



**Oketch v MMA Engineering Limited (Cause 263 of 2017)
[2024] KEELRC 2160 (KLR) (16 August 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2160 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 263 OF 2017
J RIKA, J
AUGUST 16, 2024**

BETWEEN

MAURICE OKWANY OKETCH CLAIMANT

AND

MMA ENGINEERING LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 13th February 2017.
2. He states that he was employed by the Respondent as a Welder, on 5th January 2007.
3. His performance appraisal routinely rated him ‘excellent’ or ‘very good.’ He was rewarded with gifts and bonuses for this performance.
4. In May 2014, the Respondent announced that it was facing harsh economic times, and had to reduce the number of Employees, to sustain its business.
5. The Respondent therefore terminated the Claimant’s contract.
6. He disputes the reason for termination, pleading that the Respondent acted in order to escape paying to him gratuity, he was entitled to, on retirement. Termination was unfair under Section 45 of the [Employment Act](#). It was in violation of the Claimant’s constitutional rights.
7. He prays for Judgment against the Respondent for: -
 - a. Declaration that termination is unlawful and infringes the Claimant’s fundamental freedoms and rights under Articles 27[5], 41[1], 47[1] and 26[1] of the [Constitution](#).
 - b. Compensation for the remaining 8 years of service at Kshs. 3,360,000.
 - c. General damages.



- d. 12 months' salary in compensation for unfair termination at Kshs. 420,000.
 - e. Severance pay at Kshs. 210,000.
 - f. Service charge at Kshs. 210,000.
 - g. Compensation for violation of the right to fair labour practice.
 - h. Costs.
 - i. Any other benefits.
 - j. Interest.
 - k. An order that termination can only take effect once the Respondent has conformed to all the orders issued by the Court.
8. The Respondent filed its Statement of Response on 7th April 2017. The Claimant was employed on contract. There was no performance appraisal system at the Respondent. The Respondent had a contract with BAT-Kenya Limited, which was scaled down, resulting in declaration of redundancies. The Claimant however, was not affected.
 9. The Claimant breached safety policies at BAT, leading to him being declared persona non grata, at BAT premises. He left a conveyor machine running, unattended and without guards; he exposed other workers to industrial risk and accident; and persistently failed to observe safety rules and procedures.
 10. Once the client BAT, denied the Claimant access to its promises, the Respondent's hand was tied. A decision was taken to pay the Claimant 1-month salary in lieu of notice and severance. He left on 1st October 2016, not 2nd May 2014. His rights have not been violated. He was paid salary for days worked in the month on September 2016. His N.S.S.F account was up to date, and he was therefore, not entitled to severance pay. The Respondent prays the Court to dismiss the Claim with costs.
 11. The Claimant gave evidence and closed his case on 1st March 2023. The Respondent did not attend Court, and failed to present evidence, leading to closure of proceedings on 1st March 2023. Both Parties failed to appear before the Court on subsequent dates for mention, seemingly suffering from a bout of litigation fatigue, until 19th March 2024, when the Claimant confirmed he had filed and served his closing submissions.
 12. The Claimant told the Court that, he is a boda boda rider, aged 46 years at the time of giving evidence. He relied on his witness statement, confirming that he was employed by the Respondent, and worked at the Respondent's client BAT. His salary was Kshs. 35,000 monthly. He was told that he had ignored safety procedures at BAT. He was not availed details. His contract was terminated. His view was that, termination was unfair and unlawful.
 13. The issues are whether termination was unfair and unlawful; and whether the Claimant merits the prayers sought.

The Court Finds: -

14. The Claimant was employed by the Respondent on 5th January 2007 as a Welder. There is no agreement on the date his contract was terminated. He pleads that it was on 2nd May 2014, while the Respondent states it was on 1st October 2016. There is no letter of summary dismissal on record, and the Court is not able say with certainty, when the Claimant left employment.



