



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Waiganjo Investments Ltd (Cause 978 of 2018)
[2024] KEELRC 509 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 509 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 978 OF 2018
B ONGAYA, J
MARCH 7, 2024**

BETWEEN

ZACHARY MOKAYA MAINA CLAIMANT

AND

WAIGANJO INVESTMENTS LTD RESPONDENT

JUDGMENT

1. The Claimant filed a memorandum of claim dated 17th June, 2018 and filed in Court on 18th June, 2018 through the firm of Arati & Company Advocates. The Claimant prayed for Judgment against the Respondent for:
 - a. Compensation as calculated below:
 - i. Payment in lieu of one-month notice Kshs. 27,000/-
 - ii. Salary in lieu of leave Kshs. 27,000/-
 - iii. Compensation damages for abrupt
And traumatic loss of employment Kshs. 162,000/-
 - iv. Service Kshs. 13,500/-
 - v. Overtime Kshs. 47,140/-Total Kshs. 276,640.63/-
 - b. Compensation for unlawful termination as specified above
 - c. Costs of this suit



- d. Interest on the above compensation at the rate of 12% per annum from the date of termination of service until payment in full.
 - e. Any other relief as the Court may deem just and fit to grant.
2. In his Memorandum of Claim, the Claimant states that he was employed by the respondent herein, a limited liability company on or about 1st January, 2016 in the position of a driver and was earning a monthly salary of Kshs. 27,000/-.
 3. He further states that he worked diligently and to the Respondent's satisfaction until 17th March 2017 when the respondent unfairly and unlawfully terminated his employment on alleged ground of gross misconduct. It was alleged, inter alia, the claimant interfered with the directors' documents and being disrespectful to senior managers. The claimant denied the allegations. He states that his termination was unfair and in violation of the provisions of Article 27 (5) and 28 of *the Constitution* of Kenya, 2010. Further that the respondent's actions were also in contravention with the provisions of the *Employment Act*, 2007. He urged the Honourable Court to find his claim with merit and to allow it in terms of the reliefs sought therein.
 4. The Respondent in its statement of defence dated 23rd August, 2018 and filed in Court on 14th September 2018 through Malinzi Kwesiga Advocate, admits having engaged the Claimant as stated in the claimant's memorandum of claim. It however denies unlawfully and unfairly terminating the claimant's employment as alleged. It pleaded that the claimant's employment was summarily terminated on ground of absenteeism, insubordination and negligence and that the termination was done in accordance with the provisions of the employment law of Kenya.
 5. The Respondent further states that the claimant was accorded a fair disciplinary hearing on 17th March 2017 prior to his termination. The respondent avers that the claimant's termination does not constitute unfair termination as defined under Section 45 of the *Employment Act*, 2007. It maintains that the claim as filed is an abuse of court process. It denied subjecting the claimant to unfavourable and harsh working conditions as pleaded by the claimant.
 6. The respondent pleaded that the claimant's dismissal was on valid ground and due process was followed. As a result, the claimant is not entitled to the reliefs sought in her memorandum of claim.
 7. The respondent maintained that the suit is devoid of merit and it should be dismissed in its entirety with costs to the respondent.
 8. The matter proceeded for hearing on 06.12.2023 with the claimant testifying on his own behalf as CW1. The respondent's case was closed without calling any witness to testify on its behalf.
 9. CW1 in his evidence adopted her witness statement dated 17.06.2018 as his evidence in chief. In his statement CW1 reiterates the averments made in his memorandum of claim. He further urged the Honourable Court to find his claim with merit and to allow it as prayed.
 10. Parties filed their respective submissions to the claim, which the Court has duly considered, and determines as follows.
 11. To answer the 1st issue there is no dispute that parties were in a contract of service.
 12. To answer the 2nd issue, the Court returns that the claimant was dismissed on 17.03.2017 when the Administrative Manager John Waiganjo alleged that the respondent had been disrespectful to senior employees and interfering with the director's documents.



13. To answer the 3rd issue, the Court returns that the respondent has failed to call a witness and to show that the reason was genuine per section 43 of the Employment Act, fair per section 45 of the Act and the respondent has failed to justify the termination per section 47(5) of the Act. The termination was abrupt, without due notice and a hearing per section 41 of the Act. It was unfair in procedure and substance.
14. The 4th issue is on remedies. The Court finds as follows:
- a. The claimant is entitled to Kshs. 27,000.00 in lieu of the termination notice and per section 35 of the Act.
 - b. The claimant was a member of the NSSF and is not entitled to service pay per section 35 of the Act.
 - c. The claimant has not specifically pleaded and offered the evidence for the period of leave claims and the prayer in that regard is declined.
 - d. The Court has considered the factors in section 49 of the Employment Act on award of compensation. The Court has found that the termination was abrupt and in breach of the statutory provisions. The claimant had worked for slightly over a year. The Court considers that in the circumstances, 2 months' gross salaries being Kshs. 54,000.00 will be just. Overtime claim was not particularized and strictly proved. The payslips show the same was paid on monthly basis. The claim on overtime is declined as not justified.
 - e. The respondent will pay costs of the suit.
10. In conclusion, judgment is hereby entered for the claimant against the respondent for:
- a. The declaration the termination was unfair.
 - b. The respondent to pay the claimant Kshs.81, 000.00 by 01.05.2024 failing interest to run thereon from the date of this judgment until full payment.
 - c. Respondent to pay costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 7TH MARCH 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

