



Kenya Union of Commercial, Food and Allied Workers v Kiambaa Dairy Farmers Cooperative Union Limited (Appeal 36 of 2019) [2024] KEELRC 2664 (KLR) (30 October 2024) (Judgment)

Neutral citation: [2024] KEELRC 2664 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL 36 OF 2019
DKN MARETE, J
OCTOBER 30, 2024**

BETWEEN

KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS CLAIMANT

AND

KIAMBAA DAIRY FARMERS COOPERATIVE UNION LIMITED RESPONDENT

JUDGMENT

1. This matter came to be by way of a Memorandum of Claim dated 16th November, 2018. The issues;

“Unfair/Unlawful dismissal of Jemimah Njambi, Veronica Wanjiku and Susan Wanja.”
2. The Respondent in a Response to Memorandum of Claim dated 12th March, 2019 denies the claim and prays that it be dismissed with cost.
3. The Claimant’s case is that she is a registered trade union and covers the employees of the Respondent.
4. The Claimant’s further case is that the Respondent’s three employees were in service as follows; -

Jemimah Njambi: 1st Grievant

Was employed by the Respondent on 5th October, 2006 as a general labourer at a monthly salary of Kshs.6,000/= without house allowance. She served in that capacity upto 2010 when she was promoted to a dairy recorder. She served in the capacity of a dairy recorder until she was unfairly dismissed on 21st April, 2017. At the time of her unfair dismissal she was earning Kshs.15,242/= per month and Kshs.4,572/= as house allowance. She served the Respondent diligently for ten years.

Veronica Wanjiku: 2nd Grievant



Was employed by the Respondent on January 1985 as a milk recorder at a monthly salary of Kshs.11,250/= without house allowance. She served in the capacity until she was unfairly dismissed on 21st April, 2017. She has a clean record of 32 years with the Respondent. At the time of her unfair dismissal, she was earning Kshs.27,276/= per month.

Susan Wanja: 3rd Grievant

Was employed by the Respondent on January 2007, as a milk recorder without house allowance. She served in this capacity up to the time of unfair dismissal on 21st April, 2017. At the time of unfair dismissal, she was earning Kshs.19,814/= per month and Kshs.5,944/= as house allowance. She served the Respondent for 10 years with a clean record.

5. The Claimant's other case is that on 13th May, 2015, she recruited the grievants into union membership. Before this, the parties relationship was harmonious with no victimization, harassment coercion, intimidation and or termination/dismissals.
6. The Claimant avers that no sooner has she released the check off forms to the Respondent for purposes of compliance with Section 48 and 54 of *Labour Relations Act* 2007, than the Respondent started, victimization, harassment, coercion and intimidation to the employees whose names appeared on the check off forms.
7. On 21st April, 2027, the Respondent unfairly dismissed the three grievants in contravention of sections 5, 41, 43, 45 and 46 of the *Employment Act*, 2007. All attempts at conciliation were thwarted by the non-cooperation of the Respondent.
8. She prays as follows;



Claim	Amount (Kshs)
(i)Jemimah Njambi: 1 st Grievant	19,814.00
Notice	7,344.00
Under payments (204 x 36)	405,388.00
Overtime (5484) hours	180,172.30
Public holidays (2304) hours	23,500.00
Monthly contribution of Kshs. (500x47)months	5,000.00 237,768.00
Unauthorized deductions	878,986.30
Full compensation	
Total	
(ii)Veronicah Wanjiku: 2 nd Grievant	27,276.00
Notice	24,804.00
Under payments (689x12x3)	699,062.40
Overtime (9x24x36) 7776 hours	207,129.60
Public holidays (2304) hours	23,500.00
Monthly contribution of Kshs. (500x47)months	327,312.00 1,309,084.20
Full compensation	
Total	
(iii)Susan Wanja:3 rd Grievant	25,758.00
Notice	526,694.40
Normal overtime (5184) hours x101.60	234,086.40
Public holidays (2304) hours	23,500.00
Monthly contribution of Kshs. (500x47)months	309,096.00 1,119,134.80
Full compensation	
Total	

9. The Respondent denies bias and unlawful termination and that the issues evolving around the grievant was ordered within the law. These was canvassed directions issued and the matters closed.
10. This matter is before intended to embarrass the Respondent. He submits thus;
 - a. That the claims herein are incompetent and merely intended to embarrass the Respondent.



- b. That there has been no breach of the court orders by the Respondent.
 - c. That the Claimants have been paid all their dues and further due process was followed in their termination.
 - d. That the Respondent has not at any one time refused the members to join any of their union of their choice.
 - e. That claims under the several needs is unsubstantiated and undeserved.
 - f. That the claims in their entirety be dismissed with costs.
11. The Respondent presents a case of no Recognition Agreement or Collective Bargaining agreement with the Claimant.
 12. It is her further case that the dismissal of the grievance was not a consequence of union membership that gross misconduct under section 44(4)(e) of the *Employment Act*, 2007. The grievant refused to sign the Respondent's new rules of conduct of business and were dismissed after being subjected to a disciplinary procedure as appropriate. They even declined to appeal against their dismissal despite being given a chance so to do.
 13. The issues for determination therefore are;
 1. Whether the termination of the employment of the grievance by the Respondent was wrongful, unfair and unlawful.
 2. Whether the Claimant is entitled to the relief sought.
 3. Who bears the costs of this cause.
 14. The 1st issue for determination is whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful. The parties brought in their written submission dated 19th October, 2023 for the Claimant and 29th November instant for the Respondent. These reiterate the respective cases of the parties.
 15. The Respondent's case overwhelms that of the Claimant. The Claimant has failed to controvert the Respondent's case on union membership. Indeed, she agreed that the parties were not related in so far as union activities and other requites were concerned. Either party did not owe the other a duty of union relationship.
 16. Again, the Respondent in her list of document brings out a report on conciliation proceeding and recommendations where the grievance were found to be in default and therefore no finding was made in their favour. The dismissal was found to have been occasioned by the defiance to comply with employer's requirement on signing and adhering the Respondent operational requirement.
 17. The Claimant's case fails for want of proof. She does not in any way controvert the Respondent's case of a dismissal on grounds of misconduct.
 18. The probable of the two cases is that of the Respondent. The evidence adduced on the misconduct of the grievance in the height of the push and pull between the parties is palpable and convincing. The grievants' conduct and their purported union created the disaster of their termination from employment. I therefore find a case of lawful termination of employment and hold as such.



19. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. She is not. Having lost on a case of unlawful termination of employment, she becomes disentitled to the relief sought.

20. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DELIVERED, DATED AND SIGNED THIS 30TH DAY OF OCTOBER 2024.

D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Nyumba hold brief for Manene the Claimant union.
2. Mr Gachomo instructed by Ngugi Munyoki & Company Advocate for the Respondent.

