



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Muga v China Jiangsu International Ltd (Employment and Labour Relations Cause 20 of 2020) [2024] KEELRC 1542 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1542 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 20 OF 2020**

MN NDUMA, J

JUNE 13, 2024

BETWEEN

PATRICK MUGA CLAIMANT

AND

CHINA JIANGSU INTERNATIONAL LTD RESPONDENT

JUDGMENT

1. The claimant filed suit on 20/1/2020 seeking the following reliefs:-
 - i. A declaration that the respondent's conduct amounts to unfair labour practices contrary to Article 41 of *the Constitution* of Kenya.
 - ii. An order directing the respondent to issue the claimant with a certificate of service
 - iii. Housing allowance for the contractual period
 - iv. The respondent to be ordered to pay the applicant the expected income for the remainder of the contact period.
 - v. Compensation for unlawful termination of employment
 - vi. Compensation for discrimination
 - vii. Costs of the suit and interest thereon from the date of filing suit until payment in full.
2. CW1 the claimant adopted a written statement dated 5/12/2019 and produced exhibits '1' to '6' as his evidence in chief.
3. CW1 told the court that he was employed as a quantity surveyor vide a fixed term contract dated 15/5/2019. The employment was to take effect from 3/6/2019 to 31/12/2020.



4. The claimant was in terms of the contract paid a consolidated monthly gross pay of Kshs.140,000/= . The claimant was deducted NSSF and NHIF and same was to be remitted together with employer contribution. The claimant was entitled to 24 working days leave per year.
5. On 27/8/2019, the claimant was issued by the respondent with a letter declaring him redundant.
6. The letter before court is dated 26/8/2019 and is written by the General Manager, Chen Ghong.
7. The letter states that the termination followed a meeting held on 26/8/2019, the same day, when senior management addressed employees regarding financial constraints the company was experiencing.
8. The letter expressed regret that the company had decided to terminate the contract of the claimant on grounds of redundancy. The letter is not copied to any labour office. Termination was to be with effect from 26/9/2019 giving the claimant one month notice or one months' pay in lieu of notice.
9. In terms of the letter the claimant was to be paid:
 - i. For days worked up to 26th September 2019
 - ii. One month's salary in lieu of notice (if notice is not served).
 - iii. Severance pay at the rate of 15 days salary for each completed year of service.
 - iv. Payment in lieu of outstanding leave days
10. CW1 testified that upon receipt of the letter he went to see the Human Resource Manager protesting the termination and seeking to establish reasons for the termination without prior notice. That no meeting had been held on 26/9/2019 as alleged in the said letter.
11. CW1 stated that the company then called a meeting of employees and told them that some workers will be declared redundant since the company was undergoing financial difficulties. The claimant stated that he was then called back and given another letter purporting to terminate his employment immediately with an option to be paid one month salary in lieu of notice.
12. CW1 said he was not told why he was selected for termination yet two new Chinese employees named Shi Ying De alias Leo and Deng Tenga alias Eric had just been employed after CW1 in the engineering department where CW1 worked and did the same work as CW1. CW1 protested that the two had recently taken up the project CW1 was undertaking. CW1 said he did not receive any response to his questions.
13. CW1 concluded that the termination was discriminatory, unlawful and unfair and that he be granted the reliefs sought. That he was not paid a separate house allowance and was not issued with a certificate of service and was not compensated for the sudden loss of employment.
14. That despite demand and notice of intention to sue, the claim was not settled by the respondent.
15. Mr. Adolo Advocate for the respondent cross-examined CW1 and CW1 confirmed that he received a consolidated salary as stated in the contract of employment which he had signed.
16. CW1 stated that he was paid Kshs.265,379/= upon termination which included one-month salary in lieu of notice and salary for days worked. CW1 insisted that a meeting of employees was called after he had already been declared redundant.
17. The claimant called CW2, Janet Githongo in support of his case. She testified that she was a former Human Resource and Administration Manager of the respondent and was the custodian of employee records.



