



Kenya Union of Commercial Food Workers v Platinum Outsourcing and Logistics EA Limited (Cause 849 of 2019) [2024] KEELRC 1214 (KLR) (24 April 2024) (Judgment)

Neutral citation: [2024] KEELRC 1214 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 849 OF 2019
DKN MARETE, J
APRIL 24, 2024**

**BETWEEN
KENYA UNION OF COMMERCIAL FOOD WORKERS CLAIMANT
AND
PLATINUM OUTSOURCING AND LOGISTICS EA LIMITED ... RESPONDENT**

JUDGMENT

- 1 This matter was originated by way of a Memorandum of claim dated 24th October, 2019. The issue in dispute is therein cited as;

“Unfair/unlawful termination of Ms. Catherine Munyao”
- 2 The Respondent in a Respondent’s Response to Claimant’s Memorandum of Claim dated 9th March, 2023 denies the claim and prays that it be dismissed with costs.
- 3 In between is a Union (Claimant), an employer, Respondent and a grievant and who is a full fledged member of the Union.
- 4 The claimant’s case is that on 15th September, 2015 the Respondent engaged the grievant as a General Worker at a consolidated salary of Kshs.10,164.00, exclusive of house allowance. This was increased to Kshs.13,632.00 in 2017.
- 5 The claimant’s further case is that throughout the grievant’s stint of service, he only signed one contract. This was despite various agitation on the part of the workers to be engaged in contract signing.
- 6 The Claimant’s further case is that on 8th April, 2019, the grievant was served with a letter through the site manager to appear before the Human Resource Manager at the Company’s head office which she obliged. On the same day she (grievant) went ahead and wrote a letter to Human Resource Manager highlighting her concern.



7 The Claimant other case is that on 9th April, 2019 the grievant reported to work as usual and was denied access to her work place. The dispute was referred to mediation on 13th June, 2018 but attempts to avail the parties to a round table conference were fruitless.

8 The claimant seeks to rely on section 41, 43 and 44 of the Employment Act, 2007 which call for substantive and procedural justice besides reasons for termination in the event of termination of employment. She contends that her letter of appointment stipulated as follows;

“Your contract will be dismissed if:

- a. You willingly absent yourself from duty for four (4) consecutive days without any written authority from your supervisor.
- b. If you are implicated in a theft of client property
- c. If you are drunk on duty
- d. If you are involved in a fight at work or
- e. You insubordinate your superiors”.

She prays thus;

- i. The grievant be allowed back to her position she held prior to the lock out.
- ii. The grievant be paid the salary she could have been earning since the date of her unlawful lock out to date.
- iii. Costs of the suit to the claimant
- iv. Any other relief this Honourable Court deems fit to grant to meet ends of justice.

9 The Respondent’s case is a denial of the claim.

10 The Respondent’s case is that she is a provider of outsourced services to clients in Nairobi and its environs.

11 It is her further case that the claimant was employed by the Respondent as a general worker on contract. This contract lapsed and converted to a work to work contract.

12 Her further case is that in April, 2019, the grievant was issued with a new contract which she refused to sign on grounds that she needed to be paid for the last three years. This was explained. She denies any liability to the claimant.

13 The Respondent’s other case is a denial to receipt of any invitation to mediation and further all mechanisms of dealing with the matter were not exhausted.

Further,

The Respondent denies the contents of paragraph 20-21 of the Memorandum of Claim and states that the salary increase was in line with government’s payment requirements on minimum wage. The Respondent denies the contents of paragraph 22-23 of the Memorandum of Claim and states that the claimant never worked over her contract stipulated hours thus no compensation in owing and neither was she locked out of the offices but opted to abscond duty after refusing to sign the contract. The grievant absconded duty after refusing to sign the contract.



