



REPUBLIC OF KENYA



**Recha v Frodak Services Limited & another (Cause 111 of 2018)  
[2025] KEELRC 840 (KLR) (13 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 840 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 111 OF 2018  
MA ONYANGO, J  
MARCH 13, 2025**

**BETWEEN**

**SIMON JUMA RECHA ..... CLAIMANT**

**AND**

**FRODAK SERVICES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BUTALI SUGAR MILLS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claim herein was instituted vide Memorandum of Claim dated 1<sup>st</sup> February 2018 seeking 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 averred that he was employed by the Respondents from 29<sup>th</sup> January 2016 until 2<sup>nd</sup> May 2017 when his employment was unfairly terminated by the Respondent without any justifiable reasons.
3. It is the Claimant's case that during his employment with the Respondent he worked overtime without pay, he worked on rest days without pay and he worked on public holidays without due pay.
4. The Claimant particularized the unlawfulness of the termination of his employment as follows:
  - 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. The Claimant contended that owing to the unfair and unlawful termination, he is entitled to terminal benefits which he itemized to be:
- i. One month pay in lieu of notice ..... Kshs. 5,520
  - ii. Unpaid house allowance ..... Kshs 11,520
  - iii. Compensation for unfair termination ..... Kshs. 57,600
  - iv. Service pay/Gratuity ..... Kshs 2,400
  - v. Unpaid public holiday worked ..... Kshs. 333.3
  - vi. Underpayment ..... Kshs. 19,386.6
  - vii. Accrued leave earned but not taken ..... Kshs. 4,800
- Total ..... Kshs. 101,559.90
6. In response, the 1<sup>st</sup> Respondent filed a Reply to the Statement of Claim dated 3<sup>rd</sup> May 2018 on 11<sup>th</sup> May 2018. The 1<sup>st</sup> Respondent denied that the Claimant was its employee and averred that it had no legal obligations over the Claimant since its role ended at the point the Claimant was engaged by the 2<sup>nd</sup> Respondent.
7. The court was urged to strike out the Claimant's case against the 1<sup>st</sup> Respondent.
8. The 2<sup>nd</sup> Respondent did not participate in the proceedings.
9. The suit was heard on 10<sup>th</sup> June 2024 when the Claimant testified on his behalf and the 1<sup>st</sup> Respondent called one witness who testified on its behalf.
10. The Claimant testified as CW1 and adopted his witness statement filed on 9<sup>th</sup> February 2018 as his evidence in chief. He also relied on the documents he filed in support of his case as his evidence.
11. The Claimant testified that he was employed by the Respondents on January 2016 as a loader and worked diligently until 2<sup>nd</sup> May 2017 when his employment was terminated without being given a reason for the termination. The Claimant stated that he worked without any specific working hours and was not paid overtime. He also stated that he was not paid house allowance. The Claimant testified that the 1<sup>st</sup> Respondent was operating from the 2<sup>nd</sup> Respondent's premises and that the employment contracts were prepared by both Respondents.
12. On cross examination, the Claimant stated that his loading number was 059.
13. The 1<sup>st</sup> Respondent on its part called George Onyango its Operations Manager who testified as RW1. He adopted his witness statement filed on 27<sup>th</sup> April 2022. He also adopted and relied on the documents filed by the 1<sup>st</sup> Respondent in support of its case.



14. RW1 in his evidence disputed that the Claimant was the 1<sup>st</sup> Respondent's employee and averred that the gate pass produced by the Claimant indicating that his code was L059 was fraudulent as from the 1<sup>st</sup> Respondent's records, employee code number L059 belonged to an employee by the name Hudson Gombe Lunani who was employed in June 2013 and worked until 6<sup>th</sup> May 2017 when he was terminated from employment for participating in a strike. The 1<sup>st</sup> Respondent referred the court to the payroll of October 2014 which indicated Hudson Ngombe Lunani L059 as its employee.
15. During cross examination, RW1 contended that the gate pass filed by the Claimant is fraudulent as the Claimant was never an employee of the 1<sup>st</sup> Respondent.
16. At the close of the hearing parties were directed to file written submissions. The Claimant and the 1<sup>st</sup> Respondent filed submissions dated 1<sup>st</sup> July 2024 and 6<sup>th</sup> September 2024 respectively.

