



**Orwaru v Bett Company (K) Ltd (Cause 1815 of 2016)
[2023] KEELRC 34 (KLR) (19 January 2023) (Judgment)**

Neutral citation: [2023] KEELRC 34 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1815 OF 2016
L NDOLO, J
JANUARY 19, 2023**

BETWEEN

CYRUS MOGUSU ORWARU CLAIMANT

AND

BETT COMPANY (K) LTD RESPONDENT

JUDGMENT

1. By a Memorandum of Claim dated August 31, 2016 and filed in court on September 7, 2016, the claimant has sued the respondent for unlawful and unfair termination of employment. In its defence, the respondent filed a response dated December 20, 2017.
2. At the trial, the claimant testified on his own behalf and the respondent called its administrator- plant operations, Benjamin Muli. Both parties further filed written submissions.

The Claimant's Case

3. The claimant states that he was employed by the respondent in August 2012, as a Quality Checker. He worked as such until April 12, 2016, when his employment was terminated. At the time of leaving employment, the claimant earned a monthly salary of Kshs. 20,000.
4. The claimant's case is that the termination of his employment was unlawful and unfair as there was no justification for it and due procedure was not followed.
5. He states that on April 4, 2016, he noted adjustments in his salary and decided to enquire from the Human Resource Manager how his dues were being calculated. The Human Resource Manager did not give any explanation to the claimant and on April 12, 2016, the claimant was suspended until further notice.



6. On June 13, 2016, the claimant reported the matter to the Labour Office in Athi River and the respondent was served with a letter demanding payment of the claimant's dues but the respondent failed and/or refused to comply.
7. The claimant now seeks the following remedies:
 - a. One month's salary in lieu of notice.....Kshs. 20,000
 - b. Salary for the month of April 2016.....20,000
 - c. Leave pay for 4 years.....80,000
 - d. Severance pay (@18 days for 4 years).....68,571
 - e. 12 months' salary in compensation.....240,000
 - f. Overtime (@ 5 hours per month for 4 years).....34,560
 - g. Rest days for 4 years.....147,456
 - h. Certificate of service
 - i. Costs plus interest

The Respondent's Case

8. In its Response dated December 20, 2017, the respondent admits having employed the claimant but denies that the employment was unlawfully terminated.
9. The respondent denies the claimant's entire claim and states that all the issues raised by the Labour Office were adequately addressed.

Findings and Determination

10. There are two (2) issues for determination in this case:
 - a. Whether the claimant has made out a case of unlawful termination of employment;
 - b. Whether the claimant is entitled to the remedies sought.

Unlawful Termination?

11. On April 12, 2016, the claimant was issued with a leave out sheet giving the reason as 'suspended until further notice.' The respondent's witness, Benjamin Muli confirmed having issued the leave out sheet to the claimant, on instructions by the respondent's management.
12. Muli testified that the claimant was suspended because of a disagreement with the Human Resource Manager. He further testified that the claimant was not called back from suspension as there was no plan to do so.
13. Muli's testimony accords with the claimant's account that he was suspended indefinitely which in effect amounted to an unlawful and unfair termination of employment.
14. If indeed the claimant was disrespectful to his superiors as alleged by the respondent, he ought to have been given an opportunity to respond to specific charges as dictated by section 41 of the [Employment Act](#). This did not happen and any allegations made against the claimant were not proved. The only



conclusion to make therefore is that there was no valid reason for termination of the claimant's employment as required under section 43 of the Act.

15. In the final submissions filed on behalf of the claimant, reference was made to the decision in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR where this court stated as follows:

“...for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.”

16. In this case, the respondent failed both the substantive and procedural fairness tests rendering the termination unlawful and unfair.

Remedies

17. On the strength of these findings, I award the claimant eight (8) months' salary in compensation. In arriving at this award I have considered the claimant's length of service plus the respondent's unlawful conduct in the termination transaction.
18. According to the evidence on record, the claimant was paid notice pay, salary for April 2016, leave pay and service pay. The claims thereon are therefore without basis and are disallowed. The claims for overtime and off days were not proved and are dismissed.
19. In the end, I enter judgment in favour of the claimant in the sum of Kshs. 160,000 being salary for eight (8) months in compensation for unlawful and unfair termination of employment.
20. This amount will attract interest at court rates from the date of judgment until payment in full.
21. The claimant is also entitled to a certificate of service plus costs of the case.
22. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF JANUARY 2023

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JUDGE

Appearance:

Ms. Jeruto for the Claimant

Ms. Alusiola for the Respondent

