



**Njeru v New Kenya Co-operative Creameries Limited (Cause
10 of 2018) [2025] KEELRC 976 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 976 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 10 OF 2018
S RADIDO, J
MARCH 27, 2025**

BETWEEN

ASHFORD JAMES NJAGI NJERU CLAIMANT

AND

NEW KENYA CO-OPERATIVE CREAMERIES LIMITED RESPONDENT

JUDGMENT

1. Ashford James Njagi Njeru (the Claimant) sued New Kenya Co-Operatives Creameries Ltd (the Respondent) on 8 January 2018, alleging unfair breach of contract.
2. The Respondent filed a Response on 19 April 2018, and the Cause was heard on 12 February 2025.
3. The Claimant and an Industrial Relations Manager with the Respondent testified.
4. The Claimant filed his submissions on 24 February 2025, and the Respondent on 25 March 2025 (should have been filed and served by 21 March 2025).
5. The Claimant set out the Issues arising as:
 - i. Whether the Claimant was subjected to a fair hearing?
 - ii. Whether the Claimant's employment was unfairly terminated?
 - iii. Whether the Claimant is entitled to the reliefs sought?
6. The Respondent set the Issues for determination as:
 - i. Whether the Claimant's termination was lawful and fair?
 - ii. Whether the Claimant is entitled to the prayers sought?
7. The Court has considered the pleadings, evidence and submissions.



Whether the Respondent unfairly terminated the Claimant's employment Procedural fairness

8. The gravamen of the Claimant's action was a breach of contract (suspension without salary, accrued leave, overtime and failure to furnish the decision of the Disciplinary Committee).
9. In other words, the Claimant did not plead, allege or amend his pleadings to assert unfair termination of employment in the Memorandum of Claim despite the Respondent raising the issue.
10. However, the Claimant raised the question in his submissions.
11. Since the Respondent's case was that the Claimant's employment was terminated through a letter dated 10 August 2017 after a disciplinary process, the Court will examine whether there was an unfair termination of employment.
12. The Respondent issued a show cause dated 20 December 2016 to the Claimant. The show cause set out allegations against the Claimant and requested him to respond before 24 December 2016.
13. On 9 January 2017, the Respondent suspended the Claimant to pave the way for further investigations. The suspension letter invited the Claimant to explain why disciplinary action should not be taken before 11 January 2017.
14. The Claimant replied on the same day and on 21 March 2017, the Respondent invited him to attend a disciplinary hearing on 30 March 2017. The Claimant attended the hearing. 2 Shop stewards were also present. The Claimant made representations.
15. The Panel found the representations unsatisfactory and recommended the termination of employment.
16. The Court is satisfied that the Respondent was in substantive compliance with the dictates of procedural fairness as set out in sections 35(1) and 41 of the *Employment Act*.

Substantive fairness

17. Sections 43 and 45 of the *Employment Act* places a burden on the employer to prove the validity and fairness of the reasons leading to the termination of an employment contract.
18. The reason for the termination of the Claimant's employment was defrauding the Respondent in that the Claimant and a driver failed to deliver to Tusky's supermarket 2 crates of mala milk as ordered and upon arrest and questioning paid for the same in cash.
19. The Respondent produced an investigation report. The report indicated that the Claimant delivered fewer crates of mala than was indicated in the invoice and delivery note. During an interview with the investigations team, the Claimant owned up.
20. The Court finds that the Respondent proved valid and fair reasons to terminate the Claimant's contract.

Breach of contract

Unpaid salaries from 9 January 2017 to December 2017

21. The Claimant alleged breach of contract in that the Respondent failed to pay him half salaries from 9 January 2017 to December 2017 amounting to Kshs 332,796/- during the period he was on suspension.



22. It is correct that the Claimant was suspended through a letter dated 9 January 2017. The suspension letter cited the authority of clause 24(ii) of a Collective Bargaining Agreement.
23. Unfortunately, a copy of the Agreement was not placed before the Court to enable it to interpret or apply the tenor and context of the clause relied on.
24. Equally, the Claimant did not produce copies of his pay slips for the material period to establish how much he should have been earning during the material period.
25. The Court finds that the Claimant did not prove to the required standard this aspect of breach of contract.

Unpaid leave

26. The Claimant also alleged breach of contract with respect to leave for 5 years and he claimed Kshs 249,597/-.
27. The Claimant testified that the Respondent had declined to pay him leave days since employment.
28. Section 28(4) of the *Employment Act* circumscribes how many leave days can be carried forward. The Claimant did not indicate whether he applied for leave but was denied.
29. Under the section, the Court can only consider the leave for the last 18 months before separation.
30. Section 28 of the Act also entitles an employee to at least 21 days of annual leave with pay. The Claimant did not clarify whether he was seeking commuted leave pay.
31. The Respondent did not produce the Claimant's leave records and in line with section 28(4) of the *Employment Act*, (despite being in the list of documents) and the Court holds that the Claimant would be entitled to the equivalent of one and a half basic salary as commuted leave pay (the basic salary was Kshs 45,749/-).

Overtime

32. The Claimant further sought Kshs 480,705/- overtime pay. The Claimant did not give any details of the overtime worked.
33. The Court finds that without an evidential or other legal basis, this head of the claim was not proved.

Conclusion and Orders

34. The Claimant did not prove a breach of contract save for accrued leave. The Respondent proved valid and fair reasons to terminate the Claimant's employment.
35. The Claimant is awarded:
 - (i) Commuted leave Kshs 68,623/-.
36. All the other claims are dismissed.
37. The Claimant has succeeded partly. Each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIVASHA ON THIS 27TH DAY OF MARCH 2025.

RADIDO STEPHEN, MCIARB



JUDGE

Appearances

For Claimant Murimi Murango & Co. Advocates

For Respondent Musa Juma & Co. Advocates

Court Assistant Wangu

