



Nyaboga v Central Electricals Company Limited & another (Cause 581 of 2017) [2025] KEELRC 160 (KLR) (31 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 160 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 581 OF 2017
J RIKA, J
JANUARY 31, 2025**

BETWEEN

WALLACE MORURI NYABOGA CLAIMANT

AND

CENTRAL ELECTRICALS COMPANY LIMITED 1ST RESPONDENT

KARIM MEGHJI 2ND RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 27th March 2017.
2. He states that he was employed by the Respondent as an Electrical Engineer, sometime in the year 2015.
3. He was placed on 3 months' probation which he completed successfully. He was employed through an oral agreement by the 2nd Respondent, a Director of the 1st Respondent.
4. He was paid a net monthly salary of Kshs. 90,000. He was required to use his own vehicle for transportation of the Respondents' construction material.
5. He fell ill, and needed immediate surgery. This was done at Nairobi West Hospital. The Claimant sought to utilize his N.H.I.F card to offset part of his medical bills. Unfortunately, he could not use his card, because the Respondents had not remitted his monthly contributions.
6. The 2nd Respondent terminated his contract, by word of mouth, and without any notice.
7. He prays for Judgment against the Respondents for: -
 - a. Compensation for unfair termination at Kshs. 1,080,000.
 - b. Notice of 3 months at Kshs. 270,000.
 - c. Severance pay at Kshs. 45,000.



- d. Medical expenses at Kshs. 150,000.
 - e. Vehicle overhaul at Kshs. 250,000.
 - f. Disturbances at Kshs. 1,080,000.
Total... Kshs. 2,875,000.
 - g. General damages for pain, suffering and loss of amenities.
 - h. Costs and interest.
8. The Respondents filed their Statement of Response, dated 3rd June 2022. They admit that the Claimant was their Employee as pleaded in his Statement of Claim.
 9. He was initially engaged for a probationary period of 3 months. Thereafter, he was engaged on monthly basis, to provide services to the Respondents' clients, as and when needed. His last contract ended in February 2016 and was not renewed.
 10. The Respondents acted in accordance with the *Employment Act*. They deny liability for any general or special damages claimed. The Statement of Claim does not disclose any reasonable cause of action. The Respondents urge the Court to dismiss the Claim with costs.
 11. The Claimant, and the Respondents' Human Resource Manager Scaver Mwakilomba, gave evidence for the respective Parties, closing the hearing, on 28th June 2024. The Claim was last mentioned on 4th November 2024, in the absence of the Parties, when the file was transmitted to the Trial Judge, for preparation of the Judgment.
 12. The Claimant identified himself as an Electrical Engineer, adopting his witness statement and documents [1-6], in his evidence-in-chief. He restated his employment history, and his terms and conditions of service. He fell ill, was treated, but could not use his N.H.I.F card, because his account was not up to date.
 13. Cross-examined, he told the Court that he did not have copies of his contract. He was employed in May 2015. He wrote an e-mail to the 2nd Respondent about resolution of issues, surrounding his terms of service, on 11th March 2015, pre-dating May 2015.
 14. He suffered acute appendicitis. He did not have evidence to show it was work-related. He was not able to use his N.H.I.F card, because the Respondents did not remit deducted contributions. He was compelled to pay the medical bill from his own pocket. There was no agreement, that the Respondent would meet his medical bills. He worked for 8 months. Termination was not on account of redundancy. He left in March 2016, after he underwent surgery. He was forced to sign the letter discharging the Respondents, on payment of final dues. He was paid Kshs. 98,000. He needed the money, to clear his hospital bill.
 15. Redirected, the Claimant told the Court that he was a site manager, at Two Rivers substation. He would transport building materials using his own vehicle. He seeks medical expenses because the Respondent deducted contributions from his salary, but failed to remit to the N.H.I.F.
 16. Scaver Mwakulomba, adopted his witness statement and documents on record, in his evidence-in-chief. He confirmed that the Claimant is an Electrical Engineer. He was engaged to work in a project the Respondents were involved in, at Two Rivers substation. The Respondents had been contracted to construct a power substation. There was no other work, carried out by the Respondents.



