



REPUBLIC OF KENYA



KENYA LAW
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**Daudi v Orion Hauliers Limited (Cause 579 of 2018)
[2025] KEELRC 309 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 309 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 579 OF 2018
MN NDUMA, J
FEBRUARY 6, 2025**

BETWEEN

JOSPHAT KYALO DAUDI CLAIMANT

AND

ORION HAULIERS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed suit on 20/4/2018 against the respondent seeking compensation for unlawful and unfair termination of employment and terminal benefits set out in the memorandum of claim including:-
 - i. One month salary in lieu of notice Kshs. 12,000.00
 - ii. Unpaid house allowance for January 2009 to December 2011 @ 15% of the salary in the sum of Kshs. 169,200.00.
 - iii. Service pay for each completed year of service (7 years) in the sum of Kshs. 40,645.00
 - iv. General damages for discrimination
 - v. Interest and costs.
2. CW1 testified that he was employed by the Respondent in the year 2009 as a turn boy at a monthly salary of Kshs. 12,000.00. That he worked well until 31st December 2016 when his employment was unlawfully and unfairly terminated without notice or hearing. The Claimant stated that he was not given a letter of dismissal and therefore no reasons for the decision.
3. The Claimant said he was just informed orally by a director that he had been sacked. The Claimant denied that he used to come to work drunk. Under cross-examination by Advocate Katile for Respondent, the Claimant said that his Advocate wrote a demand letter to the Respondent seeking the



reliefs set out in the suit including grant of certificate of service. The Claimant sought unpaid house allowance for the seven years of service and service pay for that period. In addition, Claimant sought notice pay and compensation for the unlawful and unfair termination of employment. The Claimant produced the letter of demand dated 12/4/2017 and adopted a witness statement dated 18/4/2018. The Claimant prays to be awarded accordingly.

4. RW1 Amit Shah adopted a witness statement dated 29/7/2019 as his evidence in chief. RW1 admitted that the Claimant was employed by the Respondent in November 2009 as a turn boy at a monthly salary of Kshs. 12,000.00 RW1 said the salary was inclusive of house allowance.
5. That the Claimant became a habitual offender by neglecting his contractual obligations and used to come to work while intoxicated. That the Claimant absented himself from work severally. That the Claimant was issued with several verbal warnings arising from the said infractions. That the Claimant would admit his mistakes, apologize and promised to change.
6. That on 22/12/2016, the Claimant was invited to a disciplinary hearing which he attended together with the Human Resource Manager. That the Claimant admitted that he had been negligent at work and was issued with a letter of termination which had reasons for the termination.
7. That the Respondent paid statutory dues for the Claimant including NSSF contributions without fail and so Claimant is not entitled to service gratuity. That the Claimant was paid all terminal dues upon termination including in lieu of notice and leave days not taken.
8. That the Claimant signed a final dues voucher confirming that he had received all his dues. That the Claimant never returned to collect his certificate of service. RW1 produced NSSF statement dated 2/8/2019 which shows full payment of NSSF dues for the period June 2009 to 2016 December. RW1 also produced a letter of termination of the employment of Claimant dated 23/12/2016 for gross negligence and being intoxicated at work. The letter does not have acknowledgement of receipt by the Claimant and does not refer to any disciplinary hearing attended by the Claimant or any notice to show cause issued to the Claimant.
9. RW1 produced a petty cash voucher for December 2014 which shows that the Claimant received Kshs. 25,000.00 but it is not indicated in respect of what the payment was done. However, RW1 also produced a statement titled "Full and final settlement" dated 23rd December 2016, which does not have any information of any amount paid to the Claimant. The statement only states that the Claimant has received his full and final settlement dues owed to him by the Respondent.
10. Under cross-examination by Advocate Okoth for the Claimant, RW1 stated that the Claimant had a written contract of employment but he did not have it before court. RW1 said that the Claimant was called to a meeting on a different day but not the day the Claimant came to work drunk. RW1 did not have minutes of the said meeting or a written notice to attend the meeting. RW1 said the Claimant was paid one month salary in lieu of notice Kshs. 12,000.00 and leave pay totaling Kshs. 25,000.00 in full and final settlement of his final dues. RW1 said the Claimant was invited to a disciplinary meeting verbally.
11. RW1 said Claimant was called when he was found intoxicated at work and then his employment was terminated. RW1 said other than coming to work drunk, the Claimant was a good employee. RW1 said the suit be dismissed with costs.

