



**Sang v Camellia Kenya Limited (Cause 158 of 2018)
[2025] KEELRC 1615 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1615 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 158 OF 2018
MA ONYANGO, J
MAY 29, 2025**

BETWEEN

PHILLIP KIPROP SANG CLAIMANT

AND

CAMELLIA KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claim herein was instituted vide Memorandum of Claim dated 10TH April, 2018 seeking the following reliefs against the Respondent: -
 - a. A declaration that the termination process as carried out by the Respondent was unlawful and that during his employment with the respondent he was remunerated as required by law.
 - b. Payment of the sums of money as claimed in paragraph 9 above
 - c. Costs and interest
 - d. Any other relief that this Honourable Court may deem fit to grant.
2. The Claimant averred that he was employed by the Respondents from 4th February, 2008 until 20th December, 2017 when his employment was unfairly terminated by the Respondent without any justifiable reasons and without compliance with the Employment Act.
3. The Claimant contended that owing to the unfair and unlawful termination, he is entitled to terminal benefits which he itemized to be:
 1. Two months pay in lieu of Notice General Amendment order 2017
Minimum wages Basic x years Notice Kshs. 16,102..75
 2. Leave dues



21 days x 9 years x 9,000/26 Kshs. 65,423.08

3. Overtime

45hrs per week

2hrs x 4 weeks = 8hrs O. T

45hrs + 8hrs = 53hrs OT per month

53 - 45hrs = 8hrs x 9 years = 72 x 12

864 x 1.5 x 16,102.75/96 Kshs. 217,387.125

4. House allowance

15% of basic x 12 x 9 years

15/100 x 9000 x 12 x 9years Kshs. 145,800

5. Gratuity pay

Each completed year is 15 days

15days x 9 x 9000/30 Kshs. 40,500

6. Under payment

a) Employed on 4th February 2008-February,2009

Legal Notice No. 38

Salary was Kshs. 6,471

Claimant was getting Kshs. 3,300

6,471 - 3,300 = 3,171

3,171 x 12 months = Ksh. 38,052

b) Legal Notice No. 97

4th February 2010 - February,2011

Shop assistant was getting Kshs. 8,400

Claimant was getting Kshs. 3,300

8,400 - 3,300 = 5,100pm

5,100 x 12months Kshs. 61,200

c) Legal Notice No. 63/2011

Shop assistant was earning Kshs. 9,450

And the claimant was getting Kshs. 3,300

9,450 - 3,300 Kshs. 6,150

6,150 x 12 months x 5 years Kshs. 369,000

d) Legal Notice No. 117

The shop assistant was earning Kshs. 13,646.40



And the claimant was getting Kshs. 9,000

13,646.40 - 9,000 Kshs. 4,646.40

4,646.4 x 12 month x 1 year Kshs. 55,756.8

7. Salary for December 2017 Kshs. 9,000
8. Leave dues
21 days x 9 years x 9000/26 Kshs. 65,423.07
9. 12months compensation for wrongful termination
Basic = house allowance
16,102.75 x 12 months Kshs. 193,233
Total Kshs. 1,199,575.075
4. The Claimant prayed for orders as follows:
 - e. A declaration that the termination process as carried out by the Respondent was unlawful and that during his employment with the respondent he was remunerated as required by law.
 - f. Payment of the sums of money as claimed in paragraph 9 above
 - g. Costs and interest
 - h. Any other relief that this Honourable Court may deem fit to grant.
5. The Respondent filed a Response to the Memorandum of Claim dated 12th May 2021 in which it denied that the Claimant was its employee or that it unlawfully terminated the Claimant's employment.
6. The Respondent pleaded on a without prejudice basis that if the Claimant was its employee then any termination process was proper and legal, and the Claimant was properly remunerated.
7. The Claimants evidence was taken on 9th November, 2022. Relying on his witness statement dated 10th April, 2018 the Claimant testified that he was employed in 2008 to pick tea at a salary of Kshs. 3000 per month. He worked for 9 years. At the time of leaving employment he was earning Kshs. 9000.
8. The Claimant testified that his employment was terminated when he was called and told work had gone down. That he should go home and wait till he was called back to work. That he was never called.
9. He testified he used to go on leave but was not paid during leave. He testified that the procedure used to terminate his employment was not fair, that he was not given notice and there was no prior warning.
10. On cross examination the Claimant stated that he was employed on 2nd February, 2008 and used to pick tea. He stated he was not a shop attendant. That he was employed by Boaz Kata. That he reported for work at 8.00 am and left at 4.30 pm. That he did not work on Sunday. That he went on leave once a year and was not paid when on leave. He stated that he was not paid overtime. That NSSF or NHIF were paid.
11. In re-examination the Claimant stated that he was not issued with an appointment letter, was stationed in a shop, that Boaz Kata was the owner of the Respondent and that he was not paid upon termination.



