I enter judgment in favour of the Claimant as follows:
 - a. 6 months' salary in compensation Kshs.60,000
 - b. Salary for 14 days worked in November 2012 Kshs.4,667Total Kshs.64,667
19. This amount will attract interest at court rates from the date of judgment until payment in full.
20. The Claimant is also entitled to a certificate of service plus costs of the case.
21. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY JULY 2024

LINNET NDOLO

JUDGE

Appearance:

Mr. Muia for the Claimant

Ms. Kagoya for the Respondent

