Emodo v Sheer Logic Management Consultants (Cause E149 of 2021)
[2025] KEELRC 2412 (KLR) (4 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2412 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE E149 OF 2021

HS WASILWA, J

SEPTEMBER 4, 2025

BETWEEN

GORDON EMODO ..... CLAIMANT

AND

SHEER LOGIC MANAGEMENT CONSULTANTS ..... RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide Memorandum of Claim dated 17th December 2021 and prays for judgment against the Respondent for:

    a. A declaration that the Claimant's dismissal from the Respondent's service was unfair and unlawful;

    b. The Respondent do issue the Claimant with a Certificate of Service;

    c. An order for the Respondent to pay the Claimant his terminal dues and compensatory damages totalling Kshs. 1,297,990;

    d. Costs of this suit; and

    e. Interest on (c) and (d) above.

Claimant's Case

2. The Claimants avers that he was employed by the Respondent on 1st May 2009 as a general worker to be deployed at any working station at the Respondent's choice based on the need of provision of services to its clients.

3. The Claimant avers that he was deployed to work at the Kenya Breweries Limited and he discharged his duties at the work station strictly under the Respondent's control in every aspect of employment including remuneration.

4. The Claimant avers that he served the Respondent continuously, diligently and lawfully until 30th September 2019 when the Respondent summoned him among other employees and summarily terminated his employment without due procedure, just cause and/or explanation whatsoever.

5. The Claimant avers that the Respondent neither issued him any notice of intention to terminate his services nor paid his salary in lieu of notice thus the said termination was unfair.

6. The Claimant avers that at the time of the said termination, he was earning a monthly salary computed at Kshs. 49,925

Respondent's Case

7. In opposition to the Memorandum of Claims, the Respondent filed a Memorandum of Response dated 28th February 2022.

8. The Respondent avers that it formally engaged the Claimant as a logistic casual attached to East African Breweries Limited (EABL) and earning on piece rate basis.

9. The Respondent avers that the terms of the Claimant's employment was that he would be paid monthly according to the amount of work done at East African Breweries as evidenced by the attendance schedule indicating how much work he had done per day and duly executed by the Claimant.

10. The Respondent avers that the Claimant was engaged in piece rate work in the form of arranging crates and or sorting bottles on the correct crates an exercise known as conversion and he was paid according to the number of crates or bottles handled per day.

11. The Claimant's monthly salary fluctuated as it was dependent on the amount of work done per day as evidenced by the copies of payslips.

12. It is the Respondent's case that by a letter dated 28th August 2019, EABL informed it that they would be descoping service related to logistics with effect from 29th September 2019. Subsequently, the Claimant and his colleagues in piece rate work were summoned to a meeting on 12th September 2019 and the Claimant executed an attendance sheet signifying that he indeed attended the meeting.

13. During the meeting, the Claimant was informed that the Respondent's contract with EABL was coming to an end and that his employment would consequently be terminated.

14. It is the Respondent's case that they then engaged EABL on the same and as a result the notice was extended up to November 2019 and in effect the Claimant had more than one month notice of termination.

15. The Respondent avers that Claimant was issued with a notice collectively in a staff meeting that his employment which was contingent with EABL contract would terminate and that the next service provider may absorb him into their employment, therefore, he was issued the requisite notice as per the provisions of Section 35 of the *Employment Act*. On 1st November 2019, the Claimant was absorbed to the new company Q-Sourcing as a sign of good will.

16. The Respondent denies the particulars of the terminal dues claimed by the Claimant and avers that he was paid on piece rate therefore he did not have a specific salary.

17. It is the Respondent's case that the termination was neither its fault nor the fault of the employee and that it was carried out fairly as the Claimant was given reasonable notice. Additionally, the termination was for a proper and justifiable reason and was procedurally sound thus there is no justification for payment of damages.

Evidence in Court

18. Vide an order of this court fiven on 13th March 2025, this file was consolidated with several others in file E151 of 2021 and the hearing was conducted on 30th April 2025 as follows.

19. Zephanoa Sabonsi, the Claimant in E151 of 2021 (CW1) adopted his witness statement dated 16th December 2020 as his evidence in chief and produced the filed list of documents dated even date as his exhibits 1-6.

20. CW1 produced a consent dated 11th March 2025 in which the other Claimants granted him authority to present their case on their behalf.

21. During cross-examination, CW1 testified that he has no employment contract to show he started working in 2009. He contends that they just started working and they all started working at different dates.

22. CW1 testified that the Claimants all signed the attendance sheet dated 12th September 2019 and they all attended the meeting held on that date which started at 9.15 a.m.

23. CW1 testified that the Claimants were indeed absorbed by Q- Sourcing Limited in October 2019.

24. CW1 testified that the Respondent gave them notice on 12th September 2019 and they were given the option to join Q-Sourcing and Felix Oduor is still an employee of Q-Sourcing.

25. CW1 testified that their payslips do not a similar salary; their salaries varied because they were piece rate employees.

