



REPUBLIC OF KENYA



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Muriungi v Nyaki Dairy Farmers Co-operative Society Ltd (Cause E012 of 2024) [2025] KEELRC 374 (KLR) (14 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 374 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E012 OF 2024
ON MAKAU, J
FEBRUARY 14, 2025

BETWEEN

JULIUS MURIUNGI CLAIMANT

AND

NYAKI DAIRY FARMERS CO-OPERATIVE SOCIETY LTD RESPONDENT

JUDGMENT

Introduction

1. The claimant filed a statement of claim dated 9th April 2024 seeking the following reliefs:
 - a. A declaration that the Respondents' letter dated 09.10.2023, terminating the claimant's employment, contravenes the claimant's rights and fundamental freedoms guaranteed under Articles 41(1) & (2) (a) and 47 (1) & (2) of *the Constitution* of Kenya and the statutory rights to fair labour practices secured under sections 43 and 45 of the *Employment Act*, Cap.226, Laws of Kenya and is therefore, unconstitutional, unlawful, contrary to the rules of natural justice, un-procedural, null and void ab initio and of no legal effect.
 - b. An order compelling the Respondents to pay the claimant all his unpaid salary of the month of September to November up to date totaling to Kshs.54,000/= in lieu of notice.
 - c. An order compelling the Respondents to pay the claimant of all the illegal deductions.
 - d. An order compelling the Respondents to forthwith issue the claimant with a certificate of good conduct.
 - e. An order compelling the Respondents to pay the claimant compensation amounting to Kshs.100,000/= as damages for unfair termination of his employment.
 - f. Costs of the claim and interest at court's rates



2. The Respondent was served with summons and pleadings but it never entered appearance.

Facts of the case

3. The claimant was employed by the respondent as a driver in March 2021 for a monthly salary of Kshs.18,000. His terms of service were permanent and pensionable. On 30th September 2023 at 5.30pm he suffered a self-inflicted cut on his left-hand finger that affected his work as a driver of a manual vehicle. The finger kept on bleeding if disturbed or subjected to work. He reported the accident to the secretary manager and requested for another driver to stand in for him until he got well.
4. On 11th October 2023, the claimant reported back only to be served with a letter dated 9th October 2023 informing him of a decision made by the Board on 3rd October to send him on unpaid leave effective from 1st October 2023. The letter cited the reason for the decision as;
 - a. Lack of respect by the claimant to the farmers and committee.
 - b. That the claimant was caught selling milk (reject) against the society rules.
 - c. Being rude to farmers.
 - d. Failure to follow the instructions from the committee and manager and more other issues.
5. The claimant denied the validity of the said reasons and described them as untrue and afterthought. He then accused the respondent of terminating his employment unfairly by failing to serve him with one month's notice before the termination. He was also not accorded any hearing and as such the termination was unfair contrary to section 41, 43, 45 and 47 of the *Employment Act*.
6. The suit proceeded by formal proof on 26th September 2024 when the claimant testified as CW1. He basically adopted his written statement dated 9th April 2024 and produced six documents as exhibits. The written statement repeated the facts in the statement of claim.

Submissions

7. The claimant submitted that the respondent did not enter appearance after service of summons and therefore the facts of the case were not challenged. Further, the respondent did not adduce any evidence to prove that it had a valid reason for dismissing him and also to show that fair procedure was followed. Therefore, he submitted that his unpaid leave for an indefinite period amounts to termination of his employment. Accordingly, he submitted that he is entitled to the reliefs sought including salary in lieu of notice, unpaid salary, compensation for unfair termination plus costs and interest at court rate.

Issues for Determination

8. Having considered the evidence and submissions, the issues for determination are: -
 - a. Whether the claimant's employment was terminated by the respondent.
 - b. If so, whether the termination was unfair.
 - c. Whether the reliefs sought are merited.



Termination

9. The claimant produced a letter dated 9th October 2023 sending him on unpaid leave from 1st October 2023 until his issue was discussed by the Board then he be recalled. The letter stated: -

“RE: Unpaid Leave

Hope this will find you well. We are good too here at work.

