



**Kisiang'ani v Frodak Services Limited (Cause 369 of 2017)  
[2025] KEELRC 1289 (KLR) (2 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1289 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 369 OF 2017  
MA ONYANGO, J  
MAY 2, 2025**

**BETWEEN**

**JOSHUA MAVONGA KISIANG'ANI ..... CLAIMANT**

**AND**

**FRODAK SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted the Claim herein vide Memorandum of Claim dated 6<sup>th</sup> December 2017 seeking the following reliefs from the Respondent: -
  - a. A declaration that the termination process as 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 Respondent in April 2013 where he worked as a casual labourer until 2<sup>nd</sup> May 2017 when he was unlawfully terminated from employment without any justifiable reasons.
3. 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
  - vii. No accrued leave earned was paid
  - viii. No house allowance was paid
4. 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. 15,249
  - ii. Compensation for unfair termination ..... Kshs. 159,120
  - iii. Unpaid house allowance ..... Kshs 111,384
  - iv. Pro-rata leave ..... Kshs 2,210
  - v. Service pay/Gratuity ..... Kshs 26,520
  - vi. Unpaid public holidays worked ..... Kshs 3,683
  - vii. Accrued leave earned but not taken ..... Kshs. 58,565
- Total ..... Kshs. 376,731
5. In response, the Respondent filed a Reply to the Statement of Claim dated 3<sup>rd</sup> May 2018. In its defence, the Respondent denied that the Claimant was its employee and averred that its role is to recruit employees for prospective employers at a commission and to offer supervisory role subject to mutual agreement between the principal and agent.
6. The Respondent contended that it was not privy on the on goings at Butali Sugar Mills where the Claimant was seconded to work.
7. It is the Respondent's case that since there existed no employment or contractual obligation binding the Claimant and the Respondent, the claim herein is misconceived and unwarranted.
8. The Respondent however stated that if the Claimant was dismissed from employment, it was because he participated in an illegal strike.
9. The Respondent urged the court to strike out the Claimant's case.
10. The Claimant testified on 4<sup>th</sup> June 2024 as CW1 in furtherance of his case. He adopted his witness statement dated 6<sup>th</sup> December 2017 as part of his evidence in chief. He also relied on the documents he filed in support of his case as part of his evidence.
11. The Claimant in his testimony stated that he was employed by the Respondent in April 2013 as a loader and worked until 2<sup>nd</sup> May 2017 when he was dismissed from employment. He stated that the Respondent put up a notice on the Notice Board informing its employees that they had been terminated.
12. The Claimant prayed for award of the reliefs he sought in his Memorandum of Claim.
13. On cross examination, the Claimant stated that he worked for the Respondent on three months' renewable contracts for four years. He stated that his salary was Kshs. 13,260 per month and that he was not paid leave allowance, house allowance or overtime. CW1 stated that he heard of the strike but denied taking part in the strike.



14. The Respondent called George Onyango, its Operations Manager who testified as RW1. He adopted his witness statement filed on 26<sup>th</sup> April 2021 as part of his evidence in chief. He also adopted and relied on the documents filed by the Respondent in support of its case.
15. RW1 in his evidence stated that the Claimant was the Respondent's employee and was engaged as a piece rate employee. According to RW1, the Claimant was employed as a loader and was piece rated. He was remunerated according to the tonnage loaded. RW1 stated that the Claimant was paid Kshs 17 per ton and payments were made fortnightly. He stated that the amount paid was consolidated. RW1 maintained that the Claimant was paid all his dues on his last contract which ended in August 2016. He averred that the Claimant did not renew his contract after it expired. RW1 contended that the Claimant was not terminated as he alleged. He also stated that the Claimant never asked for housing allowance, public holiday dues and leave.
16. During cross examination, RW1 asserted that the Claimant was paid all his dues as confirmed by the payrolls produced in court. He contended that the Claimant never worked overtime, and did not work on public holidays. He however could not explain why the Respondent did not produced a payroll for 2017.
17. At the close of the defence hearing, parties were directed to file written submissions. The Claimant's submissions are dated 21<sup>st</sup> June 2024 while the Respondent's submissions are dated 6<sup>th</sup> September 2024.
18. In his submissions, the Claimant identified the issue for determination to be whether or not the Claimant was unfairly terminated from employment. It is the Claimant's submission that his employment was verbally terminated by the Respondent without following due process. He submitted that he was not issued with notice or afforded an opportunity to be heard as envisaged by section 41 of the *Employment Act*. The Claimant urged the court to make a finding that he had discharged the burden of proving unfair termination of his employment by the Respondent.
19. On its part, the Respondent identified the issues for determination as follows:
  - i. Whether the separation of the Respondent and the Claimant was within the law
  - ii. Whether the Claimant is entitled to the reliefs sought?
20. On the first issue, the Respondent submitted that it had no reason to terminate the Claimant's contract as the same was already due for automatic termination. While relying on the case of *Rajab Barasa & 4 others v Kenya Meat Commission (2016) eKLR*, the Respondent submitted that fixed term contracts will not be renewed automatically even when there exists a clause allowing for such renewal.
21. It is the Respondent's submission that no evidence in the form of NHIF statements or contracts was presented by the Claimant to show that he continued working after the lapse of his contract in August 2016 or that he made a request for renewal of the same.
22. In this regard, the Respondent submitted that the Claimant has failed to adduce evidence that he was dismissed and that the Respondent was at fault as was required of him under section 47(5) of the *Employment Act*.
23. On the second issue, the Respondent submitted that the Claimant acknowledged signing all the payroll cash listing confirming receipt of all that was due to him and did not at any point challenge the contents of the same or alleged coercion into signing the same.



