



**Omukhulu & 2 others v Zhejiang Chengjian Construction Africa Limited  
(Cause 927 of 2018) [2024] KEELRC 1500 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1500 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 927 OF 2018**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**NELSON KWEYU OMUKHULU ..... 1<sup>ST</sup> CLAIMANT  
WILSON MWANIKI NJERU ..... 2<sup>ND</sup> CLAIMANT  
VINCENT OYOO NYAMBATI ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**ZHEJIANG CHENGJIAN CONSTRUCTION AFRICA  
LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimants filed their Statement of Claim, dated 12<sup>th</sup> June 2018.
2. They state that they were engaged by the Respondent as carpenters, on 26<sup>th</sup> January 2017.
3. They were asked to sign resignation letters by the Respondent, on 6<sup>th</sup> April 2018, on the ground that the Respondent was downsizing.
4. They refused to sign the letters, and were asked by the Human Resource Manager to leave, and never return.
5. They were not paid terminal dues, and even after they sought the assistance of the local labour office, they were not paid.
6. The 1<sup>st</sup> and 2<sup>nd</sup> Claimants earned a monthly salary of Kshs. 20,800 each, while the 3<sup>rd</sup> Claimant earned Kshs. 18,528.
7. They pray the Court for: -
  - a. Declaration that termination through redundancy was unfair and unlawful.



- b. Notice, salary for days worked, house allowance, transport allowance, annual leave, and 12 months' salary in compensation for unfair termination, added up at Kshs. 350,591, Kshs. 350,591 and Kshs 311,301 respectively.
  - c. Costs.
  - d. Interest.
  - e. Any other suitable remedy.
8. The Respondent filed its Statement of Response dated 13<sup>th</sup> August 2019. Its position is that the 1<sup>st</sup> and 2<sup>nd</sup> Claimants were employed by the Respondent on 27<sup>th</sup> January 2017, while the 3<sup>rd</sup> Claimant was employed on 28<sup>th</sup> February 2017. They absconded duty on 4<sup>th</sup> April 2018. They referred dispute to the labour office. They were paid all their dues.
  9. The 2<sup>nd</sup> Claimant gave evidence on 12<sup>th</sup> July 2023. The 1<sup>st</sup> Claimant, and Assistant Administration Officer Bernard Kibwage, both gave evidence on 21<sup>st</sup> November 2023, closing the hearing. The Claim was last mentioned on 1<sup>st</sup> March 2024, when Parties confirmed filing and exchange of their closing submissions.
  10. The 2<sup>nd</sup> Claimant relied on his witness statement. He explained that his boss advised carpenters that there was a concrete slab being worked on, and they should take a break. The carpenters were not absent without lawful cause. Cross-examined, he told the Court that he did not sign the job card daily. They had been advised not to report on the dates they were alleged to have absented themselves. He did not have a chance to read the letter of resignation he was required to sign. Some Employees signed the letters and resumed duty.
  11. The 1<sup>st</sup> Claimant relied on his witness statement as the Claimants' evidence-in-chief. He told the Court on cross-examination that his last day at work was 5<sup>th</sup> April 2018. He did not sign the job card on this date. He stated that the foreman had asked the Claimants to take a break, to allow for the concrete at the site to dry. He did not state this in his witness statement. He was paid for holiday work on 1<sup>st</sup> May 2017 at Kshs. 1,700, double the normal rate. There were several days he was shown to have been absent. He explained that this was during the elections period, when the Respondent had closed down. He was paid annual leave at Kshs. 9,600. He was paid transport/ commuter allowance. There were quite a number of carpenters, serving different blocks.
  12. Redirected, he told the Court that about 16 carpenters were affected by termination. They were asked to sign resignation letters on 5<sup>th</sup> April 2017. They could not sign the job card. Subsequently their gate passes were confiscated. They could not access the workplace.
  13. Kibwage relied on his witness statement and documents filed by the Respondent, in his evidence-in-chief. The carpenters did not report on 4<sup>th</sup> April 2018. They gave different reasons for not attending to duty. The ones who later reported were required to sign warning letters. The Claimants did not sign. The Respondent was served with documents from the labour office and made its representations. The Respondent did not terminate the Claimants' contracts; they absconded. Salaries were consolidated. The Claimants were paid their annual leave dues.
  14. Cross-examined, Kibwage told the Court that the Claimants received the warning letters, and declined to sign. They failed to report to work and the Respondent ended the relationship. All workers had gate passes. Kibwage did not know if the Claimants' gate passes were confiscated. There could have been instances, when the carpenters were instructed by the masons, to take a break to allow concrete settle. The 1<sup>st</sup> and 3<sup>rd</sup> Claimants worked for 14 ½ months, while the 2<sup>nd</sup> Claimant worked for 13 ½ months.



