



**Kisangi v Mombasa Maize Millers Limited (Employment and Labour Relations Cause E052 of 2021) [2024] KEELRC 2304 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2304 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E052 OF 2021**

**AK NZEI, J  
SEPTEMBER 26, 2024**

**BETWEEN**  
**JOHNSTONE MULINDE KISANGI ..... CLAIMANT**  
**AND**  
**MOMBASA MAIZE MILLERS LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant sued the Respondent vide a memorandum of claim dated 18/5/2021 and filed in Court on 21/5/2021. The Claimant pleaded that he was employed by the Respondent and that on 3/2/2017, he entered into an agreement (with the Respondent) to the effect that he would be sponsored on Apprenticeship training and that upon completion, he would work for the Respondent for 5 years. That upon completion, the Respondent changed the express terms of this contract and the Claimant was given yearly contracts.
2. The Claimant further pleaded:-
  - a. That his employment contract was on 29/2/2020 terminated by the Respondent without prior notice, and that his Diploma Certificate from African Milling School was withheld by the Respondent.
  - b. That the Claimant's employment was terminated without notice or payment in lieu thereof and in breach of the said contract which was to be terminated on 30/11/2023.
  - c. That the termination was contrary to Sections 41,43 and 49 of the *Employment Act* and Article 41(1) of *the Constitution* of Kenya 2010.
  - d. That the Claimant has a right to protection against unemployment, undignified life, and that having been in the Respondent's service, his academic certificate should be released to him.



- e. That the Respondent failed, neglected and/or refused to issue the Claimant with an itemized pay statement.
3. The Claimant sought the following reliefs against the Respondent:-
    - a. A declaration that the Claimant's termination was unlawful and unfair.
    - b. Compensation for unfair termination.
    - c. An order directing the Respondent to forthwith release all the Claimant's academic certificates.
    - d. Any other relief that the Court may deem fit to grant.
  4. Documents filed alongside the Claimant's Memorandum of claim included the Claimant's written witness statement and a list of documents dated 18/5/2021, listing 6 documents. The listed documents are a Course Sponsorship letter dated 3/2/2017, a schedule of information, a certificate of service, a demand notice dated 6/3/2020 and a reply (letter) by the Respondent dated 8/3/2020.
  5. The Respondent entered appearance on 8/7/2021 and subsequently filed Response to the Claimant's claim on 28/10/2021, denying the same. The Respondent further pleaded:-
    - a. That even though the Respondent paid colossal sums for the Claimant's training at the African Milling School, certificates issued by the school were given to the Claimant, and none was given to the Respondent.
    - b. That in breach of the undertaking to work for at least 5 years after the training, the Claimant resigned from employment without notice vide a letter dated 21/2/2020.
    - c. That having resigned, albeit unlawfully, the Claimant cannot sustain a claim for unfair termination.
    - d. That although the ELRC has jurisdiction, it is nonetheless forum non-conveniens in light of Gazette Notice No. 6024 of 10<sup>th</sup> June 2018.
  6. Other document filed by the Respondent included a written witness statement of Charles Onyiego Bwogari dated 28/1/2022.
  7. On 14/2/2022, the Claimant filed a further list of documents dated 14/2/2022, listing 4 documents. The listed documents are an appointment letter dated 19/9/2016, an employment contract dated 1/1/2018, an employment contract dated 1/1/2019, and a discharge voucher dated 22/2/2020. Further, the Claimant filed a further witness statement dated 10/2/2022.
  8. Trial commenced before me on 13/10/2022. The Claimant adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraphs 4 and 7 of this judgment. The Claimant further testified that the Respondent was his employer from December 2001 upto February 2020. That the Respondent took him for training on grain Milling technology and process in 2017 to 2018, on condition that the Claimant would work for the Respondent for 5 years after the training. That the Claimant passed his examinations but was informed that his (diploma) certificate would be forwarded to the Respondent which had paid for his training.
  9. It was the Claimant's further evidence that after the training, the Respondent did not give him a 5 years contract, but gave him one year fixed term contracts in 2018 and 2019, and that his salary was not increased as agreed, although his responsibilities as Head Miller were increased to a point that he worked as a Production Manager and even worked at night. That the Claimant sought assistance on the issue of him being overworked without success, and finally resigned.



