



**Ladha v Tiger Packaging Limited (Cause E006 of 2022)
[2024] KEELRC 13374 (KLR) (6 December 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13374 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI
CAUSE E006 OF 2022
AK NZEI, J
DECEMBER 6, 2024**

BETWEEN

AHMED LADHA CLAIMANT

AND

TIGER PACKAGING LIMITED RESPONDENT

JUDGMENT

1. The Claimant sued the Respondent vide a Memorandum of Claim dated 22nd September, 2022 and filed in Court on 27th September, 2022 and pleaded that he was on 18th March, 2022 employed by the Respondent as a Factory Manager at a monthly salary of Kshs.200,000/=. That the Claimant accepted the contract and worked diligently.
2. The Claimant further pleaded that on 16th April, 2022, the Respondent's General Manager (Mr. Bhavin Chandaria), at around noon and without any consultation with the Claimant, terminated the Claimant's services without giving the Claimant an opportunity to be heard. That the Respondent terminated the Claimant's services unilaterally, abruptly and maliciously, and without following lawful due process.
3. It was the Claimant's pleading that he was not served with any notice or required to show cause, and had no warning or disciplinary issue during the period of his employment. That the Claimant's employment was terminated without any valid reason, that the Claimant's salary and accrued dues were not paid, and that he was not issued with a certificate of service.
4. The Claimant sought the following reliefs:-
 - a. Salary for the period worked (15 days) Kshs.100,000/=.
 - b. Three (3) months' salary in lieu of notice Kshs.600,000/=.
 - c. Annual leave Kshs.200,000/=.



- d. Gratuity pay (2 years @ 15 days per year) Kshs.200,000/=.
 - e. Salary for the two year contract period Kshs.4,800,000/=.
 - f. Compensation for unlawful termination Kshs.2,400,000/=.
 - g. Interest.
 - h. Certificate of service.
5. Documents filed alongside the Claimant's Memorandum of Claim included the Claimant's written witness statement and a list of documents dated 22nd September, 2022 listing 3 documents. The listed documents were an employment contract dated 18th March, 2022 and signed on 30th March, 2022, mobile call log (0769-175193) and a demand letter dated 22nd September, 2022.
6. The Respondent filed a Memorandum of Response on 21st October, 2022 and denied the Claimant's claim. The Respondent pleaded:-
- a. that the Claimant was offered employment by the Respondent via a Letter of Offer dated 18th March, 2022 for the position of Factory Manager, which he accepted on 30th March, 2022 and thereafter began working on 1st April as per the terms of the offer.
 - b. that the Claimant attended orientation and induction at the Respondent's premises on 31st March, 2022, and reported to work and begun working on 1st April, 2022.
 - c. that pursuant to the offer letter dated 18th March, 2022, the Respondent drew up a contract of employment dated 1st April, 2022 to be executed by the Claimant with similar terms as those in the offer letter, and issued the same to the Claimant for execution on 5th April, 2022. That the Claimant informed the Respondent that he needed time to peruse the said contract and to satisfy himself that the terms therein were agreeable to him.
 - d. that the Respondent continued working until 14th April, 2022 when he reported to work at 7.40 am but never signed off as was required of him, despite having done the same since 1st April, 2022. That it was reported that the Claimant left at 12.00 noon and never reported back to work thereafter and did not explain why he was absent from work.
 - e. that after termination of the Claimant's employment, the Respondent computed the total number of days worked and drew a cheque, and that the Claimant failed, despite calls from the Respondent, to go to the work place and/or to pick his cheque.
 - f. that the Claimant is not entitled to payment in lieu of notice as he terminated his employment on his own, and that he is not entitled to leave pay as leave pay is earned after 28 days and he only worked for a total of 15 days.
 - g. that the Claimant is not entitled to gratuity as the Respondent factored in statutory deductions, and that gratuity is not payable where an employee is a member of N.S.S.F. That [contractual] gratuity could only be paid at the end of the contract, which the Claimant frustrated.
 - h. that the claim for the two years contract was not provided for in the offer letter which formed the basis of the Claimant's employment; and that compensation for unlawful termination was not payable as it was the Claimant who initiated the separation.



