



**Nyamoringo v Honey Suckle Residents Association (Cause
325 of 2017) [2024] KEELRC 777 (KLR) (28 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 777 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 325 OF 2017
J RIKA, J
MARCH 28, 2024**

BETWEEN

KEPHA NYAMORINGO CLAIMANT

AND

HONEY SUCKLE RESIDENTS ASSOCIATION RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 17th February 2017.
2. He states that he was employed by the Respondent as a Security Guard, on or about 8th December 2009.
3. His salary was Kshs. 8,463 monthly. It was raise to Kshs. 13,000 subsequently.
4. He was informed by one Harrison Koech, who had engaged him, that his services with the Respondent were no longer required, from 2nd June 2016 or thereabouts.
5. He was advised to return his work uniform, which he did. Termination was without notice or cause. It was unfair and unlawful.
6. The Claimant prays for: -
 - a. Declaration that termination was unfair and unlawful.
 - b. 1-month salary in lieu of notice at Kshs. 14,950.
 - c. Annual leave at Kshs. 89,700.
 - d. Public holidays at Kshs. 92,000.
 - e. Off-duty days at Kshs. 331,200.



- f. Salary underpayments [2012-Kshs. 13,030; 2013- Kshs. 29,384; 2014- Kshs. 29,384] –total Kshs. 72,071.
 - g. Unremitted N.S.S.F contributions [2010-2014] at Kshs. 6,400.
 - h. Overtime at Kshs. 744,422.
 - i. Long service allowance at 50% of the basic salary at Kshs. 7,475.
 - j. 12 months’ salary in compensation for unfair termination at Kshs. 179,400.
Total ... Kshs. 1,533,218.
 - k. Certificate of Service.
 - l. Costs.
 - m. Interest.
7. The Respondent filed its Statement of Response, dated 28th March 2022. Its position is that the Claimant absconded. He materially breached the terms of his contract and was ripe for summary dismissal. The claims for annual leave and public holidays, if any, were settled during service. The Claimant was not underpaid. All statutory deductions made were paid to the relevant bodies. No overtime pay was due to the Claimant. He is not entitled to compensation, as he was eligible for summary dismissal on absconding.
8. The Claimant gave evidence and closed his case, on 23rd March 2023. The Respondent did not give evidence, and the Respondent’s case closed on the same date, 23rd March 2023. The Claim was last mentioned before the Court on 30th November 2023, when the Parties confirmed filing and exchange of their Closing Submissions.
9. The Claimant adopted as his evidence-in-chief, his witness statement on record, and documents exhibits 1-3. His witness statement is a replica of his pleadings, as summarized above.
10. On cross-examination, he told the Court that he was employed in 2009. His salary was about Kshs. 7,000 monthly. He was paid through a payment voucher. He did not exhibit any voucher. Clause 3 of his contract provided for dismissal without notice. He was aware of this clause. He understood his duties. He was to follow his supervisor’s instructions. There was a code of conduct. He was never drunk at work. He did not sleep while on duty. The contract has a clause on arbitration. He did not understand what arbitration is. There is no documentation showing underpayment, overtime, and public holidays worked. Redirected, he told the Court that the Respondent never complained that he slept or was drunk while on duty. He confirmed that his contract had an arbitration clause.

The Court Finds:

11. Clause 10 of the contract concluded between the Parties, dated 12th February 2012, exhibit 1 of the Claimant’s documents, states: -
- “ Any dispute between the two parties, on the interpretation or implementation of this agreement, shall be referred to a single arbitrator and the making of any award thereby, shall be a condition precedent to the right to institute any proceedings in a court of law or otherwise. ”
12. The Claimant in his evidence, acknowledged the presence of this arbitration clause, in his contract.



13. He did not however inform the Court whether he referred his dispute to a single arbitrator, and whether there was an award of the arbitrator made, before he presented his Claim before the Court.
14. The contract is clear that the Court, or other dispute settlement forum, could only assume jurisdiction, after the Parties had been heard by a single arbitrator, and an award made. This was a condition precedent, to any litigation or statutory conciliation.
15. Why does the Claimant wish the Court to enforce other clauses in the contract, except the clause on arbitration? Contracts of employment are not enforced selectively; they are enforced holistically.
16. The Claim was filed prematurely. The Court could only assume jurisdiction after arbitration and after an arbitral award was made. That was the intention of the Parties, as evidenced in their contract.

It Is Ordered:

- a. The Claim is declined for want of jurisdiction.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 28TH DAY OF MARCH 2024.

JAMES RIKA

JUDGE