I write to let you know that there a joint committee meeting held on 3/10/2023 at our headquarter. During the meeting different matters were raised concerning your conduct which include: -

1. Lack of respect to the farmers and committee.
2. Caught selling milk (reject) against the society rules.
3. Being rude to farmers.
4. Failure to follow the instructions from the committee and manager and more other issues.

Having found all the above from farmers, the committee agreed to send you for unpaid leave starting from date 1/10/2023 until they discuss your issue and you will be called.

Thank you.

Yours faithfully

Board Of Management ”

10. In response, the claimant instructed Mmboos Mutunga & Co.Advocates who served a demand letter to the respondent alleging that his employment had been condemned unheard through the letter dated 9th October 2023. The counsel then, demanded for salary for September to November, remittance of all legal deductions, certificate of good conduct and compensation for unfair termination.
11. The respondent never responded to the demand letter but instead summoned the claimant to a meeting on 28th November 2023 vide a handwritten letter dated 27th November 2023. It seems that a meeting took place going by a letter by the claimant’s counsel on record dated 5th February 2024 which stated as follows: -

“The Chairman

Nyaki Dairy Farmers Society Ltd

O Box 1060-60200

MERU

Dear Sir/Madam

RE: Subject: Unlawful Termination

Our Client: Julius Muriungi

We refer to the letter dated 2nd November, 2023 from M/S MUTUMA & CO. ADVOCATES and subsequent meeting with our client where you agreed to pay his outstanding dues.



Take Notice That: we now give you (7) calendar days to pay up or else face legal actions without further reference and at your peril as to costs therefrom.

Treat this as our firm and final notice.

Yours faithfully,

For: Mbaabu M'noti &co. Advocates ”

12. The claimant has not told the court what transpired at the said meeting. He has also not produced any letter from the respondent terminating his employment. The particulars of the outstanding dues mentioned in the letter dated 5th February 2024 were not stated and the claimant has not pleaded the same in his claim.
13. In view of the foregoing gaps in the claimant's evidence, I find that he has failed to prove on a balance of probability that his employment was terminated by the respondent. It follows that the alleged unfair termination by the respondent has also not been substantiated.

Reliefs sought

14. The claimant prayed a declaration that the letter dated 9th October 2023, which allegedly terminated his employment, contravened his rights and freedoms guaranteed under section 41 (1) & (2) (a) and 47(1) & (2) of *the Constitution*, and his statutory rights under section 43 and 45 of the *Employment Act*, and it was therefore a nullity. The alleged violation does not meet the threshold for a constitutional pleading as enunciated in *Anarita Karimi Njeru v Republic (1979) eKLR* where the court held: -

“...if a person is seeking redress from the High court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.”
15. As a consequence of the gaps in the pleadings, the claim founded on violation of *the constitution* is rejected and the declaratory order sought is declined.
16. The claimant was sent on unpaid leave from 1st October 2023. He was still in employment as at 28th November when he was summoned to a meeting with the Board. He claimed for salary for September to November 2023 equaling to Kshs.54,000. There is no evidence that he was paid the same. Consequently, I award the claimant the unpaid salary for September to November 2023 at the rate of Kshs.18,000 equaling to Kshs.54,000.
17. The prayer for payment of illegal deductions lacks particulars and supporting evidence and as such it is declined. Likewise, the prayer for a certificate of good conduct is rejected for being alien to our laws and not having been anchored on the contract of service.
18. The claimant also prayed for Kshs.100,000 being damages for unfair termination but it is declined since the claimant has not proved that his employment was unfairly terminated by the respondent.

Conclusion

19. The claimant has only proved the claim of unpaid salary for September to November 2023 at the rate of Kshs.18,000 per month. Consequently, I enter judgment for him in the sum of Kshs.54,000. The award is subject to statutory deductions but in addition to costs at lower court scale plus interest at court rates from the date of filing the suit.



DATED, SIGNED AND DELIVERED AT NYERI THIS 14TH DAY OF FEBRUARY, 2025.

ONESMUS N MAKAU

JUDGE

ORDER

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N MAKAU

JUDGE