17. The Claimant continued to work after his probation ended, because the project was not complete. It was completed in February 2016. He was informed by the Respondents, that the project was over. He was paid all his dues in March 2016. He accepted payment and discharged the Respondents. He did not indicate that acceptance was involuntary. There was no redundancy declared by the Respondents. The Respondents never agreed to service his vehicle. The Respondents have their own vehicles, which were in use, and never instructed the Claimant to use his own. He did not exhibit an agreement, concerning use of his personal car. His car is a saloon car, and the substation work involved movement of heavy machinery. The Respondents used their Truck and Canter. He never availed to the Respondents medical records. The Respondents did not agree to cater for his medical expenses. He is not owed any money by the Respondents.
18. Cross-examined, Scaver told the Court that he did not have documents, to show when the project ended. The Respondents expected to complete the project, within 3 months of the Claimant's probation. They did not issue him a written contract. The Respondent paid the Claimant net terminal dues. All site material, was heavy. There was no document to show that the Claimant's car was a saloon. He wrote, asking the Respondents to service his car. The Respondents did not respond.
19. Redirected, Scaver told the Court that the Claimant did not plead, that he used his car, to ferry the Respondents' construction materials.
20. The issues are whether, the Claimant was a regular Employee of the Respondents; whether the Respondents terminated his contract fairly, lawfully or at all; whether he executed a valid discharge; and whether he merits the prayers sought.

The Court Finds: -

21. Regular Employee? There was no written contract availed to the Claimant by the Respondents. It is not disputed however, that the Respondents, through the 2nd Respondent Director, employed the Claimant by word of mouth, as an Electrical Engineer, sometime in the year 2015.
22. It is also common ground, that the Claimant served the first 3 months on probation.
23. He did so successfully, and the Respondents retained him for another 5 months. In total, he worked for 8 months.
24. He was confirmed as a regular Employee of the Respondents, at the end of the probationary period.
25. It is not correct as submitted by the Respondent, that he was merely engaged on monthly periodic contracts, after probation, according to the requirements of the Respondent's business.
26. Once probation was over, the Claimant became a regular Employee of the Respondents, entitled to the full guarantees and protections, under the Employment Act 2007.
27. Termination. Evidence on record is that the Claimant last worked for the Respondents, on 7th March 2016. According to him termination was at the instance of the Respondents, and was not preceded by notice, or lawful cause.
28. According to the Respondents, the project they were working on at Two Rivers, Nairobi, was completed in February 2016. They called the Claimant, informed him that the project had completed, and paid him his terminal dues.
29. The evidence by both sides, on termination, is fundamentally in agreement. Termination was at the instigation of the Respondents, and was not through notice.



30. There was no satisfactory evidence from the Respondents, that the project over which they engaged the Claimant, had come to completion.
31. The procedure adopted by the Respondents, in terminating the Claimant's contract was not in conformity with the minimum standards of fairness contemplated by Sections 41 and 45 of the Employment Act. The reason stated as justification- completion of the Two Rivers project- was not established, in accordance with Sections 43 and 45 of the Employment Act.
32. Termination would therefore be deemed unfair and unlawful under the above provisions of the law.
33. Discharge and remedies. On 7th March 2016, the Claimant was paid by the Respondents, Kshs. 98,680, expressed to be full and final settlement.
34. He discharged the Respondents, affirming that he had no further claims.
35. That would include his claim for compensation for unfair termination, pleaded at Kshs. 1,080,000.
36. It would include the claim for notice, pleaded at 3-months' salary at Kshs. 270,000. He did not inform the Court, which contract extended the notice period to 3 months.
37. Discharge would include the claim for severance pay, at Kshs. 45,000. He in any event, never pleaded redundancy, and the claim for severance pay has no foundation.
38. It would include the claim for medical expenses. Even without the discharge, there was absolutely no liability shown by the Claimant, imposed on the Respondents to pay the Claimant's medical expenses. The N.H.I.F Act, does not impose any liability on non-compliant Employers, to meet the medical expenses of their Employees. Neither was there such an obligation, imposed by the Employment Act, nor the Claimant's contract.
39. The discharge would include liability for servicing the Claimant's vehicle. He did not establish that the Respondents required him to use his own tools of trade, to advance the Respondents' business. A worker who uses his own car, to execute his role, would appear to be an independent contractor. If the Claimant was an Employee as concluded by the Court, there is no evidence that he used his own car to ferry his Employer's material or machinery, and that he was promised that the Respondents would service his vehicle.
40. Lastly, the discharge would include liability for the unconventional claim of 'disturbances,' pleaded at another equivalent of 12 months' salary, at Kshs. 1,080,000. There is no provision for 'disturbances' in the Employment Act, or in the Claimant's contract.
41. The discharge was executed voluntarily and constitutes a valid agreement, in accordance with the principles laid down by the Court of Appeal, in Coastal Bottlers v. Kimathi Mithika [2018] e-KLR. The Claimant is an Engineer, a man of letters and without doubt world-wise. He was a white collar Employee, who understood the effect of the discharge he chose to execute, on receiving Kshs. 98,680 from the Respondents. There is not the slightest evidence, that he accepted payment, because he needed the money for his medical bills. He did not express any compulsion by the Respondents to execute discharge, in his pleadings or witness statement. Discharge was voluntary and binding.

It is ordered: -

- a. The Claim is declined.
- b. 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 31ST DAY JANUARY OF 2025.

JAMES RIKA

JUDGE