15. Redirected, Kibwage told the Court that the foreman reported the Claimants' absence. They were not on authorized leave. They were to sign warning letters, and in default they would be taken through disciplinary hearing.
16. The issues are whether the Claimants' contracts were terminated fairly and for valid reason; and whether they are entitled to the remedies sought.

**The Court Finds: -**

17. The Claimants were employed by the Respondent as carpenters, in January and February 2017.
18. They left employment in contentious circumstances in April 2018, after serving for 13/14 months.
19. They were required to sign warning letters, which the Respondent asserts, they declined to sign.
20. The witness for the Respondent told the Court that if the Claimants declined to sign warning letters, they were to be taken through disciplinary processes.
21. They were not heard, and were not required to show cause, why they should not be dismissed. Although the Respondent told the Court that the Claimants absconded, and were not dismissed by the Respondent the witness for the Respondent told the Court on cross-examination, that the Claimants did not come back after they failed to sign the warning letters, and the Respondent therefore dismissed them.
22. It was important that the Respondent gave the Claimants a chance to tell their story, rather than angrily command them to leave when they declined to sign the warning letters. It was wrong to confiscate their gate passes, thereby locking them out from the workplace. The Claimants from their evidence, were not even clear, whether the letters they were required to sign were resignation or warning letters. It would seem that the Respondent did not communicate to the Claimants effectively.
23. Kibwage told the Court that there were instances, when carpenters would be advised by the masons, to take a break from carpentry, to allow for the concrete works to settle. Even assuming the Claimants were absent, it was essential to hear such explanations at a disciplinary forum, which the Respondent failed to convene.
24. The Respondent did not establish the reason, or reasons to justify termination of the Claimants' respective contracts of employment under Section 43 and 45 of the *Employment Act*.
25. Procedure did not meet the minimum standards of fairness, prescribed under Sections 41 and 45 of the *Employment Act*.
26. Termination was therefore unfair.
27. The Claimants were daily rated, earning about Kshs 800. The rate was described in the pay slips as gross. It included the housing element. The prayer for house allowance is not well-founded.
28. They conceded that pay slips exhibited by the Respondent show payment of transport, leave pay, and holiday pay. They are not entitled to these items.
29. The Claimants were marked as variously absent, in the early days of April 2018. There is no convincing evidence that they worked for 6 days in April 2018, and were denied salary for their sweat. Their prayer for salary for 6 days worked in April 2018, has not been established.
30. They worked for slightly over 1 year each. They may have contributed to the circumstances leading to termination of their contracts. They told the Court that some of their colleagues who went by the



demands of the Respondent, to sign the warning letters, or whatever letters were required to be signed, continued serving. The Claimants may have played hardball, making it easy for the Respondent to lock them out. They are granted compensation equivalent of 3 months' salary each, in compensation for unfair termination.

31. Their prayer for notice is allowed at 1-month salary each.
32. No order on the costs.
33. Interest granted at court rates, from the date of Judgment, till payment is made in full.

**In Sum, it is Ordered: -**

- a. It is declared that termination was unfair and unlawful.
- b. The Respondent shall pay to the Claimants-
  - 1<sup>st</sup> Claimant: compensation at Kshs. 62,400 and notice at Kshs. 20,800- total Kshs. 83,200.
  - 2<sup>nd</sup> Claimant: compensation at Kshs. 62,400 and notice at Kshs. 20,800 –total Kshs. 83,200.
  - 3<sup>rd</sup> Claimant: compensation at Kshs. 55,528 and notice at Kshs. 18, 528 – total Kshs. 74,112.
- c. No order on the costs.
- d. Interest granted at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

Court Assistant: Emmanuel Kiprono

Mudeshi Muhanda & Company Advocates for the Claimants

Chege Kibathi & Company Advocates for the Respondent

