



**Munyoki v Tiramisu Limited (Employment and Labour Relations Cause E6513 of 2020) [2024] KEELRC 51 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELRC 51 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6513 OF 2020**

**MN NDUMA, J  
JANUARY 25, 2024**

**BETWEEN**

**EVANS WAMBUA MUNYOKI ..... CLAIMANT**

**AND**

**TIRAMISU LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed on 2/12/2020 by the claimant against the respondent seeking maximum compensation for unlawful and unfair dismissal; one month salary in lieu of notice and payment of Kshs. 180,000/= gratuity in terms of clause 1 of the letter of employment.
2. CW1 testified that he was employed by the respondent by a contract commencing on 1/7/2013 to end on 1/7/2014 and for a further period of one year and subsequently other contract terms were to be negotiated.
3. CW1, the claimant adopted a written statement dated 17/11/2020 as his evidence in chief. He also produced exhibits 'I' to 'J' of the even date.
4. CW1 testified that he worked for respondent as a Master Baker from the year 2013 until the year 2019 when the employment was terminated. That no reason was given for the termination. CW1 said he got no notice of termination; no notice to show cause and no disciplinary hearing was held before the termination. CW1 said he had trained other bakers and the respondent simply felt that they no longer needed the claimant as the master baker.
5. The claimant earned Kshs. 54,675/= at the time of termination. The claimant had served the respondent for a period of six (6) years.
6. Under cross-examination, the claimant denied that he was an employee of Zucchini and insisted that he was still an employee of the respondent Tiramisu Ltd.



7. The claimant said he was not aware of a memo of understanding between Zucchini and Tiramisu dated 2/1/2015 in terms of which employees of Tiramisu were taken over by Zucchini. The claimant said he worked for the respondent but Zucchini paid him for some months.

The claimant insisted that he never attended a meeting called by Zucchini and no disciplinary hearing was held.

8. The claimant admitted that a payment of Kshs. 54,000/= was paid to his account upon termination. The claimant said Kshs. 54,000/= was his net salary and the payslips show that he was paid by Tiramisu but he did not have the payslip in court. The claimant denied that he ever got a warning letter from Zucchini or from Tiramisu and Mr. Jandu employed him and he sourced him.
9. The claimant said one Stella Muli was the Human Resource Officer of Tiramisu and Zucchini. That he got his payslips from Tiramisu and not Zucchini. That the claim be granted as prayed.

### **Defence**

10. The respondent called Sharon Laura Wanjiku, as RW1. She said she was the Human Resource Manager of Zucchini Green Grocers Limited. She adopted a written statement dated 22/3/2023 as her evidence in chief and produced documents dated 8/2/2021 in support of the respondent's case. She told the court that she was employed by Zucchini in December 2020 and did not know the claimant personally but had access to his file. RW1 told the court that Tiramisu was wound up and its employees were taken over by Zucchini. RW1 said she found warning letters for the claimant and payslips of the claimant in his file. RW1 produced a Gazette Notice (P12201392 830), which notified the closure of Tiramisu.
11. RW1 under cross-examination said that the claimant was not given a new contract by Zucchini. RW1 stated that she did not know if the claimant received money paid upon termination. RW1 said there was no notice to show cause in the claimant's file but there was a notice to attend disciplinary hearing but same was not signed by the claimant to acknowledge receipt. RW1 said that the claimant had worked for six (6) years.

### **Determination**

12. The parties filed written submissions which the court has considered together with the evidence produced by CW1 and RW1. It is not in dispute that the claimant was employed by Tiramisu Limited, the respondent on 1<sup>st</sup> July 2013.  
The claimant continued to serve as a master baker for a period of six(6) years.
13. However, RW1 testified that Tiramisu Limited was wound up and does not exist anymore. She did not produce tangible documentary evidence to that effect. RW1 stated which was denied by the claimant that the claimant was taken over by a new company called Zucchini, Green Grocers Ltd as an employee and it was Zucchini that terminated the employment of the claimant in 2019. The claimant however denied that he was an employee of Zucchini but relied on payslips issued by Zucchini Green Grocers Limited for the month of September 2019. The letter of dismissal dated 7/10/2019, Produced by the claimant himself was written on a letterhead of Zucchini and signed by Director Zucchini Green Grocers Limited.
14. The evidence before court indicates that the claimant was summarily dismissed by the employer before being issued with a notice to show cause and was not provided with opportunity to explain himself at a disciplinary hearing.



15. It would have been prudent for the claimant to sue both Tiramisu Limited and Zucchini Green Grocers Limited if there was no certainty who was his true employer.
16. If indeed Tiramisu Limited was wound up and does not exist, this suit and the outcome would be in vain and not beneficial to the claimant. It is upon the claimant and his counsel to do due diligence before filing suit on the legal status of the respondent.
17. As it is now, going by the initial contract of employment, the claimant was employed by Tiramisu Limited and there is no other contract that superseded this relationship.
18. The initial contract was for a fixed term of two years and further extension were not evidenced by any written contract between the claimant and the respondent.
19. It is the court's finding and decision that the summary dismissal of the claimant was not for a valid reason and the employer did not follow a fair procedure in summarily dismissing the client. The employer of the claimant violated section 36, 41, 43 and 45 of the *Employment Act* 2007 in summarily dismissing the claimant. The claimant admitted that he received Kshs. 54,675/= upon dismissal which was the equivalent of his one month net pay.
20. The claimant was upon completion of three years' service entitled to payment of Kshs. 180,000/= gratuity in terms of clause 1 of the contract. The claimant was not paid this amount and this may explain the effort by the respondent to change the name and identity of the employer of the claimant without first satisfying the terms of the existing contract of service between the claimant and Tiramisu Limited.
21. The court finds that Tiramisu Limited owed the claimant Kshs. 180,000/= being gratuity payable to him upon completion of his 3<sup>rd</sup> year on 1<sup>st</sup> July 2015. If Zucchini took over the employment of the claimant, it was equally bound to pay the gratuity to the claimant as at 1<sup>st</sup> July, 2015. The court awards the claimant the said sum accordingly.
22. The claimant was clearly paid one month salary upon termination and so is not entitled to a further payment in lieu of notice.
23. The claimant is however entitled to compensation for unlawful and unfair dismissal in terms of section 49(1)(c) and (4) of the *Employment Act*, 2007. In this regard the court finds that the claimant had served the respondent for a period of 9 years. The claimant was not paid gratuity upon completion of 3 years as per the contract of employment. The claimant was not compensated upon being dismissed unlawfully. The claimant lost good career advancement as a master baker and suffered loss and damage.
24. The court relies on, Cause No 70 of 2020 *Jack tone Otoyoto Otieno versus Port Florence Community Hospital* and *Peter Okoth Odhiambo versus Kenya Kazi Services Ltd* (2022) eKLR to consider this an appropriate case to award the claimant the equivalent of eight (8) months' salary in compensation for the unlawful and unfair termination of his employment in the sum of Kshs. 437,400/=.
25. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:-
  - a. Kshs. 437,400/= in compensation.
  - b. Kshs. 180,000/= being unpaid gratuity  
Total award Kshs. 617,400/=
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit.



**DATED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JANUARY, 2024**

**MATHEWS N. NDUMA**

**JUDGE**

Appearances

Mr. Momanyi for Claimant

Ms. Sharon for Respondent

Ekale: Court Assistant

