



**M'Aburi v Kiegoi Tea Factory Company Limited (Cause E027 of 2024)
[2025] KEELRC 936 (KLR) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 936 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E027 OF 2024
ON MAKAU, J
MARCH 26, 2025**

BETWEEN

ZIPPORAH CIORWORO M'ABURI CLAIMANT

AND

KIEGOI TEA FACTORY COMPANY LIMITED RESPONDENT

JUDGMENT

1. By a statement of claim dated 22nd July 2024, the claimant prayed for the following reliefs: -
 - a. Unpaid leave allowance.
 - b. Unpaid maternity leave.
 - c. Unpaid house allowance.....Kshs.1,628,152
 - d. 2 months' pay in lieu of notice.....Kshs.86,145.60
 - e. General damages or unfair termination.
 - f. Service pay/gratuity.....Kshs.501,795
 - g. Costs of the claim and interest at court rates.
2. The respondent was served with court process but it failed to enter appearance and file a defence. Consequently, the suit proceeded by formal proof.
3. The claimant's case was that she was employed by the respondent on 1st December 2020 in the processing department. Initially she was being paid Kshs.211 per day but the same was gradually increased up to Kshs.43,072.81 per month as at 30th November 2021 when her services were terminated.



4. It was further claimant's case that the termination of her employment was done orally by the respondent without any reason or prior notice. She was also never paid any benefits or issued with a certificate of service after the termination.
5. She averred that during her employment, she went for several maternity leave but she was never paid any salary. She was also never paid leave allowance and house allowance. Consequently, she prayed for the reliefs sought in her suit plus costs.
6. To support her claim she produced her pay Advice slip for November 2020 plus copy of her National Identification Card.
7. After the hearing, the claimant filed written submissions. In brief, the claimant submitted that her employment was orally terminated without a valid reason related to her conduct, capacity, performance or operational requirements of the employer, nor was fair process followed as required by section 45(2) of the *Employment Act*, 2007.
8. She submitted that the respondent's failure to participate in the suit meant that it has failed to discharge its burden of proving valid reason for the termination and that a fair procedure was followed before the termination. Consequently, she submitted that she has proved her claim on a balance of probability.

Issues for determination and analysis

9. The issues for determination are: -
 - a. Whether the respondent terminated the claimant's employment unfairly and unlawfully.
 - b. Whether the reliefs sought in the suit are merited.

Unfair termination

10. Section 45 (1) & (2) of the *Employment Act* provides that: -

“45. Unfair termination

- (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason—
 - i. related to the employee's conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”

11. The above provisions bring out two elements of unfair termination including valid reason, and fair procedure. The burden of proving that termination of employment was unfair is on the employee



while the employer has evidentiary burden of proving that termination was grounded on valid reason and that a fair procedure was followed.

12. In this case, the claimant testified that the respondent terminated her employment orally without any valid reason or following a fair procedure. The respondent did not tender any evidence to rebut the claimant's evidence and therefore I find that the claimant has discharged her legal burden of proving unfair termination on a balance of probabilities as required under section 47 (5) of the [Employment Act](#).
13. I gather support from *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR where the court held that:

“ 14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers' human resource manual or as set out in the [Employment Act](#) or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

Reliefs

14. In view of the finding that the claimant's employment contract was terminated unfairly, I find that she is entitled to salary in lieu of notice plus compensation for unfair termination under section 49 and 50 of the [Employment Act](#), 2007. She did not adduce any evidence to support the claim for two months' notice and therefore I award one-month salary pursuant to section 35 (1) (c) of the [Employment Act](#) which entitled her to 28 days' notice.
15. As regards compensation for the unfair termination, I award 12 months gross salary considering her long service of 21 years and the fact that she did not contribute to the termination through misconduct.
16. The claim for unpaid leave allowance, and unpaid maternity leave lack particulars of how they were calculated. There is also no supporting evidence and they are declined.
17. The claim for unpaid house allowance is calculated at the rate of 15% of the gross pay as at November 2020. The total claim of unpaid house allowance is calculated as Kshs.1,628,152 for the 21 years served. However, it has not been shown that the claimant was earning Kshs.43,072 since the year 2000 when she joined the respondent. In fact, she stated in her written statements that she started with daily wage of Kshs.211. Consequently, I will only award her house allowance for the month of November 2020 to November 2021 at the rate of 15% of the basic salary of Kshs.23,008.45 being Kshs.3,451.27 x 13 months =Kshs.44,866.51.
18. The claim for service pay/gratuity fails because the pay Advice Slip indicated that the employer deducted NSSF from the claimant's salary. She did not protest against the said deduction nor did she prove that the deducted NSSF contributions were never remitted to the Agency.



19. Section 35(6) of the Employment Act disqualifies any employee who is registered for NSSF from the benefit of service pay.
20. The claim for certificate of service is granted because it is a right to every employee under section 51 of the Employment Act.

Conclusion

21. I have found that the respondent unfairly terminated the employment contract of the claimant. I have also found that she is entitled to some of the reliefs sought. Consequently, I enter judgment for her against the respondent as follows:
 - a. Notice.....Kshs.28,376.72
 - b. Compensation.....Kshs.340,520.61
 - c. House Allowance.....Kshs.44,866.51
 - Kshs.413,763.84
 - d. Certificate of service.
 - e. The award is subject to statutory deductions.
 - f. The claimant is awarded interest at court rate from date of the judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 26TH DAY OF MARCH, 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

