



REPUBLIC OF KENYA



KENYA LAW
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**Nzowa v Dunhill Consulting Limited (Cause 546 of 2018)
[2025] KEELRC 467 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 467 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 546 OF 2018
B ONGAYA, J
FEBRUARY 21, 2025**

BETWEEN

JUMA NDEGWA NZOWA CLAIMANT

AND

DUNHILL CONSULTING LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the memorandum of claim dated 29.03.2018 through Ali & Company Advocates. He prayed for judgment against the respondent for:
 - i. Salary for the month of July in the sum of Kshs. 30,000/-.
 - ii. General damages for unlawful and unfair termination of employment equivalent to 12 months' salary.
 - iii. Full benefits, pro rata leave and compensation for wrongful termination and/or dismissal for this claim.
 - iv. Any other relief the Court deems fit to grant.
2. The claimant's case was that the respondent engaged his services as a Site Reliever by a written contract of employment dated 26.09.2016 effective from 02.10.2016. The terms of employment included: permanent employment; probation period for the first three months that could be extended at the employer's discretion, and either party may terminate the contract by providing one week's notice in writing during probation; monthly gross salary of Kshs. 30,000/- plus medical insurance cover as per the company scheme; employer may terminate the services by giving one month's notice or paying one month's salary in lieu of notice. The claimant dutifully completed the probation period without any extension of the period. However, he received communication through a letter dated 28.06.2017 terminating his employment with the respondent.



3. It was the claimant's averment that in essence, the respondent had terminated his contract a week earlier on 19.06.2017 without the requisite one month notice by the date of the termination letter of 28.06.2016. That the said termination letter neither discloses any reason why the respondent terminated his contract of employment nor was he given a hearing before his services were terminated. Consequently, the respondent's actions emanating from the said letter amount to unlawful, unfair and illegal termination of his employment contract. He thus claims payment for all outstanding remuneration based on a permanent employment terms as provided for in the contract of employment, and an order for compensation for unlawful, unfair and illegal termination of employment contract. He further seeks one month pay in lieu of notice and compensation for annual leave not granted for the year 2017.
4. The respondent's memorandum of response dated 22.06.2018 was filed through Musa Juma & Company Advocates. Its case was as hereunder:
 - i. Contrary to assertion, the claimant was permanently employed as a Site Reliever on 03.01.2017 after serving requisite probation, vide a letter of appointment dated 08.09.2016 and at a gross salary of Kshs. 30,000/=. Upon employment, the claimant underwent induction on how to diligently perform his duties. He regularly went on leave during his service at the respondent company, including annual leave as per his employment contract. The respondent also fully remitted to NSSF contributions during the claimant's employment.
 - ii. The claimant had worked for the respondent as a permanent employee for a period of only six (6) months.
 - iii. The claimant had been a habitual offender as he failed to follow instructions on several occasions and neglected his contractual obligations. He delayed obtaining documents from the various government institutions he was obligated to thus causing major inconveniences and smooth running of the respondent's daily activities. His actions were found to constitute gross misconduct and insubordination and he was issued with several verbal warnings.
 - iv. Other particulars of gross misconduct or breach of employment contract included failing to ensure that the respondent's sites are in good condition, and failing to inform the property coordinator of incidences like trespassing and blown out KPLC meters at the client's site.
 - v. The claimant's gross indiscipline and lack of commitment towards the company's goals warranted termination of his contract, which termination was done in accordance with the law and his contract of employment.
 - vi. Following termination of his services, the claimant was taken through administrative clearance and paid his final dues.
5. The respondent prayed that the claim be dismissed with costs.
6. The claimant testified to support his case and the respondent's witness (RW) was Jenard Mwaniki Nyaga, the Group Human Resource Consultant. Final submissions were filed for parties. The Court has considered the material on record and returns as follows:
 - a. The parties were in a contract of service. The respondent employed the claimant by the letter of the contract of employment dated 26.09.2016 to the position of Site Reliever. It was effective 03.10.2016 with first three months of probationary service to be extended or reduced at respondent's discretion. The agreed monthly gross salary was Kshs.30,000.00. Airtime allowance was Kshs.500.00. Thereafter the employment would be permanent.



- b. The employment was terminated by the letter dated 28.06.2017, as per the letter, following a verbal discussion. The letter stated the termination was effective 19.06.2017 but the claimant would remain in office until 28.06.2017 for purposes of handing over. He would thereafter go on annual leave until 19.07.2017. he would be paid salary for June Kshs. 30,000.00 plus pay up to 19.07.2017 Kshs. 21,250.00 making Kshs.51, 250.00 less loan and statutory deductions making a net of Kshs.31,144.00.
- c. The claimant confirmed that while in respondent's service he received warnings that he did not perform diligently. He further testified that while he was not given exact reason for termination, he did not reject the termination. Further, he did not appeal or protest and he signed termination letter and acknowledged acceptance of final dues with no further claims. In re-examination, the claimant testified that he had no issue with the respondent.
- d. RW testified that the claimant was severally verbally warned by his immediate supervisor and the claimant was subsequently terminated per the termination letter.
- e. The Court finds that the evidence is that claimant has admitted there were performance issues during his service and there is no reason to doubt RW's testimony that the claimant was warned severally by his supervisor. The claimant has confirmed that he was not given any specific reason for termination but that he did not reject the termination (meaning he agreed to the termination) and subsequently accepted the final dues with no further claims. By that claimant's testimony the Court finds that the termination was by mutual consent and agreement of the parties. The respondent honoured the terms of the separation agreement and which the claimant does not suggest he ever protested against but confirms he accepted and acknowledged the ensuing payment. The Court finds that the alleged unfair termination was a mere afterthought. The claim will fail. The reliefs prayed for will all collapse because the parties complied with the terms of the separation agreement. The salary for June 2017 and the leave claimed were all paid per the terms of the separation agreement per termination letter. The Court has considered the respondent's submissions and finds that while the poor performance was established, it was a misdirection to be submitted that it was a case of separation upon poor performance. It was that consequential to the warnings about poor performance, parties discussed and mutually agreed to separate per the terms in the termination letter and which both parties fully performed and perfected the separation.
- f. The Court has considered all circumstances of the case. The suit is dismissed and each party to bear own costs of the suit.

Decree to issue accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 21ST FEBRUARY, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

