



**Nyangweso v Autosterile (EA) Limited (Cause 150 of 2020)
[2024] KEELRC 2691 (KLR) (30 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2691 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 150 OF 2020
B ONGAYA, J
OCTOBER 30, 2024**

BETWEEN

AGGREY ISIAHO NYANGWESO CLAIMANT

AND

AUTOSTERILE (EA) LIMITED RESPONDENT

JUDGMENT

1. The claimant’s case is based on the amended statement of claim dated 07.03.2024 and filed through S.N. Otieno Advocates. The claimant’s case is as follows:
 - a. He was employed as a Maintenance Engineer (Mechanical) from 23.08.2010 to 22.10.2019 when he resigned from employment because the working conditions became intolerable and irredeemably hostile to him.
 - b. On 13.05.2019 he received a letter, essentially a warning letter, on unsatisfactory engineering maintenance.
 - c. By letter dated 01.08.2019 he was sent on 15 days’ compulsory leave on account of unsatisfactory work performance and conduct.. on 22.08.2019 he resumed but was sent on further leave of 26 days up to 26.09.2019. Upon resumption of duty he received a letter of final warning dated 25.09.2019.
 - d. By an email dated 20.10.2019 his supervisor Engineer Kennedy Aloo wrote to the claimant about want of claimant’s performance.
 - e. On 21.10.2019, the director John Mutuku invited the claimant to a meeting at Railways Club. The director discussed with the claimant about his performance and gave options that the claimant resigns with full terminal benefits or he is summarily dismissed with no pay. The claimant wrote a resignation letter addressed to the director thus, “I would like to resign as the



Maintenance Engineer with effect from 22/10/2019, after the meeting we held on 21.10.2019. I would wish to thank you for the time accorded to me to work in the plant.” The respondent replied by the letter dated 23.10.2019 accepting the resignation effective 22.10.2019. The acceptance letter asked the claimant to handover, clear and get paid his final dues and a certificate of service would issue.

2. The claimant alleges that the resignation letter was not voluntary and alleged summary dismissal. He alleged he was made to work overtime without due compensation or payment. He claimed 3-months’ payment in lieu of notice Kshs. 484, 220.55; salary for 15 days worked Kshs.121, 055.13; house allowance withheld Kshs. 1, 478, 011.24; average 3 hours overtime per working day and work on Saturdays throughout service as particularised Kshs. 8, 157, 613.01; and, compensation for unfair termination.
3. The claimant prayed for judgment against the claimant for:
 - a. The termination was constructive and unfair and unlawful.
 - b. Special damages of Kshs. 8,157,613.01.
 - c. 12-months’ compensation Kshs.1, 936,882.20.
 - d. Interest at Court rates.
 - e. Certificate of service.
 - f. Any other or further relief as the Honourable Court deems fit and just to grant.
4. The respondent filed the amended memorandum of response dated 08.12.2023 and drawn and filed by Munyao Muthama & Kashindi Advocates. The respondent’s case was as follows:
 - a. The respondent admitted employing the claimant as Maintenance Engineer by contract dated 23.08.2010.
 - b. The respondent admitted that the claimant resigned and the resignation was not forced at all.
 - c. The claims are time barred under section 90 of the *Employment Act*, 2007.
 - d. The compulsory leave was with full pay and per clause 9.3(v) of the respondent’s Human Resource Policy on suspension with full pay pending investigations.
 - e. On 08.10.2015 the claimant had received a final warning after due disciplinary process that found him culpable of want of performance. He worked until he resigned on 22.10.2019.
 - f. The issues of want of performance had persisted. Meetings were held between parties. Another final warning letter issued on 25.09.2019. On 21.10.2019 the claimant wrote to resign and the respondent accepted the resignation effective 22.10.2019 per respondent’s letter of 23.10.2019. The resignation was voluntary and terminal dues were paid.
 - g. As management staff, he knew he was not entitled to overtime for work outside normal hours.
5. The respondent prayed that the suit be dismissed with costs.
6. The claimant testified to support his case. The respondent’s witness (RW) was Moses Mutuku, the General Manager, Finance and Administration. Final submissions were filed for the parties. The Court has considered the material on record. The Court returns as follows.
7. To answer the 1st issue, there is no dispute that parties were in a contract of service as pleaded.



8. To answer the 2nd issue, as submitted for the respondent, the contract of service ended when the respondent accepted the claimant's offer of voluntary resignation. The claimant has not established the alleged hostile working environment. Instead, the evidence was that the claimant received the warning letters and in his testimony, he confirmed that the warnings related to shortcomings about his properly assigned duties per his job description. The claimant testified that at some point he admitted want of performance and requested for off duty because he felt very fatigued. The Court finds that indeed the claimant appears to have seriously deteriorated in performance and the separation agreement that ensued was proper and was justified. It appears that in view of his want of performance, parties met and agreed to separate whereby the claimant voluntarily offered to resign and the respondent accepted that offer. The contract ended by agreement and the alleged constructive and unfair or unlawful termination has not been established at all. Accordingly, the claimant is not entitled to compensation for unfair termination.
9. The 3rd issue is on the claims for overtime and house allowance. The claimant confirmed by testimony that he was a manager, he was not entailed to overtime, and in any event, he had not completed any prescribed overtime claim forms. He also testified that his salary was consolidated and therefore inclusive of reasonable provision for housing as envisaged in section 31 of the *Employment Act, 2007*. As urged for the respondent, throughout service, there was no grievance about overtime and house allowance. The contract expressly referred to a consolidated salary. The claims are found unjustified. As liquidated claims, they have not been strictly proved, as is trite law to do.
10. The certificate of service is exhibited for the respondent and should be available for delivery of the original if not yet already delivered.
11. The Court has found that parties agreed to separate. The issue of pay of contractual 3 months in lieu of notice does not arise on either party. The offer to resign was made and accepted. The parties must be bound by the agreed terms of separation and they cannot be permitted to go back in that respect. The

In conclusion, the suit is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS WEDNESDAY 30TH OCTOBER 2024.

BYRAM ONGAYA

PRINCIPAL JUDGE

