



Okode v Tejani (Cause 980 of 2018) [2025] KEELRC 280 (KLR) (6 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 280 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 980 OF 2018
CN BAARI, J
FEBRUARY 6, 2025

BETWEEN

NANCY KAVOGOYI OKODE CLAIMANT

AND

AMWERI KASSAM TEJANI RESPONDENT

JUDGMENT

1. In a Memorandum of Claim dated 12th June, 2018, the Claimant impleaded the Respondent seeking the following reliefs: -
 - a. One-month salary in lieu of notice
 - b. Underpaid wages
 - c. Severance pay
 - d. 12 months' salary compensation for unfair termination
 - e. Cost of the suit and interest.
2. In a Statement of Response dated 1st August, 2018, the Respondent refuted the allegations in the Memorandum of Claim and invited the Claimant to strict proof thereof.
3. The Claimant's case was heard on 15th December, 2023 where she testified, adopted her witness statement and produced the documents filed in support of her case. The Respondent's case was subsequently heard on 9th October, 2024, paving way to filing of submissions.
4. Both parties filed written submissions.



The Claimant's Case

5. The Claimant states that she worked for the Respondent for three years within Nairobi as a house help, performing various duties at a monthly gross salary of Kshs. 11,000/-.
6. It is her case that the Respondent terminated her services on 30th March, 2018 without reason or notice. She avers that she worked for the Respondent without any complaints for 3 years, and that she diligently executed her duties.
7. The Claimant states that the termination has caused her and her family psychological suffering. It is her case that she has implored on the Respondent to pay her final dues in vain, and now prays that this court assists her recover her benefits for services rendered to the Respondent.

The Respondent's Case

8. It is the Respondent's case that the Claimant was her employee and that what she earned was an amount agreed between her and the Respondent through mutual consent.
9. The Respondent avers that the Claimant voluntarily absconded duty from 29th March, 2018 to date, and that she had verbally indicated that she was no longer interested in working for the Respondent.
10. The Respondent states that if any payment is to be made, then it is the Claimant who should pay him for absconding duty without prior notice.
11. The Respondent finally states that the Claimant's claim is misconceived, frivolous and driven by a desire to unjustly enrich herself, and should be dismissed with costs.

The Claimant's Submissions

12. It is submitted for the Claimant that she was prematurely terminated by forcefully being denied access to her work place when she returned from her off-duty. It is submitted that the Respondent ought to have paid the Claimant her terminal dues and allowances entitled to her because she was prematurely terminated.
13. It is further submitted for the Claimant that she did confirm in her testimony that she was receiving Ksh.11000 /=per month as salary instead of the required amount of Kshs.14,865/= and is therefore entitled to the claim of salary underpayment.
14. It is her prayer that she be awarded the reliefs sought.

The Respondent's Submissions.

15. The Respondent on his part submits that he did not terminate the services of the Claimant as alleged. He submits further that the Claimant chose not to show up at work.
16. It is the Respondent's submission that upon being unable to reach the Claimant, he proceeded to report and to notify the County Labour Office. He submits that the Claimant has not provided any evidence to show that she was terminated.
17. He submits further that under Section 44(4) (a) of the *Employment Act* 2007, absconding duty by an employee constitutes gross misconduct and renders an employee liable for summary dismissal. He placed reliance in Richard Kiplimo Koech –Vs- Yuko Supermarket LTD [2015] eKLR to support this position.



18. The Respondent submits that as an employer, he made all reasonable attempts to contact the Claimant to no avail, and upon failing to contact her, he notified the relevant employment authorities. He sought to rely in the case of *Owudu v Digital Sanitation Services Limited (Appeal E109 of 2023) [2024] KEELRC 917 (KLR) (18 April 2024) (Judgment)* to buttress this position.
19. It is the Respondent's submission that Claimant has not established a prima facie case that her employment was terminated unfairly.
20. The Respondent submits that relying on The Regulations of Wages (General) (Amendment) Order 2015, a house servant would earn a bare minimum consolidated wage of Kshs 10,954/- per month or Kshs 527.10 per day. He submits further that the Claimant herein has not adduced any evidence of underpayment and therefore the same should not be awarded.
21. He finally submits that the Claimant has not proved that her termination was unfair, unreasonable and unlawful in substance and procedure and for this reason, the Claimant's claim should be dismissed with costs to the Respondent.

Analysis and Determination

22. I have considered the pleadings, the witnesses' oral testimonies and the rival submissions. The issues for determination are:-
 - i. Whether the Claimant was unfairly terminated; and
 - ii. Whether she is entitled to the reliefs sought.