7. Documents filed alongside the Respondent's Response to the claim included copies of the offer letter/ contract dated 18th March, 2022 and signed/executed on 30th March, 2022, a page of an attendance register for the period 25th March, 2022 to 25th April, 2022, an unexecuted letter of employment dated 1st April, 2022, a cheque for Kshs.103,016/= dated 25th April, 2022, and an unsigned payslip for April 2022.
8. The Respondent filed an Amended Response to the claim on 24th October, 2022 and raised a Counter-claim for Kshs.200,000/= being one month salary in lieu of notice, and costs.
9. The Claimant filed Reply to the Respondent's Response and Response to the Counter-claim on 8th November, 2022. The Claimant denied ever seeing the alleged contract dated 1st April, 2022 or executing it. The Claimant further pleaded:-
 - a. that on 14th April, 2022, he and other staff were granted leave to go home early on that day as the Easter Vacation started on 15th April, 2022 stretching upto 18th April, 2022, for the reasons that some of the staff were travelling upcountry. That by the time the Claimant left at around 4.00 pm, the Human Resource Office was locked, hence the Claimant could not sign the attendance register that day.
 - b. that on 16th April, 2022, the Claimant was called through Mobile [Phone] No. 0769-175193 by the General Manager, Bhavin Chandaria, and was informed that the Respondent had terminated his contract and that he should not report to work. That all his salary would be transferred to his bank account. That no reasons for the termination were given.
 - c. that there was telephone communication between the Claimant and the Respondent's General Manager on 19th April, 2022; and that the Claimant forwarded to the Respondent his documents via email (KRA Pin, copies of NSSF, NHIF and bank details), receipt whereof the Respondent acknowledged on 20th April, 2022.
 - d. that there was further communication between the Respondent and the Claimant on 25th April, 2022 whereby the Claimant sent a message to know whether his Kenyan ID had been received and the Respondent acknowledged receipt.
 - e. that it was not the Claimant who terminated his employment contract, but the Respondent who breached the same by unfairly terminating the Claimant's employment.
 - f. that there was communication between the Claimant and the Respondent between 16th April, 2022 and 25th April, 2022. That the Claimant did not abscond duty.
 - g. the Claimant denied the Respondent's Counter-claim for Kshs.200,000/=, and prayed that the same be dismissed with costs.
10. The Claimant filed a supplementary list of documents dated 7th November, 2022, listing 3 documents. The listed documents were emails from 27th March, 2022 to 25th April, 2022, excerpt of WhatsApp communication between the Claimant and Bhavin Chandaria, and excerpt of WhatsApp communication between the Claimant and Jackson Thuo.
11. The Respondent filed a witness statement of Bhavin Chandaria dated 7th November, 2022.
12. Trial opened before me on 14th February, 2024. The Claimant adopted his filed witness statement as his testimony and produced in evidence the documents referred to in paragraphs 5 and 10 of this Judgment. The Claimant further testified:-



- a. that he was employed by the Respondent as a factory Manager vide a contract dated 18th March, 2022. That the employment started on 1st April, 2022 and that he worked for only 15 days, from 1st April, 2022 to 16th April, 2022.
 - b. that on 16th April, 2022, the Claimant was called by the Respondent's General Manager and told not to report to work. That he was not given any termination notice, was not given any show cause letter, was not called for any disciplinary proceedings and that his termination was communicated to him via a telephone call.
 - c. that the Claimant was supposed to be paid Kshs.200,000/= per month, and that the notice period was supposed to be 3 months. That the Claimant was not given any notice, was not paid for the 15 days worked, and that the contract was supposed to be for 2 years.
 - d. that the Respondent's allegation that the Claimant absconded duty was untrue. That the Claimant clocked in on 14th April, 2022 at 7.40 am, and that employees were told to leave early because of the Easter holidays, and that when the Claimant went to the HR's Office for purposes of clocking out, he found the office closed as the HR had already left for Nairobi.
 - e. that on 14th April, 2022, the Respondent's General Manager (Mr. Bhavin) had requested the Claimant by (email) to furnish him with his KRA Pin, NSSF copy, NHIF (details) and bank details. That on 21st April, 2020, the Claimant received an email from the Respondent to the effect that the documents had been received. That if the Claimant had absconded duty as was being alleged by the Respondent, there would not have been communication between the Claimant and the Respondent on 16th April, 2022.
13. Cross-examined, the Claimant testified that he had given out his documents to the Respondent during his job interview, but was on 14th April, 2022 told to furnish others to the HR as those that he had earlier given had been lost. That there was communication between the Claimant and the Respondent from the date of termination (16th April, 2022) and the date of the Claimant's demand letter. That the Claimant was never asked by the Respondent to go and collect his cheque; and never saw any cheque.
14. The Respondent called one witness, Bhavin Chandaria (RW-1), who adopted his filed witness statement as his testimony and produced in evidence the Respondent's documents referred to in paragraph 7 of this Judgement. RW-1 further testified that the signing off register was kept in the security office at the main gate. The Respondent, however, admitted that from 14th April, 2022, duty resumed on Tuesday the following week. That the following Monday was a public holiday (Easter Monday). That the Claimant never resumed duty. That RW-1 called the Claimant on 16th April, 2022, and that the Claimant was in communication with the Respondent by email upto 25th April, 2022. That the Respondent had nothing to show that the Claimant was called to collect this cheque.
15. Having considered the pleadings filed and the evidence adduced thereon, issues that fall for determination, in my view, are:-
- a. Whether the Claimant's employment was terminated by the Respondent, and if so, whether the termination was unfair.
 - b. Whether the Claimant is entitled to the reliefs sought.
 - c. Whether the Respondent's Counter-claim is merited.
16. On the first issue, the Claimant pleaded and testified that his employment was terminated by the Respondent via a telephone call made to him on 16th April, 2022 by the Respondent's General



