



Kenya Union of Sugar Plantation and Allied Workers v Muhoroni Sugar Co Ltd (in receivership) (Cause E017 of 2023) [2024] KEELRC 496 (KLR) (6 March 2024) (Judgment)

Neutral citation: [2024] KEELRC 496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E017 OF 2023**

**S RADIDO, J
MARCH 6, 2024**

BETWEEN

KENYA UNION OF SUGAR PLANTATION AND ALLIED WORKERS CLAIMANT

AND

MUHORONI SUGAR CO LTD (IN RECEIVERSHIP) RESPONDENT

JUDGMENT

1. The Kenya Union of Sugar Plantation & Allied Workers (the Union) sued Muhoroni Sugar Co Ltd (in receivership) (the Respondent) on 22 March 2023, alleging breach of contract, and that the Respondent had unfairly terminated the employment of Kennedy Okuom (Grievant).
2. The Respondent filed a Response on 24 April 2023, and the Cause was heard on 29 January 2024.
3. The Union filed its submissions on 1 February 2024, and the Respondent on 22 February 2024.
4. The Court has considered the pleadings, evidence and submissions.

Background

5. The Grievant was initially employed by the Respondent in September 2006 as a boiler fireman. In 2010, the Respondent promoted the Grievant to the position of Water Level Attendant.
6. From 2014, the Respondent granted the Grievant multiple fixed-term contracts, the last signed contract was dated 30 December 2021, and was to run from 1 January 2022 to 30 June 2022.
7. The Respondent did not renew the contract when it expired and the Grievant sought the assistance of the Union which wrote to the Respondent alleging unfair termination of employment.



8. There was no settlement between the parties and the Union reported a trade dispute to the Cabinet Secretary, Labour who in turn appointed a Conciliator.
9. The Conciliator heard submissions from the parties and she issued a report dated 9 February 2023, declaring an unresolved dispute.

Unfair termination of employment

10. The Grievant served the Respondent on several fixed-term contracts. The contracts had a term indicating:
 5. Terms of contract
The contract is task-based and necessitated by the temporary increased work-load. The renewal shall be dependent on the need of the service at the expiry hereof as well as your satisfactory performance.
Management shall appraise you on performance during the contract period.
11. In alleging unfair termination of employment, the Union's case was that the Respondent declined to renew the Grievant's contract because of his union activities for at the time of separation he was a Chief Shop-steward, and that the contracts of other employees which expired at the same time were all renewed.
12. According to the Union, just before the separation, there had been industrial situation at the workplace which involved the police which the Respondent took advantage of to get rid of the Grievant.
13. The Respondent denied that it terminated the Grievant's contract. It asserted that it did not renew the contract on expiry because of the many challenges it was facing including being under receivership. The Respondent further asserted that it was facing financial challenges and that there were salary arrears.
14. Section 47(5) of the [Employment Act](#), 2007 requires an employee to demonstrate at the first instance that an unfair termination of employment occurred.
15. The Grievant was on a fixed-term contract. The contract was not renewed upon expiry. The Union did not deny that the Respondent was undergoing difficulties including the payment of salaries.
16. The Union did not anchor the Grievant's cause of action on legitimate expectation.
17. The Court therefore finds that the Union did not prove that an unfair termination of employment occurred as contemplated by sections 35(1), 41, 43, 45 and 47(5) of the [Employment Act](#), 2007.
18. Compensation and pay in lieu of notice are thus not remedies available to the Grievant.

Breach of contract

Salary arrears/unpaid salaries

19. The Union claimed on behalf of the Grievant Kshs 653,840/- being unpaid salary arrears.
20. The Respondent's witness admitted that it owed the Grievant salary arrears but did not dispute the amount stated by the Grievant nor give its own computations.
21. The Court will allow this head of the claim.

Underpayments

22. The Grievant was a Junior Boiler Operator.



23. The Union contended that in terms of the collective bargaining agreement between it and the Respondent in 2014, the Grievant should have been placed under job group UG 9 and not UG 6.
24. The Court has looked at the collective bargaining agreement. Job Grade/Titles under UG 6 does not have the designation of Junior Boiler Operator.
25. However, job grade/titles under UG 9 has the designation of Junior Pan Boiler Operator. The Union argued that the position of Junior Boiler Operator was equivalent to or was the same as Junior Pan Boiler Operator.
26. The Union did not put before the Court any evidence upon which it could conclude that the designations were the same or performed the same job functions.
27. The copy of the collective bargaining agreement had a clause stating:

The above structure will be amended to conform with the outcome of job evaluation adopted by Joint Industrial Council (JIC).
28. The parties did not disclose whether the Joint Industrial Council had adopted the job structure, or whether by the time of the dispute, the job structure had been aligned.
29. The Court, in effect, rejects the claim for underpayments as not proved to the required standard.

Gratuity

30. Clause 32 of the collective bargaining agreement provided for payment of gratuity under certain conditions, including upon termination of employment.
31. The Union cited clause 32(a) of the agreement to seek gratuity on behalf of the Grievant. The provision does not distinguish whether the termination is unfair or termination is upon the expiry of the contract.
32. In Court's view, in terms of the collective bargaining agreement, it would be patently an unfair labour practice to pay gratuity to an employee whose contract has been terminated at the behest of the employer after a disciplinary process, and deny gratuity to an employee who leaves at no fault on his part but for expiry of the contract.
33. The Grievant's contract was not renewed. The reasons for non-renewable were not on account of any reasons attributable to him. He had served the Respondent for about 17 years.
34. The Court will allow the head of claim for gratuity in the sum of Kshs 421,033/-.

Conclusion and Orders

35. Flowing from the above the Court finds and declares:
 - i. The Union did not prove that an unfair termination of employment occurred.
 - ii. The Respondent was in breach of contract.
36. The Grievant is awarded:
 - i. Salary arrears Kshs 653,840/-
 - ii. Gratuity Kshs 421,033/-TotalKshs 1,074,873/-



37. The awards to attract interest at court rates from the date of judgment until full settlement.

38. Considering the social partnership between the parties, each party to bear own costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 6TH DAY OF MARCH 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Union Mr Aveza, Industrial Relations Officer

For Respondent Kale Maina & Bundotich Advocates LLP

Court Assistant Chemwolo

