



**James v Tononoka Rolling Mills Limited (Cause 684 of 2018)
[2024] KEELRC 1159 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1159 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 684 OF 2018
DKN MARETE, J
APRIL 24, 2024**

BETWEEN

MUTUA JONES NGUGI JAMES CLAIMANT

AND

TONONOKA ROLLING MILLS LIMITED RESPONDENT

JUDGMENT

1. This matter was originated by way of undated Memorandum of claim. However, in the Verifying Affidavit to the claim was sworn by the Claimant on 9th May, 2018. The issues in dispute are therefore cited as;Non-payment of employee’s dues.Wrongful, unfair and unlawful dismissal.
2. The Respondent in a Respondent’s Memorandum of Defence dated 2nd July, 2018 denies the claim and prays that it be dismissed with costs.
3. The Claimant’s does and filed a Reply to Respondents Memorandum of Response and in this merely denies the response and prays that the same be struck in limine and in advance of the hearing hereof. The claimant’s case is that he was retained over a period of time by the Respondent and finally confirmed as a teamer man.
4. The claimant’s further case is that due to his outstanding performance and within no time and his salary was reviewed upwards and eventually earn a basic salary of Kshs 21,217.00. This is notwithstanding the oppressive environment in which he worked.
5. On or about the 5th January, 2016, the Respondent unfairly, unlawfully and wrongfully terminated his services. This was without notice, payment in lieu outstanding argues or vocation fee.
6. His further case is that as a result of the unexpected termination of his employment, the claimant found himself unemployed outstanding wages, vacation pay, pay in lieu of notice and or severance pay



and aggravated damages resulting from the emotional distress associated with having his employment terminated without notice.

7. The termination of employment was breach of contract for the following reasons;
 - a. It failed to provide the claimant with reasonable notice prior to termination.
 - b. It failed to provide the claimant with adequate compensation in lieu of notice
 - c. It failed to compensate for outstanding wages and vacation pay.
 - d. It failed to compensate for severance.
 - e. It withheld compensation owed to the claimant in lieu of benefits and bonuses to them by reason of the termination.
 - f. It did not; in any event have just cause to terminate the claimant.
8. He claims as follows;
 - a. One (1) month's salary in lieu of notice
At the rate of Kshs 21,217.00 Kshs 21,217.00
 - b. Service/Gratuity for two years pay Kshs 10,608.00
 - c. Annual leave Kshs 21,217.00
 - d. Unpaid salary Kshs 45,262.00
Kshs 102,904.00
9. The Claimant's case again comes out as follows;The claimant pleads that he is entitled to recover outstanding pay and vacation pay; house allowance, overtime pay in lieu of reasonable notice, compensation for benefits during the notice period, and severance pay, together with interest.The claimant states that the conduct of the respondent was high handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful. Actuated by malice and was with intentional disregard of the claimant, indifferent to the consequences and motivated by economic considerations.That because of the conduct of the respondent outlined above this is an appropriate case for an award of punitive damages.That by the time of the wrongful termination by the respondent company, it failed to pay his dues as law requires made up of the following;
10. He prays as follows;
 - a. A declaration that he was wrongfully and unfairly dismissed from his employment.
 - b. Unpaid dues totalling Kshs 81,687.00/=
 - c. Notice period of one month Kshs 21,217.00/=
 - d. 12 months salary as compensation for wrongful and unfair termination.
11. The Respondent's case is a denial of the claim.
12. The Respondent's case is that the claimant was employed on a fixed term contract whose terms were close and explained to him before signing. The last contract was to run from 1st July, 2015 – 31st December, 2015. On expiry of the contract on effluxion of time, the Claimant's employment lapsed on its own.



13. It is the Respondent's further case that leave pay was made to the Claimant before departure from the employment and he has no entitlement to the claim or at all. In all, the claim is misconceived on this basis.
14. The Respondent demonstrates the futility of the claim by displaying the various fixed term contract on her list of documents and submits that this was the basis of the parties employment contracts as such.
15. The issues for determination therefore are;
 1. Whether there was a termination of employment of the Claimant by the Respondent.
 2. Whether the termination of employment of the Claimant by the Respondent, if all, was wrongful, unfair and unlawful.
 3. Whether the Claimant is entitled to the relief sought.
 4. Who bears the cost of this cause.
15. The 1st issue for determination is whether there was a termination of employment of the Claimant by the Respondent. The parties in the written submission come up with the various versions of their cases.
16. The Respondent's case is that the year 2008, 2009, 2010 and 2012 the claimant was employed as a casual worker on a fixed term contract. This is not controverted by the claimant in evidence, or all.
17. The Respondent has produced documentary evidence of the contract of employment and therefore the matter tilt in her case. I therefore find a case of no termination of employment and hold as such.
18. On a finding of no termination of employment of the Claimant by the Respondent, all other issues for determination fall by the way side.
19. I am therefore inclined to dismiss the claim with orders that each party bears their cost of the same.

DELIVERED, DATED AND SIGNED THIS 24TH DAY OF APRIL 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Kuyoh instructed by Kuyoh & Company Advocates for the Claimant.
2. Mrs Nyaencha instructed by Nyaencha Waichari & Company Advocates for the Respondent.