- Manager, Mr. Bhavin Chandaria (RW-1). That the Respondent and the Claimant remained in communication (by email) until 25th April, 2022 regarding the Claimant's documents which RW-1 had requested for on 14th April, 2022. The Claimant denied absconding duty. The Respondent (RW-1) admitted in evidence to having telephoned the Claimant on 16th April, 2022, but to find out his whereabouts. The Respondent further admitted having remained in communication with the Claimant upto 25th April, 2022.
17. Although the Respondent pleaded and testified (RW-1) that the Claimant absconded duty, no evidence was tendered in proof of that allegation. The allegation that the Claimant left work early on 14th April, 2022 because he did not sign out on that date was not proved.
 18. The Claimant's evidence that employees had been allowed to leave early on that day due to the Easter holidays and that by the time he (the Claimant) left at 4.00 pm on that day the HR's office where the attendance register was kept was closed as the HR had already travelled to Nairobi, was not rebutted. The Respondent's (RW-1's) evidence that the register was kept in the security office at the main gate was not proved. The HR (Human Resource Manager) was not called to testify, and neither was the person incharge of the security office at the Respondent's main gate called to testify. No attendance registers for other employees for 14th April, 2022 were produced in evidence to demonstrate that they were signed out on the said date, and at what time those other employees signed out.
 19. On a balance of probability, I am convinced that the Claimant did not abscond duty as alleged by the Respondent, and that his employment was terminated by the Respondent, and that the termination was unfair as the Respondent did not prove that it had a valid reason to terminate the Claimant's employment. Further, the Respondent did not adhere to the fair termination procedure set out in Section 41 of the Employment Act, despite having alleged absconding of duty, which is a gross misconduct under Section 44 of the said Act. The Claimant was not given an opportunity to be heard. I find and hold that the Claimant's employment was terminated by the Respondent, and that the termination was unfair.
 20. On the second issue, and having found that termination of the Claimant's employment was unfair, I award the Claimant the equivalent of three (3) months' salary as compensation for unfair termination of employment. The Claimant's monthly salary as stated in the contract dated 18th March, 2022 and signed on 30th March, 2022 was Kshs.200,000/=. The equivalent of 3 months' salary is $Kshs.200,000/ = \times 3 = Kshs.600,000/=$, which I award to the Claimant. I have taken into account the facts that the Claimant had a 2 years fixed term contract, had worked for only 15 days, the manner and circumstances under which the employment was abruptly terminated, and the fact that the Claimant did not in any way contribute to the termination.
 21. Although the Claimant had only worked for 15 days, I am persuaded by the decision of Lenaola, J (as he then was) in the case of Samuel G. Momanyi – vs – Attorney General & Another [2012] eKLR where Section 45(3) of the Employment Act, which places a 13 months minimum employment period as a condition for claims of unfair termination, was declared unconstitutional.
 22. The claim for Kshs.100,000/= being salary for the 15 days worked by the Claimant in April 2022 was proved, and is hereby allowed.
 23. The claim for Kshs.600,000/= being 3 months' salary in lieu of notice is allowed, as it was a term of the Claimant's contract of employment signed on 30th March, 2022. The Respondent terminated the Claimant's employment without notice, according to the evidence on record.
 24. The claim for Kshs.200,000/= being annual leave is declined. The Claimant had not been in employment for 2 or more months as provided in Section 28(1)(b) of the Employment Act.



25. The claim for Kshs.200,000/= being gratuity pay is declined. Where payable, gratuity is paid based on completed years of service, by dint of Section 35(5) of the Employment Act. In the present case, the Claimant's employment was terminated after he had worked for only 15 days. Further, the Claimant's employment contract only provided for payment of service gratuity "as per Kenya law", but did not fix it as per Section 35(5) of the Employment Act.
26. The claim for Kshs.4,800,000/= being salary for the two years contract period is declined. Such an award is not provided for under Section 49(1) of the Employment Act. Further, such an award would, in my view, amount to double award, in view of the already awarded compensation for unfair termination of employment.
27. The claim for issuance of a certificate of service is allowed, pursuant to Section 51(1) of the Employment Act.
28. On the third issue, the Respondent's Counter-claim for Kshs.200,000/= being payment in lieu of notice was not proved, in view of my finding herein that the Claimant's employment was terminated by the Respondent. The Counter-claim is hereby dismissed with no order as to costs.
29. In sum, and having considered the submissions filed herein, Judgment is hereby entered for the Claimant against the Respondent as follows:-
 - a. Compensation for unfair termination of employment Kshs.600,000/=.
 - b. Unpaid salary for 15 days workedKshs.100,000/=.
 - c. Three months' salary in lieu of notice ... Kshs.600,000/=.

Total = Kshs.1,300,000/=
30. The awarded sum shall be subject to statutory deductions pursuant to Section 49(2) of the Employment Act.
31. The Respondent shall issue the Claimant with a certificate of service within thirty days of this Judgment.
32. The Claimant is awarded costs of the suit and interest. Interest shall be calculated at Court rates from the date of this Judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER 2024.

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

.....Claimant

.....Respondent

