



**Kimuyu v Amazon Motors Limited (Cause E1045 of 2021)
[2024] KEELRC 2568 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2568 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E1045 OF 2021
S RADIDO, J
OCTOBER 24, 2024**

BETWEEN

JUSTUS KIMUYU CLAIMANT

AND

AMAZON MOTORS LIMITED RESPONDENT

JUDGMENT

1. Through a Motion dated 30 June 2022, Amazon Motors Ltd (the Respondent) moved the Court seeking an order that Nairobi Cause No. E830 of 2021, Esther Wanjiku Kihura v Amazon Motors Ltd would serve as a test case of the several Causes which had been filed against it alleging unfair termination of employment.
2. On 25 July 2022, the Court allowed the plea for a test case by the Respondent.
3. The test case was heard and, in a judgment delivered on 3 May 2024, the trial Court found and held that the Respondent’s decision to send its employees on an indefinite and unpaid leave amounted to constructive dismissal and therefore constituted unfair termination of employment.
4. The parties herein appeared before this Court on 8 October 2024 and they proposed that the Court proceeds to determine the appropriate relief upon the filing of submissions.
5. The Claimant had filed his submissions on 15 July 2024, and the Respondent on 31 July 2024.
6. The Court has considered the record and submissions.

Compensation

7. Section 49(4) of the *Employment Act*, 2007 sets out the factors the Court should consider in awarding compensation after a finding of unfair termination of employment.



8. The Claimant served the Respondent from 1981 to 2021, a period of 39 years. The circumstances of separation were occasioned by the COVID-19 public health pandemic.
9. In consideration of these factors, the Court is of the view that the equivalent of 11 months gross salary as compensation would be appropriate and fair (the Claimant was earning a gross salary of Kshs 88,000/-).

Salary in lieu of notice

10. The Respondent had a collective bargaining agreement with the Amalgamated Union of Kenya Metal Workers which provided at clause 19 for notice of termination of employment.
11. Having served for over 15 years, the Claimant was entitled to 3 months written notice or pay in lieu of notice in the sum of Kshs 264,000/-.

Unpaid leave

12. The Claimant sought Kshs 176,020/- on account of accrued 52 days leave.
13. In the test case judgment, the Court capped accrued leave to the last 18 months of the contract (see section 28(4) of the *Employment Act*, 2007).
14. For the 18 months, the Respondent computed that the Claimant would be entitled to Kshs 138,600/- as accrued leave.
15. In light of section 28(4) of the *Employment Act*, 2007, the Court will adopt the computation by the Respondent.
Unpaid salaries, sacco dues, damages for unfair labour practices, severance pay and house allowance
16. The trial Court rejected these heads of the claim and the Court declines to award any relief.

Conclusion and Orders

17. The Court awards the Claimant:
 - i. Compensation Kshs 968,000/-
 - ii. Pay in lieu of notice Kshs 264,000/-
 - iii. Accrued leave Kshs 138,600/-TOTAL Kshs 1,370,600/-
18. The Respondent to issue a Certificate of Service within 30 days from today.
19. The Claimant to have interest on the awards at court rates from the date of judgment as well as costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 24TH DAY OF OCTOBER 2024.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Nchogu, Omwanza & Nyasimi Advocates



For Respondent Wanjohi & Wawuda Advocates
Court Assistant Wangu