26. CW1 testified that they were paid NSSF and as of October 2019, they were employees of Q-Sourcing.

27. Gordon Emodo, the Claimant herein (CW2), adopted his witness statement dated 17th December 2021 as his evidence in chief.

28. The Respondent's witness Patman Otieno (RW1) testified that he works for the Respondent as the Human Resource Business Partner. He adopted his witness statement dated 27th February 2022 as his evidence in chief and produced the filed bundle of documents dated 28th February 2020 as his exhibits 1-5.

29. During cross-examination, RW1 testified that the Claimants were not casuals but they were employed on piece rate.

30. RW1 testified that the Claimants were not notified of the Kenya Breweries Limited's letter and its consequences.

31. RW1 testified that the Respondent later had a meeting with the Claimants on 12th September 2019 and gave them 18 days' notice which was adequate as they were piece rate employees.

32. RW1 testified that the meeting was to prepare the Claimants for the eventuality.

33. RW1 testified that the Claimants were called to work when work was available as they were on piece rate. Therefore, had no leave days as they worked for 2 days a week.

Claimant's Submissions

34. The Claimant submitted on two issues: whether the Claimant was terminated without due notice; and whether the Claimant is entitled to the terminal dues sought in the Memorandum of claim

35. On the first issue, the Claimant submitted that the Respondent summoned him on 12th September, 2019 and orally informed him that his employment had been terminated as from 30th September 2019; the period between these days do not add up to 28 days, but are a total of 18 days.

36. The Claimant relied on the Court of Appeal case of Krystalline Salt Limited v Kwekwe Mwakele & 67 others [2017] KECA 717 (KLR) where the Court of Appeal pronounced itself as follows:

> "We think however that the determination should have been made under section 18 (1) (b) as read with section 35 (1) (c). The former deals with the intervals of payment and provides; ....."18. (1) Where a contract of service entered into under which a task or piecework is to be performed by an employee, the employee shall be entitled - .....(b) in the case of piece work, to be paid by his employer at the end of each month in proportion to the amount of work which he has performed during the month, or on completion of the work, which date is the earlier."(Emphasis)
>
> On the other hand, section 35(1) (c) provides for the manner of termination of various forms of employment in the following terms:- "35(1)A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be .....(c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.....A piece rate worker would, in terms of these provisions be entitled to a notice of 28 days before termination of service"

37. It is the Claimant's submission that the Respondent completely disregarded the provisions of the Act by firstly, casually summoning the Claimant to an oral meeting just 18 days to his termination and secondly, failing to issue a notice in writing to the Claimant for the said termination, which was in complete absence of procedural fairness.

38. On the second issue, the Claimant submitted that having established that the said termination was without notice hence unfair, he deserved the award of terminal dues. He relied on Section 49 (1)(c) of the *Employment Act* which provides:

> "where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following— ..... (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal."

39. The Claimant submitted that he is entitled to 12 months salary compensation premised on the ground that a want of notice equates to unfair termination. He relied in Owuor v Rea Vipingo Plantations Ltd [2022] KEELRC 1452 (KLR) wherein the learned judge in paragraph 26 stated as follows:

> "On the claim for unfair termination of employment, and having made a finding that termination of the claimant's piece rate engagement from 2015 to October 2016 was

procedurally unfair for want of termination notice, I award the claimant six months' salary (ksh.10,800x6) being compensation for unfair termination of employment."

40. The Claimant submitted that he is entitled to the dues on untaken leave. The Respondent stated before this Court that the Claimant being a piece rate worker, he was not entitled to proceed for leave, however, any other employee, the Claimant was duly deserving of leave days.

Respondent's Submissions

41. The Respondent submitted on three issues: whether the Claimant was a piece rate worker; whether the termination of the Claimant's employment was wrongful and unlawful; and whether the Claimant is entitled to the reliefs sought.

42. On the first issue, the Respondent submitted that the Claimant was a piece rate workers and not casual workers. Section 2 of the *Employment Act* defines piecework as follows: -

> " any work the pay, for which is ascertained by the amount of work performed irrespective of the time occupied in its performance." On the other hand, casual employee is defined as: - "a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time."

43. It is the Respondent's submission that the bundle of payslips produced show that the claimant was a piece-rated employee. The Claimant himself testified that he and his colleagues were piece-rated employees and his salary was not static, but changed from month to month depending on the work done. This was confirmed by RW1 who testified that the amount of salary payable to the Claimants depended on work done.

44. The Respondent submitted that if the Claimant was a casual employee, he would not have had varying amounts of payments each month. Consequently, the provisions of Section 37 of The *Employment Act* would have been applicable. As a piece-rate worker, he wasn't required to come to work daily, only when work was available which dues were always paid for the work done.

45. It is the Respondent's submission that the facts of the subject matter as well as evidence tendered during the proceedings are a clear indication that the Claimant was a piece rate worker who was not obliged to report daily.

46. On the second issue, the Respondent submitted that whereas the Claimant claims that his employment was terminated without being given notice or reasons; the Respondent's client vide a notice dated 28th August, 2019 expressed its intention to terminate the outsourced labour contract it held with the Respondent, which triggered the notice 12th September, 2019 to the Claimant.

