



Lusige v Metal Crowns Limited (Employment and Labour Relations Cause 2295 of 2016) [2024] KEELRC 185 (KLR) (8 February 2024) (Judgment)

Neutral citation: [2024] KEELRC 185 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2295 OF 2016**

MN NDUMA, J

FEBRUARY 8, 2024

BETWEEN

HUDSON LUSISA LUSIGE CLAIMANT

AND

METAL CROWNS LIMITED RESPONDENT

JUDGMENT

1. The claimant filed suit on 11/11/2016 seeking maximum compensation for unlawful dismissal from employment and payment of terminal benefits as set out at paragraph 6 of the memorandum of claim; costs and interest.
2. The claimant (CW1), relied on a witness statement dated 24/10/2016 which he adopted as his evidence in chief. He told the court that he was employed by the respondent on 1/9/2000 as a Forklift Operator. Due to unsafe working conditions, he fell ill and was admitted at Nairobi West Hospital from 28/6/2015 to 22/9/2015. That he was discharged and resumed duty but found that his employment had been terminated on 21/8/2015 without any valid reason or following a fair procedure. CW1 stated that the respondent alleged to have received the claimant's letter of resignation which was not true since the claimant was bedridden and could not have written a letter of resignation.
3. CW1 said he was wrongfully dismissed without notice and without following due process. The claimant prays for the reliefs sought.
4. Under cross-examination by counsel for the respondent Mr. Kabue, the claimant denied that he had written a letter of resignation dated 12/8/2015. CW1 said he was given a letter which he signed but did not read it or know its contents as he was bedridden at the Nairobi West Hospital.
5. The claimant acknowledged that he was paid some money by the respondent as per the letter dated 21/8/2015. The claimant said that he did not refute the letter of resignation at the time of payment.



- The claimant explained that the respondent got him from hospital and took him to the bank where he was made to sign a paper. That he was then given money and the papers were taken from him.
6. CW1 said he was not given leave but had no documents to elaborate that. CW1 said also that he worked during public holidays, but had no documents to show that.
 7. The claimant reiterated that he did not write the letter of resignation nor the one accepting payment. That these are typed letters which he signed while he was sick.
 8. RW1, John Karen relied on a witness statement dated 6/6/2022 as his evidence in chief. He produced exhibits '1' to '21' in support of the respondent's case.
 9. He told the court that the claimant was employed on 1/9/2000 as a Forklift Operator and worked until 20/8/2015 when he voluntarily resigned from his employment through a letter of the same date.
 10. That the respondent communicated their acceptance of the claimant's resignation by a letter dated 21/8/2015. That the claimant was paid terminal dues in the sum of Kshs. 491,848.17 vide cheque no. 043132 which cheque the claimant accepted on 28/8/2015 by signing on a copy of the said cheque. That the cheque was banked in the account of the claimant at Co-operative Bank on 29/8/2015, being account no. 01116027688500. This was the same account the claimant used all along.
 11. That the claimant signed a discharge certificate on 28/8/2015 after receiving his terminal dues in the presence of his witness one, Joseph Kagai. That the discharge certificate stated that the claimant had no further claims against the respondent.
 12. RW1 produced the letter of resignation dated 20/8/2015 which the claimant admitted he had signed but not voluntarily as he was made to sign it while in a hospital bed.
 13. RW1 also produced the letter of acceptance dated 21/8/2015 and the tabulated terminal benefits for the claimant dated 27/8/2015 in the sum of Kshs. 491,848.17. The terminal dues included salary for days worked up to 31/8/2015; 100 days in lieu of notice and payment in lieu of untaken leave days in the sum of Kshs. 693,972.25 less deduction made of Kshs. 202,124.07 in respect of PAYE and other deductions that included a company loan.
 14. RW1 also produced a discharge certificate duly signed by the claimant on 28/8/2015 and was witnessed by one Joseph Kagai. The claimant acknowledges that he had received Kshs. 491,848/= being his final dues and that "I have no further claims against Metal Crowns Ltd today or in future." RW1 also produced a certificate of service dated 4/9/2015 given to the claimant.
 15. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and RW1. RW1 under cross-examination admitted that he did not personally attend to the claimant's matter since he had not been employed then.
 16. That however, he was in the custody of the work records of the claimant which documents clearly show that the claimant voluntarily resigned from employment and he received terminal benefits in full and final settlement. That the claimant absolved the respondent from any further liability emanating from the employment relationship.
 17. In terms of Section 107 and 108 of the *Evidence Act* Cap 80 Laws of Kenya, the claimant has the onus of proving that the respondent terminated his employment and that he did not resign from employment.
 18. Once the claimant has demonstrated that his employment was terminated by the respondent, the onus of proving that the termination was for a valid reason, following a fair procedure, shifted to the respondent in terms of sections 43, 45 and 47(5) of the *Employment Act*, 2007.



19. In the present case, the claimant did not come forth as a truthful witness. The respondent ably demonstrated that the claimant had freely and voluntarily signed a letter of resignation from his employment and brought a witness who together with the claimant signed a certificate of discharge upon payment of terminal benefits to the claimant.
20. The court is satisfied that the claimant understood that he had tendered a resignation letter from his employment to the respondent and freely and voluntarily received terminal benefits paid to him subsequent to which he executed a discharge certificate.
21. The court finds that the claimant has failed to prove on a balance of probability that he was unlawfully and unfairly dismissed from employment.
22. The claimant has also failed to prove that he was owed any further terminal benefits by the respondent having freely and voluntarily discharged the respondent from any further liability upon receipt of the terminal benefits.
23. The entire claim and the reliefs set out therein lack merit and the suit is dismissed in its entirety.
24. Taking into account the good relationship between the claimant and the respondent and that he got sick while working for the respondent, the court regards this as an appropriate case for each party to meet their own costs of the suit.

MATHEWS N. NDUMA

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF FEBRUARY, 2024

Appearances

Mr. Bundi for claimant

Mr. Kabue for Respondent

Ekale: Court Assistant