18. CW2 confirmed the employment details of CW1 as a Quantity Surveyor.
19. CW2 stated that sometime in August 2019, the company interpreter Mr. Liu Zuozi confided in CW2 that Mr. Chen, the General manager was intending to get rid of some employees including the claimant and replace them with some Chinese nationals and new employees.
20. CW2 stated that she then advised the respondent that since the employees had existing contracts of employment the respondent should await the contracts to expire and that terminating the contracts would be unlawful. CW2 said the general manager was not pleased with the advice. CW2 also wrote an email to Mr. Chen and Ms. Pan the deputy General Manager and forward the email to Mr. Liu Zuozi giving reasons why terminating the contract of the claimant was unlawful.
21. CW2 said on 27/8/2019, Mr. Xi came to CW2's office and handed her a letter and directed that CW2 hands it over to the claimant. The letter had declared the claimant redundant.
22. CW2 said there had been no meeting convened by the management to deliberate the issue of declaring employees redundant. Further there was no notification issued to the labour office notifying them of intended redundancy. That the affected employees had not been informed of intended declaration of redundancy. CW2 politely declined to deliver the letter to the claimant but Mr. Xi said CW2 had no choice but to do so. CW2 then handed the letter to the claimant. The claimant protested and demanded an explanation.
23. Mr. Xi hastily convened a meeting of all Kenyan employees including CW2 and announced that some employees would be laid off on grounds of redundancy. CW2 said, they were not allowed to seek any clarification and management did not engage the employees at all to ascertain any suitable alternatives to the redundancy.
24. CW2 stated that the respondent violated section 40 of the *Employment Act*, 2007. That first in last out principle was not adhered to since the respondent had recently employed two employees of Chinese decent namely, Shi Yina De alias Leo and Deng Teng alias Eric in July 2019 one month after the claimant had been employed. That the same week the claimant was declared redundant two new employees were recruited namely Moses Kibet and Vivian Mukule.
25. In addition, the respondent recruited multiple other employees including Chinese nationals to fill several other existing and newly created positions in the weeks following the purported redundancy.
26. That the termination was illegal, unreasonable and was unlawful and unfair.
27. The respondent despite having filed a memorandum of response to the claim did not call any witness to defend the suit. The testimony by CW1 and CW2 is wholly uncontroverted.
28. Accordingly, the claimant has proved on a balance of probability that the termination of employment of the claimant on grounds of redundancy was unlawful and unfair as it violated sections 36, 40, 41, 43 and 45 of the *Employment Act* 2007.
29. The respondent did not provide one month mandatory notice of the intention to terminate on grounds of redundancy to the claimant and other affected employees. The respondent did not notify the labour office of the intended redundancy. The respondent did not consult with the employees to provide genuine reasons for the intended redundancy and to explore alternative methods to minimise the effects of the redundancy. The respondent did not provide the claimant with a certificate of service.



30. The claimant was not compensated for the unlawful loss of his employment. the claimant's employment was cut short after only three months despite the fact that he had a valid contract up to 31st December 2020; CW1 lost service and income for a period of 13 months.
31. The claimant suffered loss and damage as a result of the unlawful termination and is entitled to an award of compensation in terms of section 49(1)(c) and (4) of the Act.
32. In terms of the Supreme Court decision in Kenfreight (E.A) Ltd versus Benson Nguti, [2019] eKLR, the court is mandated to consider remedies under section 49 of the Act, upon a finding that the employment of a worker has been terminated unfairly.
33. This suit is a mundane employment dispute and no constitutional violations have been proved by the claimant to warrant elevating the matter to a constitutional dispute and grant general or aggravated damage in addition of an award of compensation.
34. The circumstances of this case are peculiar in that the Human Resource Manager of the respondent has given damning evidence which has not been controverted regarding the arbitrary, unreasonable and unlawful manner in which Mr. Chen the general manager of the respondent proceeded with utter disregard of her advice to implement the unlawful termination of employment of the claimant and other employees of Kenyan decent, while replacing them with employees of Chinese decent and other newly employed Kenyans. This sort of conduct require sanction by the court to stem that kind of tide by foreign companies investing in Kenya.
35. The court has considered the above circumstances of the case in terms of section 49(4) of the Act, and regard this a deserving case for an award of compensation close to an award of specific performance and award the claimant the equivalent of ten (10) months' salary in compensation in the sum of Kshs. (140,000 x 10) 1,400,000.00

Terminal benefits

36. The claimant did not prove that he was entitled to housing allowance in addition to the consolidated salary he was paid in terms of the contract of employment.
37. As stated above, the claimant has not proved that he is entitled to any additional award of damages for discrimination nor is the claimant entitled to an award of specific performance of the remainder of the term of the contract upon being granted compensation in terms of section 49(1)(c) and (4) of the *Employment Act*, 2007.
39. The claimant is entitled to grant of certificate of service.
39. In the final analysis judgment is entered in favour of the claimant against the respondent as follows:
 - a. Kshs.1,400,000.00 in compensation for the unlawful and unfair termination of employment.
 - b. Grant of certificate of service within 30 days of judgment.
 - c. Interest at court rates from date of judgment till payment in full
 - d. Costs of the suit.

Dated at Nairobi this 13th day of **June, 2024**

Mathews Nderi Nduma

JUDGE



Appearance:

Mr. Kiriimi for claimant

Mr. Adolo for respondent

Mr. Kemboi, Court Assistant

