



Kyalo v English Press Limited (Employment and Labour Relations Cause 252 of 2017) [2024] KEELRC 2165 (KLR) (28 August 2024) (Judgment)

Neutral citation: [2024] KEELRC 2165 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 252 OF 2017**

J RIKA, J

AUGUST 28, 2024

BETWEEN

CHARLES KILOVOO KYALO CLAIMANT

AND

ENGLISH PRESS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on February 9, 2017.
2. He avers that he was employed by the Respondent, as a General Worker on January 8, 2011, until May 3, 2016, when the Respondent terminated his contract.
3. His salary was Kshs. 11,248 monthly.
4. He was summarily dismissed by word of mouth. There was no notice. He was not paid terminal dues.
5. He asks the Court to find and declare that termination was unfair and unlawful, and grant him: -
 - a. Rest days at Kshs. 112,580.
 - b. Public holidays at Kshs. 20,784.
 - c. Notice at Kshs. 11,248.
 - d. Annual leave at Kshs. 54,558.
 - e. Severance pay at Kshs. 33,744.
 - f. 12 months' salary in compensation for unfair termination at Kshs.134,976
Total...Kshs. 367,890
 - g. Costs.



- h. Interest.
 - i. Certificate of Service to issue.
 - j. Any other suitable order.
6. The Respondent filed his Statement of Response on June 21, 2017. His position is that the Claimant was employed by the Respondent as a General Worker. He worked on fixed-term contracts. The last commenced on May 1, 2015, and was to lapse on April 30, 2016. His gross salary was Kshs. 12,597 monthly. It is denied that he was summarily dismissed by the Respondent. His contract lapsed on the agreed date. He was entitled to 1 rest day weekly, under the contract, which was paid as shown in his pay slips. He utilized his leave, in accordance with his contract. His prayers are not merited. The Respondent prays for dismissal of the Claim, with costs.
7. The Claimant gave evidence, and rested his case, on March 17, 2023. Head of Human Resource, Rachael Karugu, gave evidence for Respondent on March 15, 2024, closing the hearing. The Claim was last mentioned on July 10, 2024, when the Parties confirmed filing and exchange of their Closing Submissions.
8. The Claimant restated the averments contained in his Statement of Claim, as his evidence-in-chief. He adopted his witness statement and documents [1-5] on record. He testified that he went on annual leave, but 4 days after return, was told there was no more work. He used to pack books, printed by the Respondent. His contract had expired by the time he returned from annual leave. Cross-examined, he confirmed that his contract had expired, by the time he came from annual leave.
9. Karugu relied on her witness statement and documents [1-4] filed by the Respondent, as her evidence-in-chief. Cross-examined, she confirmed that the Claimant was on a fixed-term contract. He was aware that his contract expired. He was paid salary to the last day worked. He was paid service of 1 year.
10. The issues are whether the Claimant left employment through the expiry of his contract, or was summarily dismissed by the Respondent; and whether his prayers are merited.

The Court Finds: -

11. The Claimant executed a contract limited to 1 year of service, commencing May 1, 2015 to April 30, 2016. His salary was Kshs. 12,597, indicated to be all-inclusive.
12. In his own evidence, before cross-examination, he volunteered that his contract had expired, by the time he went on annual leave. This was confirmed by the Respondent's witness. He did not argue that he was coming back, expecting renewal. He was aware that his contract had expired, and there is no justification in his U-Turn, to advance the argument that he was summarily dismissed by the Respondent.
13. His prayers for rest days, public holidays, annual leave, which incorporates other contracts outside his last contract of 1 year, have no foundation. He did not complain at the time the other contracts expired, that there were unpaid terminal dues. He claims annual leave for the entire period of service, but told the Court he had gone on annual leave, and learnt of termination of his contract, upon return from annual leave.
14. His pay slips indicate annual leave was consistently paid. His last pay slip for the month of April 2016, show he was paid annual leave and service.
15. The Claim is without foundation, save for the prayer for certificate of service, and is rejected.



It Is Ordered: -

- a. The Claim is rejected, save for the prayer for the certificate of service.
- b. The Respondent shall issue the Claimant with his certificate of service.
- c. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF AUGUST 2024.

JAMES RIKA

JUDGE

Eric Ntabo & Associates Advocates for the Claimant

The Federation of Kenya Employers (FKE) for the Respondent

