

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
ELRC CAUSE NO. E1528 OF 2016

RASHID BUNYULI.....CLAIMANT

VERSUS

AYANY PRIMARY SCHOOL.....RESPONDENT

JUDGMENT

The Claimant filed suit on 4/8/2016. The Claimant testified under oath and stated that he was employed by the Respondent as a cook on or about April 2010 at a monthly salary of Kshs. 8,000.00 The Claimant was not given a letter of appointment.

The Claimant worked diligently until 6th February 2016 when he was called to take an interview for the same position he held and was told he had not qualified for the position and his employment was terminated without notice, notice to show cause or valid reasons. The Claimant testified that the termination was unlawful and unfair and sought the following reliefs:-

- (i) One month salary in lieu of notice Kshs. 8,000.00
- (ii) Untaken annual leave for six (6) years of employment Kshs. 33,600.00
- (iii) Unpaid house allowance at 15% of his monthly salary for six (6) years Kshs. 7,200.00.
- (iv) Under payment for period 2011 to 2015 in terms of the general wage order in the sum of Kshs. 223,457.60.

Kituo cha Sheria calculated the underpayments and sent a demand letter to the Respondent who did not respond to the same. The calculation was produced before court as an exhibit.

The Respondent filed a statement of response but did not adduce any evidence to rebut the testimony by the Claimant.

The letter attached to the statement of response by the Respondent dated 15th January 2016, which was an application letter by the Claimant the response to an advert for the position of cook expressly confirms that the Claimant had by that time worked for the Respondent for over five (5) years.

This corroborates the testimony by the Claimant as to the period of service he had served the Respondent although he had no letter of appointment.

The court finds that the Claimant's employment was terminated without notice, notice to show cause or any reason given. The termination violated section 36, 41, 43 and 45 of the Employment Act, 2007 and was unlawful and unfair and the court finds accordingly.

The Claimant is entitled to compensation in terms of section 49(1)(c) and (4) of the Employment Act, 2007. In this respect the Claimant had worked for about six (6) years. The Claimant was underpaid throughout the period. The Claimant did not contribute to the termination. The Claimant was not paid any terminal benefits upon termination. The Claimant was not

compensated for the unlawful termination. The Claimant suffered loss and damage.

The court has considered the Court of Appeal decision in ***Cooperative Bank of Kenya Ltd versus Yator (Civil Appeal 87 of 2018) (2021) KECA 95 (KLR)*** where the court held

“That notwithstanding, even where an employee has committed gross acts of misconduct, which acts warrant summary dismissal, the law requires that before such sanction is undertaken, an employer must ensure procedural fairness to the employee by allowing the employee to give his defence. Where the employer is unable to hear the employee in defence, such must only be in exceptional circumstances which the employer must demonstrate. We have laboured through the Appellant’s disciplinary policy and procedure manual to find out the disciplinary procedure adopted in the case of the Respondent and have not been able to find any, considering that the earlier complaint had been dealt with exhaustively. If another complaint arose after the earlier one, then the Appellant was obligated to commence the termination procedure in accordance with its manual. That this did not happen and the summary dismissal of the Respondent was unfair, unprocedural and illegal. We therefore find no basis for interfering with the Judge’s finding to that effect. It follows that the act of summarily dismissing the Respondent without giving him an opportunity to be heard and was the cause with the first complaint amounted to unfair termination. The burden was on the Appellant to prove that the

employment was terminated in accordance with fair procedure. The Appellant did not discharge this burden at all.”

The court also has relied on the case of ***Richard Abiero versus Nyali Unit and County Club Limited [2025] KEELRC 522 (KLR)*** on the matter of non payment of annual leave and house allowance which cannot be forfeited because they both are statutory rights of the Claimant.

The court relies on the Supreme Court decision **Kenfreight (E.A) Limited v Benson K. Nguti [2019] eKLR** where the Supreme Court stated that;

‘On an award on damages, the Act limits the award a court of law can make to a maximum of 12 months’ salary. In as much as the trial Court therefore does have a discretion in the quantum of damages to award for unfair or wrongful termination of employment, it must be guided by the principles and parameters set under sub-Section 4 of Section 49 of the Employment Act’.

The factors under section 49(4) includes the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and the employee’s length of service with the employer; any conduct of the employee which to any extent caused or contributed to the termination and the opportunities available to the employee for securing comparable or suitable employment with another employer.

The Court considering the fact that the claimant did not in any way contribute to the termination, the absence of evidence of improper conduct

on his part and the opportunities available for securing comparable or suitable employment awards six (6) months' salary in compensation.

Accordingly, the court awards the equivalent of six (6) months' salary in compensation. The monthly salary applicable at the time of termination is Kshs. 11,831.20 which the court uses as the multiple.

In the final analysis judgment is entered in favour of the Claimant against the Respondent as follows:

- (a) Kshs. 8,000.00 in lieu of one-month notice.
- (b) Kshs. 33,600.00 in lieu of untaken leave.
- (c) Kshs. 7,200.00 for unpaid house allowance.
- (d) Kshs. $(2193 \times 24) + (4,563 \times 24) + (3831.20 \times 16) = 223,457.60$ being underpayments from the period 2011 to 2015
- (e) Compensation in the sum of **Kshs. $(11,821.20 \times 6) = \text{Kshs. } 70,927.20$**
- Total amount Kshs. 343,184.80**
- (f) Interest at court rates from date of judgment till payment in full.
- (g) Costs of the suit

Dated at Nairobi this **2nd Day of October 2025.**

Mathews Nduma
JUDGE

Appearance:

Ms. Atsieno for Claimant

Mr. Ochieng for Respondent
Mr. Kemboi – Court Assistant

ORIGINAL