



Kenya Union of Commercial Food and Allied Workers v Rene Superclean Services Ltd; Mulogoli (Grievant) (Cause E030 of 2024) [2025] KEELRC 86 (KLR) (22 January 2025) (Judgment)

Neutral citation: [2025] KEELRC 86 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E030 OF 2024
NZIOKI WA MAKAU, J
JANUARY 22, 2025**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

RENE SUPERCLEAN SERVICES LTD RESPONDENT

AND

SUSAN MULOGLI GRIEVANT

JUDGMENT

1. The Claimant filed this claim on behalf of the Grievant, Susan Mulogoli, alleging unfair termination. The Claimant seeks either reinstatement or, alternatively, Kshs. 537,712.88/- in unpaid dues and damages as well as costs of the suit.
2. In its response, dated 17th May 2024, the Respondent denied employing the Grievant and challenged the Claimant to provide strict proof of their allegations.
3. The hearing proceeded on 12th November 2024, with the Grievant testifying. However, the Respondent did not present any witnesses. She stated that she worked as a cleaner for the Respondent and was suddenly dismissed when she had gone for treatment having been admitted to hospital for 5 days. She said that she went to work with the documents from hospital and she was told to continue with treatment then resume. After the treatment she tried to resume work but was given a suspension letter on return 4 days later. She was notified that her position had been taken by someone else since they could not wait.
4. In cross-examination she testified that she did not obtain sick leave and there was no documentation for the leave taken. She said she was given oral permission. She testified she gave the hospital



discharge summary and related documents to the Respondent upon return. She said there was no acknowledgment given to her. She said that she was just given a show cause and the Respondent did not respond to communication from the Labour Office. She stated she was underpaid from 2016.

5. Following the hearing, both parties closed their cases, and the court directed them to file and serve written submissions.

Claimant's Submissions

6. The Claimant submits that, in the absence of witness statements and testimony from the Respondent, the Memorandum of Response lacks merit. In support, the Claimant cites the case of *Kabucho v Kamuthi Housing Co-operative Society Ltd* [2024] KEELRC 536 (KLR), where the court ruled that a Statement of Defence is ineffective without supporting testimony.
7. The Claimant further asserts that the allegations leading to the Grievant's suspension from duty were fabricated. First, regarding the Grievant's failure to report to the Human Resources office as requested, the Claimant argues that no evidence was presented to show she refused to obey instructions. Second, concerning the Grievant's alleged use of company resources for personal gain at Tiengre, the Claimant highlights the lack of evidence to support this claim. Third, regarding the accusations of performing external duties during working hours, the Claimant submits that no evidence was provided, nor was the issue raised during the Grievant's cross-examination, which would have allowed her the opportunity to clarify the matter.
8. Instead of inventing reasons for the suspension, the Claimant asserts that the Respondent should have acknowledged the Grievant's illness, which was the true cause of her absence, and of which the Respondent was fully aware. The Claimant further submits that the Respondent's decision to suspend the Grievant, despite knowing of her illness, violated the proper procedures for handling sick leave as outlined in section 30(1) of the *Employment Act*. Additionally, the Claimant argues that the Respondent failed to fulfill its obligations under sections 34(1) & (2) of the *Employment Act*, including providing medical care and ensuring timely notification of the Grievant's illness. Consequently, the Claimant submits that the suspension letter, issued despite the Respondent's knowledge of the Grievant's illness and without allowing her the opportunity to explain, was both inhumane and unjust. It is thus urged that the claim be allowed as prayed.

Disposition and determination

9. The Grievant was an employee of the Respondent. She would not have received the suspension from duty if she was not an employee. She would also not be required to report to the human resources of the Respondent if she was not their employee. The denials of employment are therefore found to have no merit and were a feeble attempt to deny the claim. The Claimant asserts the Grievant was not given any opportunity to explain her absence from work which was as a result of illness. There is evidence to the effect the Grievant was unwell. Granted the Respondent seems to lack a policy on absence on account of illness, the determination by the Respondent that the Grievant was absent without cause was both inhumane and unjust. The Claimant is correct in its surmise that the termination of the Grievant's employ was unfair and unlawful. The Claimant however falls into error in the computations of the sums due. It is inconceivable the Grievant is entitled to the sum of Kshs. 537,712.88 as unpaid dues and damages.
10. The Grievant was earning Kshs. 14,025.40 a month and therefore was entitled to one month's notice, 19 days worked in June 2023, leave dues (only one year is claimable on account of limitation of continuing harm under section 90 of the *Employment Act*). She is also entitled to 10 months compensation in terms of section 49 of the *Employment Act*. She did not prove underpayment from



2016. One wonders why an employee would wait for so long to seek relief for underpayment. This head of claim is disallowed. In the final analysis I enter judgment for the Grievant as follows:-

- a. Kshs. 14,025.40 as notice
- b. Kshs. 10,249.33 for the days worked in June 2023
- c. Leave dues – Kshs. 14,025.40
- d. Compensation for wrongful termination – equivalent to 10 months salary – Kshs. 140,254/-
- e. Costs of the suit.
- f. Interest at court rates on the sums in a), b), and c) above from date of filing suit till payment in full.
- g. Interest at court rates on the sum in d) above from date of judgment till payment in full.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 22ND DAY OF JANUARY 2025.

NZIOKI WA MAKAU, MCIArb.

JUDGE