Whether the Claimant was unfairly terminated

23. The Claimant contends that she was unfairly terminated. She asserts that she left the Respondent's premises on off-duty and that on return, she was not allowed into the Respondent's premises/her place of work. In her testimony, the Claimant told the court that she sought the help of her union to enable her collect her personal belongings from the Respondent's premises.
24. The Respondent's position is that the Claimant went on leave and never returned to work and that she absconded duty and should compensate him for absconding duty. The Respondent further states that he wrote a letter dated 3rd April, 2018 notifying the County Labour Office that the Claimant had absconded duty since 29th March, 2018.
25. The issue is whether the manner in which the Claimant separated with the Respondent amounts to an unfair termination.
26. It is now settled that where the employer alleges that an employee absconded duty, the employer bears the burden to prove that he made an effort to trace the employee before declaring the employee as having been terminated. In the case of *Owudu v Digital Sanitation Services Limited (Appeal E109 of 2023) [2024] KEELRC 917 (KLR) (18 April 2024) (Judgment)*, the Court stated:-

“First, an employee does not terminate his employment in a case of alleged abscondment. When faced with an employee who fails to attend work, the employer must issue notice to the employee to render an account over his misconduct(emphasis own). Where the employee persists and fails to abide by such directions, the employer is required to issue notice terminating employment or summary dismissal through the last known address of the employee.



Further, under Section 18(5) (b) of the Act, where the employer cannot trace the employee, notice must be issued to the Labour Officer and any terminal dues deposited in such office. Then, the employer has undertaken its legal duty to properly end employment.”

27. Although the Respondent led evidence showing that the he wrote a letter notifying the labour office of the Claimant’s abscondment of duty, nothing else shows that indeed, the Claimant did abscond duty.
28. The fact that the Claimant had to be assisted to pick her personal belonging, goes to confirm that when the Claimant took leave, she left with every intention to return to her work place as she would otherwise have left with her belongings.
29. It is also clear that the Respondent did not write to the Claimant as he did the labour office in an effort to find out why she had not reported to work, and whether she intended to do so, and nor did he issue her with a termination notice indicating abscondment of duty as the reason for the termination. In *Joseph Nzioka v Smart Coatings Limited* [2017] eKLR the court observed that:-

“Dismissal on account of absconding must be preceded by evidence showing that reasonable attempt was made to contact the employee concerned and that a show cause letter was issued to such employee calling upon such employee to show cause why his services should not be terminated on account of absconding duties.”

30. I thus return that simply writing to the labour office, was in my opinion not sufficient to show that the Claimant/employee absconded duty. I in the premise, find and hold that the Claimant’s termination is unfair.

***Whether the Claimant is entitled to the reliefs sought**

One month salary in lieu of notice

31. It is evident that the Claimant was terminated without reason and without notice. She is therefore entitled to the claim of salary in lieu of notice, and is hereby awarded as prayed.

Underpayment of Wages

32. Under the Regulations of Wages (General) (Amendment) Order applicable in 2015, a house servant was entitled to a consolidated wage of Kshs 10,954/- per month. The Claimant earned Kshs. 11,000/- as consolidated salary, which then confirms that she was not underpaid.
33. This claim fails and is dismissed.

Severance Pay

34. The Claimant was not declared redundant as to be entitled to payment of severance pay. This claim equally fails.

12 months’ salary compensation for unfair termination

35. The finding that the Claimant was unfairly terminated, entitles her to an award of compensation in accordance with Section 49 and 50 of the *Employment Act*.
36. In the case of *Alphonse Maghanga Mwachanya v Operation 680 Limited* [2013] eKLR the Court held that in determining whether to make an award of compensation, the court is to consider the 13 factors set out under section 49 (4) of the *Employment Act*.



37. Considering the opportunities available to the Claimant for securing comparable or suitable employment with another employer, I deem an award of five (5) months' salary sufficient compensation for the unfair termination.
38. In the end, the claim succeeds in the following terms:-
- a. A declaration that the Claimant was unfairly terminated
 - b. Payment of one month salary in lieu of notice at Kshs. 11,000/-
 - c. Five months' salary as compensation for the unfair termination at Kshs. 55,000/-
 - d. Costs of the suit and interest at court rates from the date of judgment until payment in full
39. It is so ordered.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF FEBRUARY, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Onyancha present for the Claimant

Ms. Wamukore present for the Respondent

Ms. Esther S. – CA

