



**Juma v Frodak Services Limited & another (Cause 115 of 2018)
[2025] KEELRC 837 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 837 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 115 OF 2018
MA ONYANGO, J
MARCH 13, 2025**

BETWEEN

JACOB WEFILA JUMA CLAIMANT

AND

FRODAK SERVICES LIMITED 1ST RESPONDENT

BUTALI SUGAR MILLS LIMITED 2ND RESPONDENT

JUDGMENT

1. The Claim herein was instituted vide a Memorandum of Claim dated 1st February 2018 in which the Claimant seeks the following reliefs against the Respondents jointly and severally: -
 - a. A declaration that the termination process carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law
 - b. Payment of sums of money claimed in the Memorandum of Claim.
 - c. Costs and interests
 - d. Any other relief that the Court may deem fit and just to grant
2. The Claimant contended that he was employed by the Respondents from 14th November 2015 to the 2nd May 2017 when his employment was unfairly terminated without any justifiable reasons.
3. It is the Claimant's case that during his employment with the Respondents he worked overtime without pay, he worked on rest days without pay and he worked on public holidays without pay.
4. According to the Claimant, the termination of his employment was unlawful on grounds that:
 - i. The termination was without any fair valid reason
 - ii. The termination was not in accordance with fair procedure



- iii. No leave pay was given
 - iv. No one months' salary in lieu of notice was paid
 - v. No overtime dues were paid
 - vi. No compensation for unfair termination was paid.
5. It is the Claimant's contention that owing to the unfair and unlawful termination of his employment, he is entitled to compensation as well as payment of his terminal benefits which he itemized as follows:
- i. One month pay in lieu of notice Kshs. 6,210
 - ii. Compensation for unfair termination..... Kshs. 64,800
 - iii. Unpaid house allowance Kshs 13,700
 - iv. Service pay/Gratuity Kshs 45,900
 - v. Unpaid public holiday worked Kshs 375
 - vi. Underpayment Kshs. 17,264.35
 - vii. Accrued leave earned but not taken Kshs. 5,400
- Total..... Kshs. 153,719.35
6. On 11th May 2018 the 1st Respondent filed a Reply to the Statement of Claim dated 3rd May 2018 denying that the Claimant was its employee. It is the 1st Respondent's case that its role was to recruit employees for prospective employers at a commission and that it had no legal obligations over the Claimant since its role ended at the point the Claimant was engaged by the 2nd Respondent.
7. The 1st Respondent prayed that the Claimant's claim be the 1st Respondent's acts of struck out with costs to the Respondents.
8. There is no evidence on record that the 2nd Respondent was served with the Claimant's pleadings as the Summons to Enter Appearance dated 14th February 2018 indicates that the summons were only served on the Managing Director of the 1st Respondent.
9. The suit was heard on 10th June 2024 when the Claimant testified as CW1 and adopted his witness statement filed in court on 9th February 2018 as his evidence in chief. He also relied on the documents he filed in support of his case as his evidence.
10. The Claimant testified that he was employed in May 2017 and terminated from employment on 2nd May 2017 without being issued with a notice. He testified that on the material day, he reported to work only to be told at the gate that his services were no longer needed.
11. On cross examination by Ms. Twene, counsel for the 1st Respondent, the Claimant maintained that he was terminated from employment orally without any reason. He also contended that during the course of his employment with the Respondents he was underpaid as he was only paid Kshs. 6000 after every two weeks which amount was below the statutory minimum wage.
12. George Onyango, the 1st Respondent's Operation Manager testified as RW1. He adopted his witness statement filed on 31st August 2021 and relied on the documents filed by the 1st Respondent as his evidence in chief.



13. In his testimony, RW1 admitted that the Claimant was employed by the 1st Respondent as a loader in March 2016. It was his evidence that the Claimant was employed on a three months contract which was only renewed once. RW1 testified that from the payroll for November 2016, which was filed by the 1st Respondent, the Claimant's name did not appear on the list, an indication that he never worked during the period. The 1st Respondent's witness also refuted the claims made by the Claimant that he worked on public holidays and maintained that the factory was closed on public holidays.
14. On being cross examined, RW1 maintained that the Claimant was employed by the 1st Respondent in March 2016 on a three months' contract which contract was renewed to August 2016. It was RW1's evidence that the Claimant left employment before the strike that happened in May 2017. That he was no longer the 1st Respondent's employee at the time he alleges to have been terminated unfairly from employment.
15. On re-examination, RW1 contended that the Claimant was paid all his dues when he left employment.
16. At the close of the hearing, parties were directed to file written submissions. The Claimant's submissions are dated 1st July 2024 while the 1st Respondent's submissions are dated 6th September 2024.

