



**Andala v Safety Auto Spares Limited (Cause E250 of 2022)  
[2024] KEELRC 13405 (KLR) (27 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13405 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E250 OF 2022  
DKN MARETE, J  
NOVEMBER 27, 2024**

**BETWEEN**

**PETER WILSON ANDALA ..... CLAIMANT**

**AND**

**SAFETY AUTO SPARES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated 21st April, 2022. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's Reply to Memorandum of Claim dated 14th June, 2022 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that he was he employed on or about 2nd May, 1990 on permanent basis as a Mechanic. He earned Kshs.5,000.00 which was later reviewed to Kshs.17,946.00.
4. The Claimant's further case is that on or about 27th March, 2020, he proceeded for annual leave on medical grounds and has not returned to work ever since. He had worked diligently for 25 years on 7 days a week without fail and has not been paid his salary since proceeding on leave.
5. It is the Claimant's other case that at all times during his employment he rendered his services with devotion, dedication and diligence as was required of him.
6. The Claimant's other case is that the Respondent's drastic action was actuated by malice and biased in that he was not accorded any defence.
7. He prays as follows;
  - a. Two (2) months gross salary plus in lieu of notice  $Kshs.17,946 \times 2 = Kshs.35,892/-$
  - b. Severance pay (15) days for every year worked  $598 \times 15 = 8,973/- \times 25 \text{ years} = Kshs.224,325/-$



- c. Certificate of service;
  - d. Certificate of remittance of any statutory deductions (as applicable);
  - e. Interest on (a) to (c) above at court rates till date of full payment;
  - f. Costs of the suit;
  - g. Any other and/or further relief that this Honourable Court may deem fit and just to grant in the circumstances.
  - h. Terminal dues-twenty four (24) month(s) gross salary – Kshs.430,704/-;
8. The Respondent's case is that indeed the Claimant proceeded on sick leave as signed by his doctor and was away for four months. He did not present a certificate of incapacity, or at all.
9. The Respondent's further case is that when the Claimant returned in August 2020, he worked for only 15 days and left, never to return. She was therefore not duty bound to pay him
10. The Respondent other case is a denial of paragraphs 5 – 10 of the Memorandum of Claim and avers as follows;
- a. That on or about 27<sup>th</sup> March, 2020 the Claimant presented a sick leave sheet from Berea Medical Centre in which his doctor advised that he was under medication for hyper tension and that he would resume duty on 4<sup>th</sup> April, 2020 without any problem.
  - b. That the Respondent allowed the Claimant to proceed on sick leave but the Claimant did not resume on 4<sup>th</sup> April, 2020 as per the certificate of incapacity signed by his doctor.
  - c. That contrary to his certificate of incapacity the Claimant remained away from work for four (4) months without any justifiable reason and only came back in the month of August 2020.
  - d. That the Claimant did not present any certificate of incapacity to justify why he was away from work for four (4) months.
  - e. That when he came back in August 2020, the Claimant only worked for 15 days and then left never to be seen again.
  - f. That under Section 30 (1) of the *Employment Act*, 2007 & while the Claimant was on sick leave, the Respondent was only supposed to pay the Claimant seven (7) days full pay & seven (7) days at half pay.
  - g. However, the Respondent out of good will paid the Claimant his full salary for the months of March, April and August 2020 despite him been away from work for the whole of April & half of August without presenting any Certificate of Incapacity from a qualified doctor.
  - h. That since mid-August 2020, the Claimant never came back to work and under the law the Respondent was not required to pay any more monies to the Claimant.
  - i. That in the circumstances, the Claimant's allegations are not true and this suit is an afterthought.
11. The Respondent's further avers that the Claimant is not entitled to the prayers set out in paragraph 13 of the Memorandum of Claim. This is as follows;
- a. The claim for two-month gross pay plus in lieu of notice are unmerited since the Claimant was not terminated but elected to be away from work and not to present any certificate of



incapacity. Further, the Claimant was paid more than his statutory dues owed to him under Section 30 of the [Employment Act](#), 2007.

- b. The claim for severance pay is unmerited, speculative and unjustified since the Claimant was a registered member of NSSF and the Respondent was a regular contributor.
  - c. The claim for terminal dues of twenty-four (24) months gross salary is also unmerited, speculative & misleading since it is the Claimant who elected to be away from work and not to present any certificate of incapacity to his employer. He was further paid all his terminal dues under the law.
12. The issues for determination are;
1. Whether there was a termination of the employment of the Claimant by the Respondent.
  2. Whether the termination of the employment of the Claimant by the Respondent, if at all, was wrongful, unfair and unlawful.
  3. Whether the Claimant is entitled to the reliefs sought.
  4. Who bears the costs of this cause?
13. The first issue for determination is whether there was a termination of the employment of the Claimant by the Respondent. The Claimant in its written submissions dated 7th February, 2024 reiterates his case and submits a case of unfair and unlawful termination of employment. It is his case that the failure to pay his salary when he proceeded on sick leave was a breach of labour laws. This is because the Respondent purported to punish him for being sick and unwell whereas he had followed procedure in Section 30 of the [Employment Act](#) by notifying the Respondent of his sickness and also submitting his medical certificates.
14. The Claimant pleads and submits a violation of Section 41 and 45 of the [Employment Act](#), 2007 for want of substantive and procedural fairness in his termination of employment.
15. The Respondent on the other hand submits a case of a fair termination of employment of the Claimant and urges the court to dismiss the case. This is as follows;
- a. The Claimant on 27<sup>th</sup> March, 2020 presented a doctor's note/sick leave sheet which stated that he would resume duty on 4<sup>th</sup> April, 2020. Contrary to his sick leave he never resumed duty on 4<sup>th</sup> April, 2020 but elected to remain away from work for four (4) months without any justifiable reason.
  - b. No certificate of incapacity was presented by the Claimant to justify why he was away from work for four (4) months.
  - c. The Claimant came back to work in August 2020 for fifteen (15) days, thereafter left work and has not returned to date.
  - d. That under Section 30 (1) of the [Employment Act](#), 2007 & while the Claimant was on sick leave, the Respondent was only supposed to pay the Claimant seven (7) days full pay & seven (7) days at half pay.
  - e. However, the Respondent out of good will paid the Claimant his full salary for the months of March, April and August 2020 despite him been away from work for the whole of April & half of August without presenting any Certificate of Incapacity from a qualified doctor.
  - f. The Claimant has not been dismissed. He left on his volition.



16. The Respondent submits that under Section 47(5) of the *Employment Act*, 2007 the burden of proving unfair termination of employment or wrongful dismissal lies on the employee. In this case, the Claimant has failed to discharge this burden of proof and the claim for unlawful termination of employment must fail.
17. The Respondent's case is that the Claimant left employment on his own and voluntarily. A case of termination of employment therefore does not arise. I agree.
18. The Respondent's case overwhelms that of the Claimant. It is the more probable of the two. In any event, the Claimant has in toto failed to substantiate and proof a case of termination of employment, let alone unlawful termination of employment. He has failed to meet the dictates of Section 47 (5) of the *Employment Act*, 2007 and therefore his case collapses in toto. I therefore find a case of no termination of employment and hold as such. This answers the first issue for determination.
19. On a finding of no termination of employment as above, all the other issues for determination fall by the way side. They are not worth of any determination.
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 27<sup>TH</sup> DAY OF NOVEMBER 2024.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances :

Mr. Kariuki holding brief for Amadi instructed by Amadi & Amadi Advocates for the Claimant.

Miss Njuru instructed by Llyod & Partners Advocates LLP for the Respondent.