- 14 The issues for determination
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 hold diametrically opposed positions on this.
- 16 The Claimant's case is that this dispute arose out of the Claimant's refusal to sign a new contract of employment without regard and payment for three months benefit for a term already served. The grievant had fully served a one year contract which was not readily renewed and she continued working for three years and eight months before she was confronted with a letter for signing a new contract before the Human Resource Manager.
- 18 The Claimant's further case and submission is that the Respondent required of her to explain why she was reluctant to sign the contract and despite offering an explanation to this, she was locked out of employment without explanation.
- 19 Again, the Respondent's contract of employment has represented before court does not meet the threshold of section 9(2), (3) & (4) of the *Employment Act*, 2007 which provides that it is the onus of the employer to cause the drawing of a contract of employment inter partes. The employee only comes in to attest and acclaim to the same.
- 20 The Claimant further submits that non renewal of the contract and the continued working for a further three plus years amounted to permanent employment to which the grievant is entitled. She was also entitled the provision of Section 41 and 43 of the *Employment Act*, 2007 which provides for substantive and procedural fairness besides of reasons for termination of employment. This is enunciated in the authority of Sandra M. Waswa and Golbal Campaign for the Free Expression where the court held thus;
- 46: "be that as it may, the claimant was in employment for more than nine months after lapse of the contract. She was therefore on a month open ended contract and was entitled to be subjected to the provisions of Section 41 and 43 of the *Employment Act* which provide for fair hearing and valid reason for termination of contract..."
- 21 Again, the new contract was never offered to the grievant for perusal, scrutiny and discussion.
- 22 The Respondent's case is that the grievant absconded duty and not report to work after failing to sign the contract. Again, she did not provide any evidence to corroborate this.
- 23 The Claimant's case takes the day. It is her case that numerous attempt were made at finding amicable solution to the issues in dispute to no avail. All this is courtesy of the Respondent who declined to co-operate or participate in proceeding before the mediator.
- 24 Further it is the claimant's submission that no one knows what exactly the contents of the alleged new contract" were shown to the Grievant for her to make the demands as she did. The Respondent did



not exhibit any form of evidence before this Honourable Court. The decision by Justice M. Mbalu in Samwel Nguru Mutonya v National Bank of Kenya Ltd was clear.

“No material or evidence is attached to support these averments. The PIP, review that resulted in a finding of unacceptable performance or anything to suggest the claimant was of poor performance and warranted termination on this basis is not attached. The evidence submitted by the Respondent is devoid of any material leading to any poor performance of the claimant”. “B”

- 25 It would appear that the Respondent was at all times hell-bent to frustrate the outcome of this dispute. Even at this stage, she does not provide any evidence in support of a case of absconding duty by the grievant or even appropriate a fair disciplinary process employed in satiation of the grievant’s termination of employment.
- 26 The 2nd issue for termination is whether the termination of employment of the Claimant by the Respondent, if all, was wrongful, unfair and unlawful. The narration of the Claimant’s case as set out bring out a case of unlawful termination of employment. The Claimant exhibits that he was excluded for accessing his work place. This amounts to constructive termination of employment and is unlawful. The Respondent’s defence of absconding duty by the Claimant is not feasible, convincing or possible. There is an evidence of any action by the Respondent in action to his, or at all.
- 27 Overall, the Claimant’s case overwhelms that of the Respondent on a preponderance of evidence. She has managed to adduce evidence to the extent of a probable case in her favour. I therefore find a case of termination of employment of the grievant by the Respondent and hold as such.
- 28 The 3rd issue for termination is whether Claimant is entitled to the relief sought. She is. Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- i. One(1) month salary in lieu of noticeKshs10,164.00
- ii. Eight (8) days worked in April, 2019Kshs3,127.40
- iii. Service pay for every year worked 15 days x 10,164/26x3.....Kshs.17,591.50
- iv. Twelve(12) months compensation for unlawful termination of employmentKshs.10,164.00 x12 months.....Kshs.121,98.00
Total of claimKshs.152,850.90.00
- v. The Respondent be and is hereby ordered to issue a certificate of service to the grievant within thirty (30) days of this judgment of court.
- vi. The cause of the claim shall be borne by the Respondent.

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

D. K. NJAGI MARETE

JUDGE

Appearances:

Lilian Manene for the Claimant Union.

Mr. Keter instructed by Chemurgor Kosgei & Company Advocates for the Respondent.