### **The Claimant's Submissions.**

17. In his submissions, the Claimant identified the main issue for determination to be whether or not the Claimant was unfairly terminated from employment.
18. The Claimant submitted that his employment was verbally terminated by the Respondent, without following due process. That he was not issued with notice or afforded an opportunity to be heard as envisaged under Section 41 of the Employment Act.
19. It was his submission that in his testimony before court, he proved that he was not paid any dues after the separation which evidence according to him was not rebutted by the Respondent.
20. The Claimant urged the court to find and hold that he had discharged the burden of proving unfair termination of his employment. He submitted that the Respondents had failed to discharge the burden of proving valid and fair reason for dismissing him or that fair procedure was followed in the termination of his employment.
21. The Claimant submitted that he is entitled to the reliefs he sought in his Memorandum of Claim.

### **The 1st Respondent's Submissions.**

22. On its part, the 1<sup>st</sup> Respondent identified the issues for determination as follows:
  - i. Whether the Claimant was an employee of the 1<sup>st</sup> Respondent and whether he was terminated in accordance with the law?
  - ii. Whether the Claimant is entitled to the reliefs sought?
23. On the first issue, the 1<sup>st</sup> Respondent submitted that the Claimant was never its employee. That the documents presented by the Claimant, specifically the gate pass, belonged to a different person who is not the Claimant herein.
24. It was the 1<sup>st</sup> Respondent's submission that the burden of proof lies on the Claimant to demonstrate the merits of his case and this being an Employment related claim, the non-existence of an employment relationship and alleged termination can only lead to a conclusion that the Claimant has no cause of action against it. In support of this position, the 1<sup>st</sup> Respondent relied on the case of *Zarika Adoyo Obondo v Tai Shunjun & Another* [2020]eKLR and *Casmur Nyankuru Nyaberi v Mwakikar Agencies Limited* [2016] eKLR.
25. The 1<sup>st</sup> Respondent further submitted loader No. L059 indicated in the Gate Pass produced by the Claimant is a code that was issued and utilized by the 1<sup>st</sup> Respondent's former employee by the name



Hudson N. Lunani who was employed by the 1<sup>st</sup> Respondent in December, 2014 as per contract which was attached to the Respondent's bundle of documents.

26. On the issue whether the Claimant is entitled to the reliefs he sought in his Memorandum of Claim, the 1<sup>st</sup> Respondent urged the court to make a finding that nothing is owed to Claimant as he was never at any point an employee of the 1<sup>st</sup> Respondent. In this regard, the 1<sup>st</sup> Respondent prayed for the dismissal of the Claimant's suit with costs.

**Determination.**

27. Upon considering the pleadings herein, the evidence of the parties, the submissions and the authorities cited, I find that the issues for determination are: -
- i. Whether the Claimant was an employee of the Respondents
  - ii. Whether the Respondents are liable for the alleged unfair dismissal of the Claimant from employment
  - iii. Whether the reliefs sought should issued

**Whether the Claimant was an employee of the Respondents.**

28. In his Memorandum of Claim, the Claimant pleaded that he was employed by the Respondents on 29<sup>th</sup> January 2016. However, in his oral testimony before court and in his submissions, the Claimant contended that he was employed by the 1<sup>st</sup> Respondent. The Claimant in support of this position produced a gate pass with employee code No. L059 that was allegedly issued to him by the 1<sup>st</sup> Respondent upon being employed.
29. The 1<sup>st</sup> Respondent on the other hand disputed the existence of an employment relationship between itself and the Claimant. According to the 1<sup>st</sup> Respondent, the gate pass produced by the Claimant was fraudulent as the employee code L059 was issued to Hudson Ngome Lunani. The 1<sup>st</sup> Respondent referred to the employment contracts for the said employee at pages 6 to 13 and payrolls at pages 14 to 23 of the 1<sup>st</sup> Respondent's Documents filed in court.
30. I have looked at the contracts of employment and the payrolls produced by the 1<sup>st</sup> Respondent and noted that they indeed indicate that the employee code no. L059 was one Hudson L. Ngome.
31. Apart from the gate pass which is in contention, the Claimant did not produce any other document to prove the existence of an employment relationship between him and the 1<sup>st</sup> Respondent.
32. Taking into consideration the documents produced by the 1<sup>st</sup> Respondent showing that employee code number L059 belonged to one Hudson Ngome, the court finds that the 1<sup>st</sup> Respondent has proved that there was never an employment relationship between itself and the Claimant herein.
33. Having found that the Claimant was not an employee of the 1<sup>st</sup> Respondent, the entire claim cannot hold. I accordingly dismiss the same with costs to the 1<sup>st</sup> Respondent.

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

**MAUREEN ONYANGO**

**JUDGE**

