



Transport Workers Union Kenya v Sifa Imports Limited (Cause 1421 of 2018) [2024] KEELRC 2181 (KLR) (6 September 2024) (Judgment)

Neutral citation: [2024] KEELRC 2181 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1421 OF 2018
NJ ABUODHA, J
SEPTEMBER 6, 2024**

BETWEEN
TRANSPORT WORKERS UNION KENYA CLAIMANT
AND
SIFA IMPORTS LIMITED RESPONDENT

JUDGMENT

1. The Claimant a registered trade union filed its statement of claim dated 3rd October, 2018 and pleaded inter alia as follows:
 - a. That on or about 7th November,2015 the Grievant one Mr. Kennedy K. Nalwa was employed by the Respondent as a Financial Controller/Accountant. That the claim was made to the court in line with section 69(b) of the *Labour Relations Act* as per certificate of unresolved dispute.
 - b. The Claimant averred that the Grievant’s employment with the Respondent came to an end on 15th January,2018 after his work station (Prime Star Services Station one among many others which the Respondent operates) was taken over by another dealer hence the Grievant was locked out from his place of work which was unfair redundancy.
 - c. The Claimant averred that the Grievant salary at the time he left the Respondent was Kshs 120,000/= per month. That the Respondent had started withholding the Grievant salary for the month of April 2017 without any explanation. That by the end of December 2018 the Grievant unpaid salary arrears totaled to Kshs 775,000/= and as such he had to formally write to the Respondent to request for the payment. That the Respondent did not bother to pay as requested or make a reply and the Grievant referred the matter to the Claimant.
 - d. The Claimant averred that it wrote to the Respondent on 24th January 2018 and forwarded the Grievant claims for payment as required by law. That the Respondent further ignored



the Claimant letter and failed to make any response to date. That the Claimant reported a formal dispute to the Ministry of Labour and a conciliator was appointed. That the Conciliator arranged for three conciliation meetings on 09/03/2018, 23/04/2018 and 08/06/2018 which the Respondent declined to attend. That the conciliator then issued a certificate of unresolved dispute to refer the dispute to this court.

2. The Claimant in the upshot prayed for the following against the Respondent;
 - a. That, the Hon. Court Awards and Orders the Respondent to pay the Grievant -Mr. Nalwa his employment/severance benefits as hereunder: -
 - i. Pay in lieu of notice-one Month Salary---Kshs 120,000.00
 - ii. Unpaid/withheld monthly salary(s) – April, 2017 to Dweceember,2017 Kshs 775,000.00
 - iii. 15 days wages for January,2018-Kshs 60,000.00
 - iv. 2 years pending annual leave days@21 days per year-42 days wages x Kshs 4,000/- per day = Kshs 168,000.00
 - v. 2 years severance pay @15 days for each complete year of service-30 days wages-Kshs 120,000.00
 - vi. 6 months' salary compensation for unfair redundancy @Kshs 120,000 pm = Kshs 720,000.00
 - vii. Issuance of certificate of service as per section 51 of the Labour Relations Act-2007.Total Claim =Kshs 1,963,000.00
3. The Respondent despite being served did not enter appearance or file defence hence the matter therefore proceeded as undefended cause and further oral hearing was dispensed with and the matter would be determined based on documents filed.

Determination

4. The court has reviewed and considered the pleadings by the Claimant and I have has come up with two main issues;Aa. aa.
 - a. Whether the Claimant was unfairly terminated
 - b. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant was unfairly terminated

5. The Claimant averred that the grievant was unfairly terminated on account of unfair redundancy when the Prime Star Service One was taken over by another dealer. The court notes that in cases of redundancy, section 40 of the Employment Act has to be followed. It may be true that the Respondent might have had financial difficulties hence failed to pay the grievant his salary arrears however due process ought to have been followed. The Court is therefore of the view that the redundancy was unfair besides the Respondent did not participate in the proceedings to dispute the grievant's allegations.WhethrWWhwr



Whether the Claimant is entitled to reliefs sought.

6. The court having found that the grievant was unfairly terminated compensation follows as a matter of course. The grievant had worked for the respondent for approximately two years hence an award of three months' salary would be reasonable compensation in the circumstances.
7. Severance pay will also be pegged on the two years served and assessed at the rate of 15 days' pay for each complete year of service. The claimant's pleaded salary was Kshs. 120,000/- per month hence the severance pay for the period will be Kshs. 60,000/- . The claimant is further entitled to one month's pay in lieu of notice.
8. The prayer for unpaid salary of Kshs 775,000/= as well as 15 days Salary for January 2018 also succeeds.
9. On the prayer for leave days since the Respondent who has the burden to proof that the grievant did take his leave never participated in the proceedings herein the same is granted as prayed at Kshs 168,000/=
10. The Grievant is entitled to certificate of service under section 51 of the Employment Act and the same should be issued in 30 days after delivery of this judgment.
11. In conclusion the Claimant's claim is hereby allowed with costs as follows:
 - a. Notice Pay.....Kshs 120,000/=
 - b. Unpaid/withheld monthly salary(s) -April 2017 to December 2017Kshs 775,000/=
 - c. 15 days wages for January 2018Kshs 60,000/=
 - d. Unpaid Leave.....Kshs 168,000/=
 - e. Severance pay.....Kshs 60,000/=
 - f. Three months compensation for unfair termination.....Kshs 360,000/=
 - Total..... KSHS 1,543,000/=
 - g. Certificate of service

DATED AT NAIROBI THIS 6TH DAY OF SEPTEMBER, 2024

DELIVERED VIRTUALLY THIS 6TH DAY OF SEPTEMBER, 2024

Abuodha Nelson Jorum

Judge