24. The Respondent urged the court to make a finding that nothing is owed to Claimant as he was paid all his dues. The Respondent prayed for the dismissal of the Claimant's suit with costs.

### **Determination.**

25. 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's employment was unfairly terminated
- ii. Whether the reliefs sought should be issued

26. From the evidence on record, it is not disputed that the Claimant was engaged by the Respondent at some point. What is in dispute, is whether the Claimant was unfairly terminated as alleged, or his contract expired in August 2016 as contended by the Respondent.

27. According to the Respondent, the Claimant's contract expired in August 2016 and he did not apply for renewal of the same. The Claimant on the other hand maintained that he was unfairly terminated from employment on 3<sup>rd</sup> May 2017 without any reason.

28. RW1 in his testimony produced the Claimant's employment contracts up to August 2016. On cross examination, he stated that he had not produced any payroll for 2017 which would have enabled the court to make a determination on whether the Claimant was no longer in the Respondent's employment when he alleges to have been terminated unfairly.

29. Section 74 of the [Employment Act](#) provides that it is the responsibility of the employer to keep employee records.

30. Section 47(5) of the Act on the other hand provides that (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 of employment or wrongful dismissal shall rest on the employer. The Respondent can only be called upon to justify the grounds for termination once the Claimant has proved that his employment was unfairly terminated.

31. It was the responsibility of the Claimant to prove that he worked for the Respondents after the date of the last contract produced by the Respondent. Having not done so the court must make a finding that he left the employment of the Respondent following the effluxion of his last contract on 1<sup>st</sup> August, 2016 and was not in the employment of the Respondent on 2<sup>nd</sup> May, 2017 when he alleges to have been sacked by a notice placed at Butali Sugar Mills Ltd to the effect that there was no work for Frodak employees.

### **Whether the Claimant's employment was unfairly terminated**

32. Having found that the Claimant's employment ended when his contract lapsed on 1<sup>st</sup> August, 2016, the Claimant's claim that his employment was terminated by the Respondent unfairly cannot stand. I find that the Claimant did not prove that his employment was terminated at all as the evidence on record points to the expiry of the contract when the Claimant failed to apply for renewal of the same.



### **Whether the Claimant is entitled to the prayers sought in the Memorandum of Claim**

33. In his Memorandum of Claim, the Claimant sought for a declaration that the termination process as carried out by the Respondent is unlawful and payment of terminal benefits as enumerated in paragraph 4 of this judgment. The reliefs will be addressed in separate heads as hereunder:
- i. A declaration that the termination process as carried out by the Respondent is unlawful and that during his employment with the Respondent, he was not remunerated as required by law  
Having found that the Claimant did not prove that the termination of his employment was unfair or unlawful, this prayer fails and is dismissed.
  - ii. One month pay in lieu of notice  
Having found that the termination of the Claimant employment was by expiry of his contract, this prayer must also fail. The same is accordingly dismissed.
  - iii. Compensation for unfair termination  
Having not proved unfair termination of his employment the Claimant is not entitled to compensation.
  - iv. Unpaid house allowance  
The Claimant was employed on piece rate which was consolidated and therefore inclusive of house allowance. The prayer for house allowance must therefore also fail. The same is dismissed.
  - v. Pro-rata leave  
There is no evidence on record that the Claimant ever went on paid annual leave or was ever paid in lieu thereof. The Claim for pro rata leave was however never proved. The Claimant did not as much as mention the period for which the pro rata leave claimed relates to. I find this prayer not proved and dismiss the same.
  - vi. Service pay/Gratuity  
The prayer for service pay fails as there is evidence on record showing that the Claimant was a registered member of the National Social Security Fund to which monthly contributions was made by the Respondent.
  - vii. Accrued leave earned but not taken  
As stated above there is no evidence on record that the Claimant ever went on paid annual leave or was ever paid in lieu thereof. From the evidence adduced by the Respondent the Claimant worked for the Respondent from June, 2013 to 1<sup>st</sup> August 2016, a period of 38 months. He is entitled to annual leave for the period in the absence of proof that he was either given leave or paid in lieu. I award him 66.5 days based on 1.75 days per month provided for in section 28(1) of the *Employment Act*. Since the Claimant was on piece rate I base this pay on the minimum daily wage applicable for a loader at the time the Claimant left employment in August, 2016 which was (296.20 x 66.5) Kshs. 19,697.30.
34. Consequently, judgment is entered for the Claimant in the sum of Kshs. 19,697.30.
35. In view of the fact that the claim has only partially succeeded I award the Claimant 50% of costs applicable.



**DATED, SIGNED AND DELIVERED VIRTUALLY ON  
THIS 2<sup>ND</sup> DAY OF MAY 2025  
MAUREEN ONYANGO  
JUDGE**