10. The Claimant further testified that the Respondent refused to give him his Diploma Certificate, and that on sending them a demand through the Commission of Human Rights and Justice, the Respondent stated that they had taken the certificate and had lost it. He asked the Court to direct the Respondent to release his certificate to him.
11. Cross-examined and re-examined, the Claimant testified:-
  - a. That the management of the African Milling School told him that his certificate would be sent to the Respondent because those trained before him had misused their certificates. That the Claimant was in the 3<sup>rd</sup> batch from the Respondent to be trained at the school. That the Respondent secured his admission to the school and paid his fees.
  - b. That the Claimant completed his training at the school and graduated on 31/11/2018, and that the 5 years bond (contract) that he was supposed to get from the Respondent was supposed to run from the last day of the training.
  - c. That he (the Claimant) wrote a letter dated 21/2/2020.
12. The Respondent called one witness, Charles Onyiego (RW-1) who adopted his filed witness statement as his testimony and produced in evidence the Claimant's resignation letter dated 21/2/2020.
13. Cross-examined, RW-1 testified that the Respondent sponsored the Claimant to attend training at the African Milling School on condition that the Claimant worked for the Respondent for at least 5 years upon completion of training (Claimant's exhibit no. 1). That the Claimant completed training and attained the marks that he was supposed to attain, but the Respondent gave him one year contracts in 2018 and 2019 without any explanation. That for each year that the Claimant worked, he was issued with a certificate of service by the Respondent. RW-1 further testified that he was not in a position to know whether the Respondent had the Claimant's certificate (from the African Milling School) and had refused to hand it over to the Claimant.
14. It was RW-1's further evidence that the Claimant ordinarily signed 1 year contracts with the Respondent, and that there were no 5 year contracts in the Respondent Company.
15. Re-examined, RW-1 testified that the Claimant had a 5-year bond with the Respondent. That he was given a 1 year contract and when that contract was over, he would be given another one, until the 5 years would be over. That there was no agreement/indication that the Claimant would be given a 5 years' contract. Asked by the Court whether the Respondent had in place a policy on collection of employees' certificates from African Milling School upon completion of training, RW-1 told the Court that there was no policy on the issue.
16. Having considered the pleadings filed by both parties and evidence presented thereon, issues that fall for determination, in my view, are as follows:-
  - a. Whether the Respondent terminated the Claimant's employment, and if so, whether the termination was unfair.
  - b. Whether the reliefs sought are deserved.
17. On the first issue, it was a common ground that the Claimant was an employee of the Respondent. The date of commencement of such employment is not pleaded. The Claimant, however, testified that he was employed by the Respondent in the year 2001 and worked upto 21/2/2020. This evidence was not controverted by the Respondent. Evidence on record shows that the Claimant was issued with a letter of employment by the Respondent on 19/9/2016 for an indefinite period of time at a monthly



basic salary of kshs. 26,087 and a house allowance of kshs. 3,913. The Claimant testified that he was, on 1/1/2017, forced to sign a one year contract. That before attending training at Nairobi in African Milling School, he signed another contract to the effect that he would be awarded a 5 year contract upon completing training. The Claimant produced in evidence two one year employment contracts, duly signed by him in January 2018 and January 2019 respectively.

18. The Claimant also produced in evidence Course Sponsorship/ Letter of Undertaking signed by him on 3/2/2017 and which states in part:-

“..... I agree that MMM shall pay the fee on condition that I shall:-

- (a) .....
- (b) .....
- (c) .....
- (d) Not leave the service of MMM before completion of the course;
- (e) On completion of the course, serve a five years bond with MMM. The bond period will begin on the last day of the course, unless otherwise prescribed by the MMM Training policy....”