The Claimant's Submissions

17. The Claimant in his submissions crystallized the issues for determination to be whether or not the Claimant was unfairly terminated from employment.
18. It was his submission that he was verbally terminated from employment by the Respondent, without any reason or notice. He also submitted that he was not afforded an opportunity to defend himself as envisaged by Section 41 of the Employment Act.
19. The Claimant urged the court to award him the reliefs he sought in his claim, costs and interest.

The 1st Respondent's Submissions

20. On its part, the 1st Respondent framed the issues for determination to be:
 - i. Whether the separation of the 1st Respondent and the Claimant was within the law
 - ii. Whether the Claimant is entitled to the reliefs sought.
21. On the first issue whether the separation of the 1st Respondent and the Claimant was within the law, the 1st Respondent submitted that towards the end of his contract the Claimant willingly and without notice left his employment in August 2016. The 1st Respondent maintained that it had no reason to terminate the Claimant's contract as his contract had automatically lapsed.
22. While submitting that fixed term contracts are not renewed automatically even when there exists a clause allowing for such renewal, the 1st Respondent submitted that the Claimant had two contracts, each running for three months, and that no further renewal of contract was requested by him.
23. It was the 1st Respondent's submission that the Claimant did not tender any evidence in the form of NHIF statements or Contracts, to show that he continued to work for the 1st Respondent after his contract had lapsed in August, 2016.
24. On this basis, the court was urged to find that the Claimant has not discharged the burden of proving that he was unfairly and unlawfully terminated from employment by the 1st Respondent.



25. With regard the issue whether the Claimant is entitled to the reliefs he sought, the 1st Respondent submitted that the Claimant in his testimony acknowledged and confirmed that his contract was not renewed after August 2016 and that he received his dues. The 1st Respondent thus submitted that the termination of the Claimant's employment was within the province of the law. To buttress this point, the case of Wachie Richard Sindani & 10 others v Builders Depot Limited [2019] eKLR
26. In conclusion, the court was urged to evaluate the evidence on record and arrive at the finding that the Claimant did not prove his case against the 1st Respondent.

Determination

27. Upon considering the pleadings on record, the evidence of the parties, the submissions and the authorities cited, I find that the issues for determination are: -
 - i. Whether the claim against the 2nd Respondent has been proved.
 - ii. Whether the Claimant was unfairly and unlawfully terminated from employment by the 1st Respondent
 - iii. What orders should issue

DIVISION - Whether the claim against the 2nd Respondent has been proved.

28. As mentioned earlier in this judgment, there is no evidence that the 2nd Respondent was served with pleadings in this matter. From the oral testimonies and submissions presented before the court, it is clear that the Claimant's claim is against the 1st Respondent and not the 2nd Respondent.
29. The 1st Respondent through its witness, RW1 confirmed that the Claimant was its employee. There was therefore a misjoinder of the 2nd Respondent to this suit. The claim against the 2nd Respondent is hereby struck out.

Whether the Claimant was unfairly and unlawfully terminated from employment by the 1st Respondent

30. The Claimant averred that he was verbally terminated from employment by the 1st Respondent on 2nd May 2017 without any notice. He further contended that he was not given a reason for the termination of his employment and that he was not taken through a disciplinary hearing before the termination of his employment.
31. On its part, the 1st Respondent refuted the claim made by the Claimant that it unfairly and unlawfully terminated the Claimant's employment. Although the 1st Respondent admitted that the Claimant was its employee between March 2016 and August 2016, it maintained that the Claimant's contract of employment lapsed by effluxion of time in August 2016.
32. It is the 1st Respondent's case that as at 2nd May 2017 when the Claimant alleges that his employment was unfairly terminated, he was no longer in the 1st Respondent's employment.
33. The gate pass that was produced by the Claimant in court shows that the same was issued on 18th March 2016 and was valid until 18th June 2016. The Claimant did not provide any other evidence to prove that he was in the 1st Respondent's employment after August 2016.
34. Section 107 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Section 108 further provides that the burden of proof in a suit or proceeding lies on that person



who would fail if no evidence at all were given on either side, while section 109 states that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person

35. Section 47 (5) of the Employment Act stipulates the burden of proof in employment claims as follows:

“47(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination.”

36. The Claimant was required to prove that he was in the employment of the 1st Respondent after the lapse of his second contract of employment in August 2016. In the absence of such proof, it is the court’s finding that the Claimant has not proved existence of an employment relationship between him and the 1st Respondent at the time he alleges that his employment was terminated by the 1st Respondent.

What orders should issue?

37. Having found no proof of existence of an employment relationship at the time the Claimant alleges his employment was terminated by the 1st Respondent, the entire claim cannot stand. The Claimant’s claim is accordingly dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 14TH DAY OF MARCH 2025.

MAUREEN ONYANGO

JUDGE

