



Odipo v Kenya Association of Music Producers (Employment and Labour Relations Cause 1465 of 2018) [2025] KEELRC 1924 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1924 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1465 OF 2018**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

OTIENO ODIPO CLAIMANT

AND

KENYA ASSOCIATION OF MUSIC PRODUCERS RESPONDENT

JUDGMENT

1. This matter arose out of a Memorandum of Claim filed on 11th October, 2018. The issues in dispute are therein cited as; Compensation for unfair termination; Notice payment; Payment in lieu of leave;
2. The Respondent in a Response to the Claimant's Memorandum of Claim dated 9th November, 2018 denies the claim and prays that it be dismissed with costs.
3. The Claimant in a Reply to the Respondent's Response to the Memorandum of Claim dated 25th February, 2020 prays that the Respondent's Response to Memorandum of Claim and counter claim filed be struck out and judgement be entered in his favour as prayed.
4. The claimant's case is that at all material times to this case, he was an employee of the Respondent and designated Head of Licensing since the 1st August, 2014. He avers that for the entire stint of his employment up to and also during the 3rd August, 2017 when he was dismissed, he discharged his duties diligently and faithfully.
5. The Claimant's further case is that on 7th November, 2018, the Respondent suspended the claimant from duty on grounds of high handedness and allegations of fraud but on 25th November, 2016 the Respondent asked him to resume duty but failed to provide the claimant with the results/findings of investigation. Thereafter, the claimant's employment was terminated on 3rd August, 2017 without notices or lawful justification. He earned Kshs.106,783.00 then.



6. The claimant further avers that on the 21st day of September, 2017, the respondent placed a notice to the General public in the Daily Nation with a photo of him and other field agents who had been dismissed for misconduct informing the public that they were no longer authorized to transact on the respondent's behalf. The said Notice also had the claimant's photo, name and identity card number. This was malicious and calculated to injure his reputation and portray him as a dishonest employee of questionable integrity who was involved in unethical and unprofessional conduct. This advert was needless, reckless and malicious and has caused him great distress, agony, mental torture, depression, humiliation, opprobrium and contempt in the glare of the public.
7. He claims thus;
 - a. 12 month's salary as damages for unfair termination.....Ksh.1,281,516.00
 - b. 3 Months salary in lieu of notice.....Ksh.323,382.00
 - c. Unpaid Leave for 36 days [106,793/26*36].....Ksh.147,867.00
 - d. Severance pay @ 15 day's pay for 3 complete years worked
[106,793/26*15*3].....Kshs184,834.00

Total.....Kshs.1,937,599.00
8. He prays thus;
 - a. A declaration that the Respondent's termination of the Claimant's employment was illegal lawful, and that the Claimant is entitled to payment of his terminal dues
 - b. General damages for unfair and illegal termination
 - c. General damages for defamation
 - d. An order for the Respondent to pay the Claimant her terminal dues totaling to 1,937,599.00
 - e. An order for the Respondent to Issue the Claimant with Certificate of service.
 - f. Costs of the claim plus interest thereon.
 - g. Any other or further relief this court deems and just to grant.
9. The Respondent's case is a denial of the claim.
10. In further response, the Respondent avers as follows;That the claimant was employed as Head of Licencing on a three [3] year contract that commenced on 1st August, 2014 to 31st July, 2017.The claimant was never dismissed from employment on 3rd August 2017 but was merely required the claimant to clear with the respondent on expiry of his contract of employment on 31st of July 2017.The claimant was lawfully suspended from employment based on numerous serious and credible allegations against him by the Respondent's music users.The fact that the claimant was allowed to resume duty after investigations indicate that his suspension from duty was made in good faith and was not actuated by malice.A letter informing the claimant of non-renewal of his contract of employment with the respondent was promptly made on 31st July 2017.The notice placed for information to the general public by the respondent in the Dally Nation of 21st September 2017 was not defamatory to the claimant and was not intended as such. It was merely for information to the general public that the claimant and the other employees in the notice were no longer employees of the respondent which was



factually true and in public interest. The claimant was not entitled to any notice on expiry of contract. This was not renewed and the Respondent had no legal obligation so to do. The Respondent has been willing to pay the claimant's dues on expiry of the contract but the claimant has not been keen on this. The Respondent denies that the Claimant earned Kshs.106,793.00 per month.

11. It is the Respondent's penultimate case that the claimant was not established a reasonable cause of action against the Respondent and is therefore not entitled to the prayers sought.
12. The Claimant's reply to the Respondent's Response to the Memorandum of Claim is a mere reiteration of his case and denial of the Response.
13. The issues for determination therefore are;
 1. Whether there was a termination of the employment of the Claimant by the Respondent.
 2. Whether the termination, if at all, was wrongful, unfair and unlawful.
 3. Whether the Claimant is entitled to the relief sought.
 4. Who bears the costs of the cause?
14. The 1st issue for determination is whether there was a termination of the employment of the Claimant by the Respondent. The Claimant submits a case of delayed non-renewal on his contract of employment which subsequently culminated in a letter of non-renewal dated 31st July, 2017.
15. The Claimant treats this non-renewal as a case of redundancy and submits authorities in support of his case for unlawful termination of employment. However, this is irrelevant and inapplicable in the substances. Clause 3.1 of the parties Employment Agreement dated 1st August, 2014 stipulates the basic terms of employment on tenure. This is as follows;
 - 3.1 The Employee will commence employment with the Company with effect from 1st August 2014 and shall remain in effect for a period of three [3] years, unless otherwise terminated as provided for within this Agreement.
16. This supports the Respondent's case and submission that the Claimant served on a three year fixed term contract whose expiry was 31st July, 2017. The Respondent elected not to renew the contract and this was communicated to the Claimant on due date. This is accepted and acknowledged by the Claimant in his witness statement. A case of termination of employment therefore does not ensue and I find as such.
17. On a finding of no termination of employment, the other issues for determination fall by the way side.
18. Perhaps the only remaining issue worth mentioning is one of costs. Who bears the costs of this cause? I note that in the circumstances, the Claimant is an adult of very sound mind. At all time before the onset of this cause and proceedings, he was always aware that his was a fixed term contract for three years. The issue of renewal or otherwise of the Agreement was neither nor there. It was not based on the discretion of the Respondent's employer. This matter has been with us for tending to eight years. Why then did he choose to pursue a claim he well knew or ought to have known did not exist? Was this a gamble with the due process of the law? I have no answers. I however find this offensive to industry. To cure this mystery, it is only fair that the Claimant be condemned to costs.
19. I am therefore inclined to dismiss the claim with costs to the Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE



JUDGE

Appearances:

Miss Moraa holding brief for Kimiti instructed by Kimiti & Associates Advocates for the Claimant.

Miss Irungu holding brief for Ngata Kamau instructed by Ngata Kamau & Company Advocates for the Respondent.