15. He states that his salary was Kshs. 35,000 in his evidence. There is no pay slip or other evidence of salary paid to the Claimant, exhibited by either Party. The Claimant's documents consist demand letter and copy of his national identity card, and no more.
16. The Respondent did not attend Court, and its reasons justifying termination, remain in the realm of bare pleadings.
17. It is pleaded by the Respondent that the Claimant breached safety procedures at BAT. There was no evidence of breach from the Respondent, or from any witness from BAT. It is pleaded that the Claimant was declared persona non grata by BAT, leaving the Respondent's hand, in continuing to employ the Claimant, tied. No evidence showing that the Claimant was denied access by BAT, was provided to the Court either through documents, or by word of mouth.
18. At paragraph 9 of the Statement of Response, the Respondent states that upon the Claimant being denied access by BAT, a decision was made to pay the Claimant 1-month salary in lieu of notice, and severance pay for the period worked. At paragraph 10[7], the Respondent states that it terminated the Claimant's contract on 1st October 2016 for the "foregoing reasons."
19. The Respondent does not attempt to show that procedure leading to termination, conformed to the standards prescribed under Section 41 and 45 of the *Employment Act*. It is not shown that the allegation of negligence against the Claimant was subjected to investigations, letter to show cause, and disciplinary hearing.
20. Termination was unfair and unlawful under Sections 41, 43 and 45 of the *Employment Act*.
21. There is however, no evidence that the violations against the Claimant, were of such a grievous nature, and extensive, as not to be remedied adequately under the relevant statute, the *Employment Act*, 2007. There is no justification in the Claimant's invocation of multiple Articles of the *Constitution*, and his endeavour to constitutionalize a simple employment dispute.
22. His prayer for anticipatory salaries over a period of 8 years is unreasonable and contrary to the principle of remedial proportionality and fair go all round, laid down in the Court of Appeal decision, *Elizabeth Wakanyi Kibe v. Telkom Kenya Limited* [2014] e-KLR. Remedies for employment violations must aim at correcting genuine economic grievances, and not be applied as a plank, to unjust enrichment.
23. This Court has recently cautioned in Petition 138 of 2016, *Prof. Dr. Dr. Moni Wekesa v Mt. Kenya University* [2024] e-KLR, and shall not cease to caution Claimants appearing before it, against making bloated claims, and turning remedies for unfair and unlawful termination, into a cash-grab industry.
24. Consequently, the prayers for Constitutional declaratory orders; compensation under the *Constitution*; anticipatory salary of 8 years; and service charge, are declined.
25. The Claim before the Court is based on the fact, that the Claimant's contract was terminated. It is preposterous for the Claimant, to ask the Court to order that he is deemed to be in employment, until the orders granted in his favour herein, are honoured by the Respondent. This prayer is declined.
26. The Claimant worked for 7 years according to his pleadings and evidence. The Respondent's position is that he worked for 9 years. He is not shown to have cause or contributed to the circumstances leading to termination. He told the Court that he is gainfully working as a boda boda rider. He mitigated loss of employment. He did not inform the Court how long he expected to go on working for the Respondent. His last salary which he told the Court was Kshs. 35,000, though not supported through a statement of pay advice, was not disputed by the Respondent through evidence. He is granted compensation for unfair termination, equivalent of 9½ months' salary at Kshs. 332, 500.



27. The Respondent alleged to have offered the Claimant what was incorrectly termed as severance pay, for the period of service. The Respondent probably meant service pay, because severance is payable on redundancy under Section 40 of the [Employment Act](#), which was never in contention, in this dispute. Although the offer was made, the Respondent did not pay service to the Claimant, pleading that the “ Claimant’s N.S.S.F is up to date, and therefore not entitled to severance pay.”
28. The Claimant’s prays for what he similarly mislabels ‘severance pay’ at the rate of 15 days’ salary for 12 years of service, at Kshs. 210,000. There is no evidence by the Respondent that the Claimant was actively subscribed to N.S.S.F. He is allowed the prayer for what should have been pleaded as service pay, at 15 days’ salary for 9 years’ of service, at Kshs. 157,500.
29. Costs to the Claimant,
30. Interest allowed at court rate, from the date of Judgment till payment is made in full.

In sum, it is ordered: -

- a. Termination of the Claimant’s contract by the Respondent was unfair and unlawful.
- b. The Respondent shall pay to the Claimant: compensation for unfair termination, equivalent of 9 ½ months’ salary at Kshs. 332,500; and service pay at Kshs. 157,500, -total Kshs. 490,000.
- c. Costs to the Claimant.
- d. Interest allowed at court rate, from the date of Judgment till payment is made in full.

DATED, SIGNED, AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 16TH DAY OF AUGUST 2024.

JAMES RIKA

JUDGE

