



**Serem v JRS Group Limited (Cause E056 of 2023)
[2024] KEELRC 499 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 499 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E056 OF 2023
S RADIDO, J
MARCH 6, 2024**

BETWEEN

VINCENT KIBITOK SEREM CLAIMANT

AND

JRS GROUP LIMITED RESPONDENT

JUDGMENT

1. Vincent Kibitok Serem (the Claimant) sued JRS Group Ltd (the Respondent) on 4 August 2023, alleging unfair termination of employment and breach of contract/statute.
2. The Respondent filed a Response on 31 August 2023, and the Claimant filed a Reply to the Response on 11 October 2023.
3. The Cause was heard on 28 November 2023 and 25 January 2024.
4. The Claimant and a General Manager with the Respondent testified.
5. The Claimant filed his submissions on 14 February 2024, and the Respondent on 29 February 2024.
6. The Court has considered the pleadings, evidence and submissions and identifies the Issues arising for determination as examined hereunder.

Unfair termination of employment

7. The Claimant asserted that the termination of his employment on 24 December 2022 was unfair because he was not allowed an opportunity to respond to the allegations of being a troublemaker.
8. The Respondent denied that it terminated the Claimant's employment.
9. According to the Respondent's witness, the Claimant had been issued with a warning letter on 23 December 2023, and instructed to go for a one-day refresher training before being deployed to Kisumu



(prior to this the Claimant had been based in Busia), but he never turned up for the re-training or to work and was thus treated as having deserted work.

10. The Court has before it the uncorroborated testimony of the Claimant and the Respondent's General Manager.
11. The documents produced in Court indicate that the Claimant sought legal advice and his advocate sent out a demand letter dated 17 January 2023, asserting unfair termination of employment. After the demand, there was a brief exchange of communication between the parties through WhatsApp.
12. The Respondent did not bother to respond to the formal demand. If it is true that the Claimant had deserted, the Respondent could have taken the opportunity brought by the formal demand to inform the advocate as much.
13. Further, desertion or failure to report at the designated workplace is misconduct that warrants summary dismissal but after giving the show cause or notice contemplated by section 35(1)(c) of the [Employment Act](#), 2007. In addition, the employer should attempt to hold a disciplinary hearing as envisaged by section 41 of the Act.
14. The Respondent had the Claimant's contact details. It did not make any meaningful steps to contact him to explain his whereabouts.
15. The Court therefore discounts the defence of desertion, and finds that the Respondent unfairly terminated the Claimant's employment on 24 December 2022.
16. Despite the finding and factoring section 49(4)(i) of the [Employment Act](#), 2007, the Court declines to award compensation but will allow the equivalent of 1-month salary in lieu of notice.

Breach of contract

Underpayments

17. The Claimant contended that he was underpaid for 105 months (2014 to December 2022), and prayed for Kshs 441,359/-).
18. The Claimant set out the wages he was earning during the period.
19. Sections 20 and 21 of the [Employment Act](#), 2007 contemplate the employer keeping certain payroll records.
20. The Respondent opted not to respond directly to the Claimant's case for underpayments or produce pay records. It did not issue a written contract to the Claimant.
21. In light of these considerations, the Court will allow this head of the claim.

Accrued leave

22. The Claimant sought Kshs 113,752/- on account of accrued leave.
23. Section 10(3) of the [Employment Act](#), 2007 requires an employer to maintain leave records which would make it possible to determine an employee's entitlement to annual leave.
24. The Respondent, as the employer did not place the records before the Court.



25. Considering the effect of section 28(4) of the *Employment Act*, 2007, the Court will allow this head of the claim but restricted to the last 18 months of the contract in the sum equivalent to one and a half months' salary.

Service pay

26. By virtue of section 35(5) of the *Employment Act*, 2007, certain categories of employees are eligible for service pay.
27. There was no evidence that the Claimant belonged to the excluded class and the Court awards service pay of Kshs 81,252/- as claimed.

December 2022 wages

28. The Respondent did not provide any records to rebut the Claimant's testimony that he was not paid earned wages for December 2022 and the claim for Kshs 14,038/- is allowed.

Overtime

29. On account of overtime, the Claimant pleaded a sum of Kshs 425,257/-.
30. The Claimant was a security guard. It is a notorious fact that the Court takes judicial notice that guards work 12-hour shifts.
31. Under Regulation 6 of the Regulation of Wages (Protective Security Services) Order, 1998, a guard should work fifty-two hours spread over 6 days of the week.
32. It is clear that the Claimant worked overtime.
33. The Respondent did not provide the pay statements contemplated by sections 10(3) and 20 of the *Employment Act*, 2007. This head of the claim is allowed.

House allowance

34. Section 31 of the *Employment Act*, 2007 obligates an employer to provide its employees with housing or pay an allowance to cover rent.
35. The Respondent admitted it did not issue a written contract to the Claimant. It did not place before the Court an itemized pay statement.
36. The Court therefore allows the head of claim for Kshs 214,781/- as house allowance.

Deducted wages for November 2022

37. The Claimant's testimony that he was deducted Kshs 1,800/- from the November 2022 wages was not explained by the Respondent, and relief is allowed.

Conclusion and Orders

38. The Court finds and declares that the Respondent unfairly terminated the Claimant's employment, and further that it was in breach of contract.
39. The Claimant is awarded:
- i. Pay in lieu of notice Kshs 14,038/-



- ii. Underpayments Kshs 441,359/-
 - iii. Accrued leave Kshs 21,057/-
 - iv. Overtime Kshs 425,257/-
 - v. House allowance Kshs 214,781/-
 - vi. December wages Kshs 14,038/-
 - vii. Service pay Kshs 81,252/-
 - viii. Deducted wages Kshs 1,800/-
- Total Kshs 1,213,582/-

40. Claimant to have costs and interest from the date of judgment.

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

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant P.M. Kithuka & Co. Advocates

For Respondent M.C. Ouma & Co. Advocates

Court Assistant Chrispo/Chemwolo