Determination

12. The court has considered the testimony by CW1 and RW1 together with the written submissions filed by both parties. The issues for determination are:



- a. Whether the termination of employment of the Claimant was for a valid reason following a fair procedure.
 - b. Whether the Claimant is entitled to the reliefs sought.
13. Section 43(1) and (2) read with section 47(5) obliges an employer to prove that it had a valid reason(s) to terminate the employment of an employee.
 14. Section 41 on the other hand obliges the employer to provide an employee with opportunity to be heard, accompanied by a colleague or a union official to explain why he/she should not be punished for misconduct notified to the employee in advance by way of a notice to show cause.
 15. In the present matter, the Respondent was unable to demonstrate that it notified the Claimant in writing of alleged misconduct and subsequently held a hearing in which the Claimant was given opportunity to answer the charges of misconduct levelled against him. RW1 had no minutes of any such meeting.
 16. RW1 only produced a letter of termination in which no reference of any charges notified to the Claimant on a disciplinary hearing held is made.
 17. The court finds that the Claimant has demonstrated as he is obliged to do under section 47(5) that the termination of his employment was for matters not notified to him in advance and no hearing was held to offer him opportunity to be heard and so the termination was wrongful.
 18. The Respondent was unable to justify the termination having failed to prove any valid reasons established after a notice was issued to the Claimant and a hearing held.
 19. Accordingly, the termination of the employment of the Claimant was for no valid reason and did not result from a fair procedure in violation of section 45(1) and (2) of the *Employment Act* of 2007.
 20. The Claimant is entitled to compensation in terms of section 49(1) (c) and (4) of the Act. In this respect the Claimant had served the Respondent for a period of 7 years. The Claimant lost means of support unlawfully and unfairly. The Claimant worked as a turn boy and in the words of RW1 was a good employee except for occasional coming to work drunk. The Claimant therefore contributed to his termination. The Claimant was paid only Kshs. 25,000.00 upon termination in respect of one month's salary in lieu of notice and for leave days not taken. The Claimant was not paid house allowance for the period of 7 years he worked. The Respondent did not produce any documents to rebut this claim. The Claimant was paid for NSSF and so was not entitled to payment of gratuity upon termination.
 21. The court has considered the case of Peter Kamau Mwara and another versus National Bank of Kenya [2020] eKLR in which the court awarded the Claimant compensation equivalent to 12 months salary in compensation in a case with similar circumstance.
 22. Upon considering all the factors above, the court awards the Claimant the equivalent of seven (7) months salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs. $(12,000 + 1,800 \times 7 \text{ years}) = \text{Kshs. } 85,800.00$.
 23. The court awards the Claimant house allowance for a maximum of 3 years since the rest of the claim is time barred in the sum of Kshs. $(1,800 \times 12 \times 3 \text{ years}) = \text{Kshs. } 64,000.00$.
 24. The claims for notice pay and service pay lack merit in view of the evidence by RW1 considered by the court and are dismissed.
 25. Accordingly, judgment is entered in favour of the Claimant against the Respondent as follows.



- a. Kshs. 85,800.00 for compensation
- b. Kshs. 64,000.00 house allowance
Total Kshs. 149,800.00
- c. Interest at court rates from date of judgment till payment in full.
- d. Costs of the suit.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2025.

MATHEWS NDUMA

JUDGE

Appearance:

Mr. Okoth for Claimant

Ms. Katile for Respondent

Mr. Kemboi – Court Assistant

