



**Dunman v Athi Stores Limited (Cause E003 of 2023)  
[2024] KEELRC 13565 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13565 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E003 OF 2023  
B ONGAYA, J  
DECEMBER 19, 2024**

**BETWEEN**

**CHARLES DUNMAN ..... CLAIMANT**

**AND**

**ATHI STORES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 29.05.2023 through Mwaura & Wachira Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the termination of the claimant's Employment by the Respondent was unlawful, unfair and unprocedural.
  - b. A declaration that the claimant was discriminated on account of his age contrary to the provisions of Article 27 of *the Constitution* of Kenya, 2010;
  - c. Special damages
    - i. Unpaid salary for 4 months (100,000\*4).....Kshs 400,000/=
    - ii. Annual leave dues for 10 years (100,000\*10).....Kshs 1,000,000/=
    - iii. Service pay (47 years) (100,000/30)\*15\*47)...Kshs 2,350,000/=
    - iv. 12 months' salary as compensation for unfair/unlawful termination of employment .....Kshs 1,200,000/=Total .....Kshs 4,950,000/=
  - d. General damages for discrimination;
  - e. Costs of the claim;



- f. Interest on (c), (d) and (e) above at courts rate from the date of filing suit until payment in full.
  - g. Any other and or further relief that this honourable court deems fit to grant.
2. The respondent was on 21.06.2023 served with Summons, however, to date, it has failed to enter appearance nor file its statement of defence.
  3. The claimants' case was that he was employed by the respondent in early January, 1973 as a Plant Mechanic handling mining and other related heavy-duty equipment of a similar nature used in the mining and processing of raw materials used by cement companies.
  4. On or about 01.05.2020 he was presented with a Notice of Termination letter terminating his services with effect from 01.06.2020.
  5. The claimant states that by the time his employment was terminated he held a supervisory role where he was in charge of 30 employees and was receiving a salary of Kshs 100,000.
  6. The salary payments were made partly in cash with the bulk of the balance being made into employee bank accounts, the foregoing arrangement by the respondent was mainly for managers and persons who had higher salaries.
  7. That the respondent would pay Kshs 20,228/- directly into the claimant's bank account and these are the sums the respondent would indicate in the claimant's payslip.
  8. The respondent would then pay the claimant Kshs 78,163 in cash, which the claimant would immediately deposit into his bank account.
  9. Prior to receiving the termination letter, the claimant states that he had not received his salary for 4 months and the same has not been paid to him to date.
  10. It is the claimant's contention that his termination was unlawful and discriminatory because of his age. Further it was unlawful because of redundancy as the respondent did not follow any of the procedures under law.
  11. The claimant's reasonable expectation was that he would continue to be in employment since he was properly carrying out his duties.
  12. The claimant filed his submissions. The court has considered the claimant's case and makes finding as follows:
    - a. In view of the termination notice dated 01.05.2020 and the claimant's testimony, the Court returns that the parties were in employment relationship as urged for the claimant. The Court further finds that the employment was terminated by that letter because of redundancy. The reason given was that business volumes had reduced. There is no reason to doubt the respondent's position especially that the claimant relies on that letter to urge for redundancy package. The claimant worked for the respondent from January 1973 to 01.06.2020.
    - b. The claimant has exhibited a payslip for Kshs. 22, 500.00 and a further bank deposit slip for 78, 163.00 and urges that his gross monthly salary as a supervisor for 30 respondent's staff was Kshs. 100, 000.00 as at termination. The salary is upheld on a balance of probability.
    - c. The Court finds that the redundancy was in breach of section 40 of the *Employment Act* on service of 30 days' notice to the claimant and area labour officer on the scope and extent of the redundancy and selection criteria. It was sudden and in disregard of the claimant's long service since 1073. Such is an aggravating factor under section 49 of the Act together with blatant



breach of the law and the claimant is awarded Kshs. 1, 200, 000.00 maximum compensation for the unfair redundancy. He is awarded 4 months' salary arrears Kshs. 400,000.00 as claimed. The claimant offered no evidence on circumstances under which he did not take annual leave allegedly for 10 years and the claim will fail. He is awarded severance pay Kshs. 2, 350, 000.00. The respondent will pay costs of the suit.

- d. Discrimination is not established at all. The claimant was dismissed on account the workload had reduced and not because of his age. The claims and prayers in that respect are unfounded. The claimant says he had 4 months' salary arrears suggesting the respondent was indeed undergoing a difficult financial time consistent with reduced workloads.

In conclusion, judgment is hereby entered for the claimant against the respondent for:

1. The declaration that the termination by redundancy was unfair.
2. The respondent to pay the claimant Kshs.3, 950,000 (less PAYE) by 01.03.2025 failing interest to run thereon at court rates from the date of this judgment until full payment.
3. The respondent to pay the claimant the costs of the suit.
4. The Deputy Registrar to return the case file to Machakos sub registry forthwith within two days.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 19<sup>TH</sup> DECEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