19. There was no provision in the foregoing bond (agreement) signed by the Claimant that the Respondent would give him a one 5 year contract. The agreement was that he would serve a five-year bond with the Respondent, with effect from the last day of the training (course). The Claimant testified that he graduated from the African Milling School on 31/11/2018. In my view, that date was the last day of the training.

20. According to the evidence on record, the Claimant was on 1/1/2019 given by the Respondent a 1 year employment contract, which he duly executed. The Respondent produced in evidence the Claimant’s letter to it dated 21/2/2020. The said letter, which the Claimant admitted in evidence to having written states:-

“Re: Contract Termination.

Please accept this letter as my formal contract termination from my position as Miller at Mombasa Maize Millers effective from one week from 21<sup>st</sup> February 2020.

I appreciate the opportunities for growth and development that you have provided during my tenure, thank you for your guidance and support.”

21. Although the Court was not told that the Claimant signed another contract after termination of the 1 year fixed term contract signed by him on 1/1/2019, the fact that he wrote a letter on 21/2/2020 terminating his employment contract is testimony enough that he was still in employment as at that date, servicing the bond period of five years. The termination letter does not indicate the reason for the abrupt resignation.

22. I find and hold that the Respondent did not terminate the Claimant’s employment. The Claimant terminated his employment by way of voluntary resignation. Having made that finding, the question of whether or not the termination was unfair does not arise.



23. On the second issue, the Claimant, having voluntarily resigned from his employment, cannot claim compensation for alleged unfair termination. He did not plead and/or demonstrate constructive dismissal. The claims based on alleged unfair termination are declined.
24. Regarding the Claimant's prayer for an order directing the Respondent to release his "academic certificates" to him forthwith, it is clear from both the pleadings and the evidence presented in Court that the certificate that the Claimant seeks to have released to him is the certificate issued by African Milling School upon training which was the subject of the bond/sponsorship undertaking referred to in paragraph 18 of this judgment.
25. Vide its letter to the Commission for Human Rights and Justice dated 8/3/2020, the Respondent admitted having received the said certificate. The said letter, whose authenticity and/or validity the Respondent did not rebut and/or challenge states in part:-

"..However, we wish to clarify that there is a contractual agreement between the parties, that the employee (Mr. Kisangi) is obliged to serve the company for the agreed period post training and also to reimburse the full paid up fees and any other attendant costs in the event that he would wish to leave before the bond period lapses.

Please note that these are conditions that were agreed upon before the training commenced, and in so far as the matter of the certificate of the training goes, unfortunately we have misplaced the certificate sent from the training institution.

Kindly ask your client to satisfy the contractual obligations and thereafter, he may approach the training institute on his own to access the certificate.

We thank you for your indulgence.

Yours faithfully

Mombasa Maize Milers

(signed) Director."

26. A Certificate and/or a professional certificate acquired by an employee during employment, whether or not the professional training was paid for by the employer, is only useful to the employee as it certifies both completion of the professional training and acquisition by him/her of particular skills and/or knowledge. The certificate is of no use to either the employer or to other employees, present or future. An employer cannot justly withhold an employee's professional certificate or any other certificate acquired by an employee during employment. An employer can, however, seek legal redress against the employee in case of breach of contract by the employee regarding the training in issue. In the instant case, I have noted that the Respondent did not raise any counter-claim against the Claimant.
27. I make a finding that the Claimant is entitled to the certificate issued by the African Milling School, and which the Respondent admitted to having received.
28. Consequently, judgment is hereby entered for the Claimant against the Respondent as follows:-
  - a. The Respondent shall, within thirty days of this judgment, give to the Claimant the Claimant's certificate that the Respondent received from the African Milling School.\*
  - b. Each party shall bear its own costs of the suit.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26<sup>TH</sup> SEPTEMBER 2024**

**AGNES KITIKU NZEI**



**JUDGE**

**Order**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Claimant

.....Respondent