47. Additionally, the Claimant acknowledged he and his colleagues' presence at the meeting by appending their signatures. During cross examination, he also acknowledged that that they were briefed of the Respondent's contract coming to an end with Kenya Breweries Ltd, and they subsequently all cleared with the Respondent and joined Q-Sourcing Ltd in October, 2019.

48. It is the Respondent's submission that Sections 35 and 41 of the *Employment Act* provides that an employee should be issued with a termination notice giving reasons leading to such action, to allow the employee the benefit of addressing the notice in terms of Section 47(5) of the Act. The Claimant was issued with an 18days notice, in line with the two-week intervals within which the claimant was being paid as evidenced by the pay slips tabled in by both parties in documentary evidence, therefore, he was not unfairly dismissed.

49. The Respondent submitted that Section 35(1)(c) of the *Employment Act* on termination notice provides that a contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.

50. It is the Respondent's submission that the law under Section 35 states that termination notice does not apply to contract to perform specific work (piece rate work) and the same was echoed in paragraph 49 of Asakhulu v West Kenya Sugar Company Limited [2024] KEELRC 705 (KLR).

51. The Respondent submitted that the Claimant was not unfairly dismissed, his tasks with the Respondent simply came to an end and even then, he was duly notified of the contract with the Respondents' client coming to an end. The Respondent is purely bound by contractual obligations with its client and could not continue to offer labour services without a contract for the same being in force.

52. On the final issue, the Respondent submitted that the Claimant was given sufficient notice thus the claim for one-month salary in lieu of notice is unfounded.

53. The Respondent submitted that the claim for October 2019 salary is unfounded and without merit because it has demonstrated through its evidence on record, in specific, the NSSF statement, that the Claimant was an employee of Q-SOURCING Limited in October, 2019. Additionally, the Claimant did not earn a constant salary as demonstrated by the payslips filed by the Respondent. He was a piece rate employee who earned his salary after a fortnight.

54. The Respondent submitted that having demonstrated through these submissions that the claimant was a piece rate employee, the law is instructive that piece rate workers are not entitled to leave as a benefit. It relied on the Court of Appeal decision of Krystalline Salt Limited v Kwekwe Mwakele & 67 others [2017] KECA 717 (KLR) wherein the Court said:-

> " In a piece work or, as it is sometimes called, piece rate arrangement, the emphasis is on the amount of work and not the time expended in doing it. The decision to elect which form of employment to go for, either as an employee or employer will depend on a number of factors, but the dominant consideration is, for the employee, the earnings and other physical conditions of employment, and on the other hand, savings for the employer. An employee under piece work arrangement, though not entitled to all or some of the benefits of the other forms of employment, is at least entitled to minimum wage."

55. It is the Respondent's submissions that Claimant is not entitled to service pay having been put in the NSSF scheme as Section 35 (6) (d) of The *Employment Act* stipulates that it shall not apply where an employee is a member of the National Social Security Fund.

56. The Respondent submitted that it did not unlawfully terminate the Claimant's employment, its contract with East African Breweries Ltd came to an end which triggered end of the Claimant's employment based on the circumstances. The Respondent therefore urges the court to decline the award for damages as prayed for reason that the nature of the Respondent's business is that of outsourcing labour, therefore, mostly bound by its contractual obligations with the subject client and has no control over when the contract may come to an end. Compensation as prayed for will be an unjust enrichment at the Respondent's expense with regard to consideration of the 13 factors set out under section 49 (4) of the *Employment Act*.

57. I have examined all the evidence and submissions of the parties herein. The issues for this courts submission are (1) whether the claimant was a casual labour or piece rate employee of the Respondents, (2) Whether the termination of the claimant was fair and justified, and (3) whether the claimant is entitled to the remedies sought.

58. On the first issue, the Respondents submitted that the bundle of pay slips produced show that the claimant was a piece-rated employees. The CW2 testified that he and his colleagues were piece-rated employees and his salary was not static, but changed from month to month depending on the work done. This was confirmed by RW1 who testified that the amount of salary payable to the Claimants depended on work done. Having considered this position, it is evident that the relationship between the claimant and the Respondents was not a casual employment relationship but piece rated engagement.

59. On the second issue, it is clear that the employment of the claimants was based on work available and this work came to an end when the EABL terminated their engagement with the Respondent. It is therefore clear that the respondents didn't deliberately terminate their engagement with the claimant but this relationship was of a nature that it remained standing as long as EABL needed the services and this understanding was very clear. The issue of wrongful termination does not therefore exist.

60. On the remedies sought, the claimant sought to be paid terminal dues. The details of the terminal remedies have not been set out. That notwithstanding, it is also true that the Claimant was a member of NSSF and so his terminal dues if at all were covered in his NSSF contributions and remittances. There is no any other dues he explained were due to him.

61. The only other prayer sought is for issuance of a certificate of service which I grant him accordingly. Given the nature of the claim, I will not grant any order for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE