



**Onyango v Sunny Haulier Limited (Cause 1243 of 2016)
[2024] KEELRC 1445 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1445 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1243 OF 2016**

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

BETWEEN

PETER JUMA ONYANGO CLAIMANT

AND

SUNNY HAULIER LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 24th June 2016.
2. He states that he was employed by the Respondent as a long-distance truck driver in the year 2013. His last salary was Kshs. 25,441 monthly.
3. The Respondent terminated his contract on 17th May 2016. He states that there was no notice and termination was unlawful.
4. His prayers are: -
 - a. Service pay of 3 years at Kshs. 76,323.
 - b. House allowance for 3 years at Kshs. 137,376.
 - c. Annual leave for 3 years at Kshs. 76,323.
 - d. Overtime of 6 hours every Sunday for 3 years at Kshs. 132,293.
 - e. 1-month salary in lieu of notice at Kshs. 25,441.
Total... Kshs. 447,756.
 - f. Costs and interest.
5. The Respondent filed its Statement of Response on 22nd September 2016. It is conceded that the Claimant was employed by the Respondent as a truck driver. He was summarily dismissed in



accordance with his contract of employment and the law. He was engaged in an illegal strike. The Respondent sustained loss of Kshs. 4 million, as a result of the strike, which it counterclaims from the Claimant.

6. The Respondent urges the Court to allow its Counterclaim; grant general damages for loss of business; grant interest; and dismiss the Claim, with costs.
7. The Claimant, and the Respondent's Human Resource Manager Anthony Njuguna, both gave evidence on 11th June 2021 when the hearing closed. The Claim was mentioned on 13th December 2022 with a view to confirming filing and service of Closing Submissions. None of the Parties appeared before the Court, and the matter was stood over generally. It was again mentioned on 28th July 2023, when the Claimant's Advocates informed the Court, through inadvertence, that the Claim had been heard in another Court. The undersigned referred Parties to that other Court, where it was confirmed that hearing had indeed taken place, and concluded before the undersigned. The Claim was therefore scheduled for mention before the undersigned on 24th October 2023. Parties did not attend Court and again the Claim was stood over generally.
8. On 20th February 2024, Parties attended Court and confirmed filing and exchange of Submissions, paving way for preparation of this Judgment.
9. The Claimant confirmed that he was employed by the Respondent as a driver. He worked for 3 years. It was alleged that he was involved in a strike. He was driving to Uzuri Foods Limited. He was not informed by the Respondent that there was an illegal strike. He was not issued a warning. The applicable CBA provided for warning, in event of a strike. The Respondent's Managing Director did not visit the site where the strike, was alleged to have taken place. Delay at Uzuri Foods Limited was normal. Trucks would que, waiting to be attended to. At no time was the Claimant advised to drive back to base, at the Respondent, and declined instructions.
10. Cross-examined, the Claimant explained that he had transported goods to Uzuri Foods Limited. From 5th May 2016 to 17th May 2016, his truck was at Uzuri Foods Limited. There was a pile-up of trucks. The drivers were not on strike. The Claimant was aware about a letter on record, from Uzuri Foods Limited, which states that the Respondent's drivers were on strike at its premises. The trucks were parked on the roadside. Vehicles were able to drive in and out. The Claimant informed the Respondent about the pile-up. He saw the letter of termination. Details of terminal dues were given. He did not collect his dues. His contract provided for house allowance, which was included in the monthly salary of Kshs. 25,441. The basic salary was Kshs. 21,635, with house allowance specifically stated at Kshs. 3,816.
11. He was subscribed to the N.S.S.F. He was offered annual leave pay on termination. He did not have a document to support his prayer for overtime. He did not complain about unlawful termination to the Ministry of Labour. He opted to engage Counsel. He was at Uzuri Foods Limited, from 5th May 2016 to 17th May 2016. It is not true that another driver, had to drive the Claimant's truck, from Uzuri Foods Limited. He did not occasion loss of Kshs. 4 million to the Respondent. There were other drivers, over 10 of them, at Uzuri Foods Limited. He named one of the drivers as Sindano.
12. Redirected, the Claimant told the Court that he drove back to the Respondent's premises on 17th May 2016. There is no auditors' report establishing loss of Kshs 4 million, sustained by the Respondent.
13. Anthony Njuguna told the Court that its drivers, including the Claimant, engaged in an illegal strike. The Respondent sustained business loss as counterclaimed.
14. On 5th May 2016, one of the drivers Sindano was found to have a shortfall in his consignment. The Respondent enquired about the shortfall, which drew in the other drivers. They went on strike in



solidarity. They parked their trucks at Uzuri Foods Limited, and abandoned them. The Respondent had to send other drivers with spare keys, to retrieve its trucks. It sustained loss of Kshs. 4 million. The Respondent prepared the Claimant's terminal dues. He did not collect his dues.

15. Cross-examined, Anthony told the Court that he did not have an auditor's report to support the Counterclaim. There was loss of user when the Claimant parked the Respondent's truck at Uzuri Foods Limited. The Respondent's Management did not visit Uzuri Foods Limited. The goods, comprising wheat and other cereals, were not damaged. The Respondent did not seek the intervention of the Court, when its drivers went on illegal strike. CBA provided for warning in event there was a strike. The Respondent did not issue warning. The trucks were driven back from Uzuri Foods Limited to the Respondent's premises. Redirected, Anthony told the Court that loss was on account of lack of user.
16. The issues are whether the Claimant's contract was terminated for valid reason; whether it was executed fairly; and whether the Claimant merits the prayers sought.

The Court Finds: -

17. Going through the evidence given by the Parties in this Claim, the Court developed a hunch, that it was involved in retrial of facts. It was compelled to look deeper into its past Judgments, and came across Judgment in Cause Number 1242 of 2016, Kenneth Mwirigi Gituma v. Sunny Hauliers Limited. The Judgment was delivered on 16th March 2022.
18. The facts in Cause 1242 of 2016 are the same as the facts in the current dispute. Gituma was a fellow driver to the Claimant herein. He was employed by the Respondent, and was involved in the drivers' strike that took place at Uzuri Foods Limited. The Pleadings and documents relied on by the Parties in the two Claims are the same. The salary was the same. The only variation is in the name of the driver.
19. The Parties' Advocates in both Claims are the same. It is unfortunate that they did not alert the Court that they had prosecuted Cause Number 1242 of 2016 and Judgment delivered. The Court Registry itself, which is the custodian of records, ought to have placed Judgment in Cause Number 1242 of 2016 in the current Claim. Failure to do so, and leaving it to the hunch of the trial Judge, imperilled fair and expeditious administration of justice. There was a real danger of the Court generating two different Judgments, based on the same set of facts.
20. The Court is persuaded that its findings in the previous Claim, Cause Number 1242 of 2016, should apply in this Claim.
21. It was the finding of the Court that the Claimant was involved in an illegal strike at Uzuri Foods Limited; it was confirmed that the drivers had disrupted business at Uzuri Foods Limited; and it was concluded that the Claimant was dismissed on valid ground. The Court found however, that termination was not executed fairly. There was no letter to show cause issued upon the Claimant; there were no disciplinary charges drawn; there was no invitation to a disciplinary hearing; and there was no hearing.
22. The Claimant was granted, and the Claimant herein is granted, equivalent of 2 months' salary in compensation for unfair termination at Kshs. 50, 882.
23. Other prayers, and the Counterclaim, were declined for reasons given in the Judgment, which the Parties' Advocates are aware about.



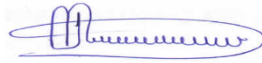
IN SUM, IT IS ORDERED: -

- a. It is declared that termination was based on valid reason, but flawed procedure, and to that extent, unfair.
- b. The Respondent shall pay to the Claimant equivalent of 2 months' salary in compensation for unfair termination at Kshs. 50,882.
- c. The Counterclaim is declined.
- d. No order on the costs.

Dated, signed and released to the Parties electronically at Nairobi, under Practice Direction 6[2] of the Electronic Case Management Practice Directions, 2020, this 14th day of June 2024.

James Rika

Judge



5