12. For the Respondent Boaz Kipkosgei Kata testified as RW1 on 18th March, 2024. He testified that he was a tea farmer, having inherited the business from his late father. He relied on his witness statement and the documents filed on behalf of the Respondent.
13. RW1 testified that he knew the Claimant because the Claimant worked for him as a general worker when he was running a business known as Camellia. He stated the Claimant did not have any professional qualifications that he was aware of.
14. RW1 testified that the Company Camellia was established in 2010 and the Claimant started working for him the same year though he could not remember the exact date. He stated that the Claimant could not have started working for Camellia in 2008.
15. He stated that when the Claimant started working he was earning about Kshs.3000 to 3500. That by May, 2015 the Claimant was earning Kshs. 9000 as per legal notices which the Respondent relied on. That the Claimant was later paid about Kshs. 9,500 which was higher than the statutory minimum wage. That the Respondent did not underpay the Claimant.
16. He stated that the Claimant proceeded on paid leave during the period he worked for the Respondent.
17. RW1 testified that the Claimant's employment was never terminated unprocedurally.
18. He testified that he took big loans and Camellia went under so he was not able to meet his obligations. That the business collapsed after its property was attached by auctioneers and everybody lost their jobs.
19. Under cross examination RW1 stated that the Claimant was his employee in Camellia but he did not have a copy of the Claimant's appointment letter. He stated he was not able to tell the Claimant's job description but can explain what the Claimant was doing. He testified that the Claimant was paid in cash, that the business was in Nandi Hills Town and the Claimant was stationed in the building where the business run in a shop in Nandi Hills.
20. RW1 testified that he was a tea packer and sold tea in the shop. The Claimant was stationed inside the shop that was selling tea.
21. RW1 testified that he did not issue notice of termination to the Claimant, that the business collapsed, that he did not pay in lieu of notice.
22. He testified that the Claimant was not staying in the building and was not paid house allowance. That the Respondent provided housing that the Claimant did not use.
23. RW1 stated he did not file any documents to prove he was auctioned, that he had assumed the letter was filed.
24. RW1 testified that he did not issue a certificate of service to the Claimant.
25. RW1 testified that he has a sister by the name Eglu who sometimes helped him in the shop. He denied that Eglu terminated the Claimant's employment verbally.
26. R1 stated that the Claimant did not commit any offence that warranted termination.
27. RW1 testified that the business of tea packing started in 2010 but the business of tea growing was there from when he was young.
28. He testified that all employment records got lost during the process when the business was auctioned. He confirmed that the Claimant was his employee at Camellia and that he did not issue an employment letter to the Claimant.



Determination

29. I have considered the pleadings, evidence on record and submissions filed by the parties. It is not contested that the Claimant was an employee of the Respondent. It was however the Respondents position that the Claimant was employed in 2010 when the business was incorporated and not in 2008 as alleged by the Claimant. The Respondent produced a certificate of incorporation of the Respondent dated 30th April, 2010.
30. The Claimant filed his NSSF statement which shows that he started paying NSSF in May 2010. This is consistent with the evidence of RW1 that the company was incorporated in 2010 and the Claimant started working for the company the same year. I therefore find that the Claimant was employed in May, 2010.
31. The Claimant did not state how his employment terminated. He merely stated that he was dismissed from employment.
32. RW1 on the other hand stated that the Claimant lost his job upon the collapse of the company which he claims went under following inability to meet its financial obligations. RW1 testified that the company property was auctioned. The Respondent however did not adduce any evidence to prove that the company went under or that its property was auctioned.
33. From the evidence on record it is my finding that the Claimant's employment was terminated without notice and that the Respondent failed to prove that there was valid reason for such termination. I therefore find the termination was unfair and declare accordingly.
34. On the prayers by the Claimant, I find he is entitled to pay in lieu of notice as RW1 confirmed that no notice of termination was issued to the Claimant. I award him the same at Kshs. 9,000.
35. The Claimant prayed for salary during annual leave for the entire period of employment. He testified that he went on leave but was not paid during leave. The Respondent insisted that the Claimant was paid during leave but he did not have any documents as all employment records were lost during the auction.
36. As I have already stated, there was no evidence adduced to prove that there was any auction.
37. I find that the Respondent failed to prove that the Claimant was paid when he went on leave. I award the Claimant Kshs. 65,423.10 being pay during annual leave for 9 years.
38. The Claimant prayed for overtime. He testified that he worked Monday to Saturday from 8.00 am to 4.30 pm. This adds up to 51 hours per week. He is not entitled to overtime as he did not work beyond the maximum 52 hours per week provided for in the Wages General Order
39. The Claimant further prayed for gratuity. He is not entitled to the same as his employment terms did not provide for the same and he was a member of NSSF.
40. The Claimant prayed for underpayments. From the description of his work the Claimant was a shop assistant. The Claimant stated that he started earning Kshs. 9,000 per month in November, 2016. The salary of a shop assistant was Kshs. 6,943 in 2010; Kshs. 7,811 in 2011; Kshs. 8,834.20 in 2012; Kshs. 10,071 in 2013; Kshs. 11,279.50 in 2015 and Kshs 13,309.80. Total underpayment was therefore Kshs. 294,484.40.
41. The Claimant prayed for house allowance. RW1 confirmed the Claimant was not housed or paid house allowance. I award him the same at Kshs. 114,990.



42. Salary for December 2017 is awarded to the Claimant as RW1 admitted that the same was not paid. I award her Kshs. 9,000.
43. Having found that the Claimant's employment was unfairly terminated, he is entitled to compensation. Taking into account the reason given by the Respondent that it was because the company was unable to meet its financial obligations, I will award the Claimant 6 months' salary as compensation being Kshs. 54,000.
44. The Claimant is awarded costs of the suit.
45. Interest shall accrue at court rates from date of judgement.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 29TH DAY OF MAY 2025

MAUREEN ONYANGO

JUDGE

