



**Ontita v Impala Glass Industries Limited (Cause 1489 of 2016)  
[2024] KEELRC 13473 (KLR) (19 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13473 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1489 OF 2016  
L NDOLO, J  
DECEMBER 19, 2024**

**BETWEEN**

**CHARLES MAAKE ONTITA ..... CLAIMANT**

**AND**

**IMPALA GLASS INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant's claim brought by a Memorandum of Claim dated 29<sup>th</sup> July 2016 is for compensation for alleged unlawful and unfair termination of employment plus payment of terminal dues. The Respondent defends itself by a Statement of Defence dated 6<sup>th</sup> November 2017.
2. At the trial, the Claimant testified on his own behalf and the Respondent called its Human Resource Manager, Shabir Hakimji. Thereafter, the parties filed final submissions.

**The Claimant's Case**

3. The Claimant states that he was employed by the Respondent for a period of seven years. Effective 1<sup>st</sup> May 2011, the Claimant was promoted to Grade 5A at a basic salary of Kshs. 8,724.
4. The Claimant claims to have been injured at work upon which he sought compensation for the injuries sustained.
5. By a letter dated 19<sup>th</sup> March 2015, the Claimant was transferred to a different department. According to the Claimant, the Respondent accused him of unsatisfactory performance without substantiation.
6. On 17<sup>th</sup> April 2015, the Claimant's employment was terminated. The Claimant terms the termination as malicious, unlawful and unfair. He therefore claims the following:
  - a. Reinstatement or in the alternative damages for unlawful termination;



- b. Kshs. 323,642 being salary arrears, notice and benefits;
- c. Kshs. 51,184 in severance pay;
- d. Certificate of service;
- e. Costs.

### **The Respondent's Case**

- 7. In its Statement of Defence dated 6<sup>th</sup> November 2017, the Respondent admits having employed the Claimant in different departments. At the time of leaving employment, the Claimant earned a monthly salary of Kshs. 14,624.50 plus a house allowance of Kshs. 2,800.
- 8. The Respondent states that the Claimant performed his work well until February 2015, when his performance started to decline and in the month of March 2015, he was put on a performance cycle.
- 9. The Respondent further states that the Claimant's performance was assessed on 15<sup>th</sup> April 2015 and being found not to have improved, the Claimant was issued with a termination letter on 17<sup>th</sup> April 2015.

### **Findings and Determination**

- 10. There are two (2) issues for determination in this case:
  - a. Whether the termination of the Claimant's employment was lawful and fair;
  - b. Whether the Claimant is entitled to the remedies sought.

### **The Termination**

- 11. On 17<sup>th</sup> April 2015, the Respondent wrote to the Claimant as follows:

“Dear Sir,

Ref: Termination

This is to inform you, as per our letter of 19<sup>th</sup> March 2015 you have not improved your performance as such the management has decided to give you termination with effect from 18<sup>th</sup> April 2015.

You are therefore requested by the management to return all the company property and get in touch with HR. Dept for your Terminal dues if any.

Thanking you,

Yours faithfully,

For Impala Glass Industries Ltd.

(signed)

Shabbir Hakimjee

Administration and Human Resource Manager”

- 12. This letter makes reference to a previous one dated 19<sup>th</sup> March 2015 stating thus:

“Dear Sir,



Ref: Performance

The management wishes to inform you that it has come to its knowledge that your work performance is not satisfactory as you are aware you had been working in Hakimi Department in past and due to unsatisfactory performance you were transferred to Hasanji Department till now and again it has been discovered you are not performing as required.

Please note if we do not find any improvement we will have no choice but to take a disciplinary action by the management.

Thanking you,

For Impala Glass Industries Ltd

(signed)

Shabir M. Hakimji

HR & Admin Manager

13. From the foregoing correspondence which is backed by evidence adduced in court, it is irrefutable that the Claimant's employment was terminated on account of alleged poor performance. This is one of the grounds recognised by the law upon which employment may be terminated, subject to established procedural fairness requirements.
14. In addressing the issue of poor performance, the Court in *Kenya Science Research International Technical and Allied Workers Union (KSRITAWU) V Stanley Kinyanjui and Magnate Ventures Ltd (Cause No 273 of 2010)* stated as follows:

“The proper procedure once poor performance of an employee is noted is to point out the shortcomings to the employee and give the employee an opportunity to improve over a reasonable length of time. In our view 2-3 months would be reasonable”
15. In its decision in *Jane Wairimu Machira v Mugo Waweru and Associates [2012] eKLR* this Court held that termination of employment on account of poor performance must be preceded by a credible performance review. Further, once an employer begins to consider termination on this ground, the affected employee is entitled to the procedural fairness dictates set out in Section 41 of the *Employment Act*.
16. In the present case, apart from a letter dated 19<sup>th</sup> March 2015, by which the Respondent raised concern on the Claimant's performance, there was no other document on this issue. More significantly, there was no evidence of any performance review or a performance improvement plan. Moreover, the Claimant was not subjected to any disciplinary proceedings. A blanket statement that an employee is a poor performer cannot be a valid reason for termination of employment.
17. In light of the foregoing findings, I have reached the conclusion that the termination of the Claimant's employment was substantively and procedurally unfair.

## Remedies

18. The Claimant seeks reinstatement as a primary remedy. However, in view of the time lapse after separation, reinstatement would not be an appropriate remedy. Instead, I award the Claimant six (6) months' salary in compensation for unlawful and unfair termination of employment.



19. In making this award, I have taken into account the Claimant's length of service and the finding that he did not contribute to the termination. I have also taken into account the Respondent's failure to avail the Claimant an opportunity to be heard, prior to termination.
20. The claims for salary arrears, notice and benefits were not proved and no basis was established for the claim for severance pay. These claims therefore fail and are dismissed.
21. Finally, I enter judgment in favour of the Claimant in the sum of Kshs. 92,547 being 6 months' salary in compensation for unlawful and unfair termination of employment.
22. This amount will attract interest at court rates from the date of judgment until payment in full.
23. The Claimant is also entitled to a certificate of service plus costs of the case.
24. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF DECEMBER 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Makori for the Claimant

Mr. Okeche for the Respondent

