



**Kenya Union of Commercial, Food & Allied Workers v Oyugis Supermarket Ltd  
(Cause 376 of 2018) [2023] KEELRC 446 (KLR) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 446 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 376 OF 2018  
S RADIDO, J  
FEBRUARY 22, 2023**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL, FOOD & ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**OYUGIS SUPERMARKET LTD ..... RESPONDENT**

**JUDGMENT**

1. The Kenya Union of Commercial, Food & Allied Workers (the Union) sued Oyugis Supermarket Ltd (the Respondent) on 19 November 2018, and it stated the Issue in Dispute as:

**Dismissal of Evans Muhati.**

- 2. The Respondent filed a Response on 27 June 2019 and the Cause was heard on 23 January 2023, when Evans Muhati (the Grievant) testified.
- 3. Upon the close of the Union’s case, the Respondent applied for an adjournment, but the Court declined the request prompting the Respondent to close its case without calling any witness or leading evidence.
- 4. The Union filed its submissions on 9 February 2023, and the Respondent on 20 February 2023.
- 5. The Court has considered the pleadings, evidence and submissions.

**Alternative dispute resolution**

- 6. Attempts to resolve the dispute at conciliation failed, and the Conciliator issued a Certificate on 4 April 2018.



### **Employment relationship**

7. The Respondent had denied having an employment relationship with the Grievant in its Response.
8. However, it did not call any evidence, and the Court is only left with the Grievant's oral testimony that the Respondent employed him on 18 April 2014 as a storekeeper and that in the course of time, he was deployed to the Respondent's hardware unit.
9. In light of the oral testimony and the provisions of sections 9(2) and 10(7) of the [Employment Act, 2007](#), the Court concludes that the Grievant was an employee of the Respondent from 18 April 2014 until 11 September 2016.

### **Unfair termination of employment**

10. Section 35(1) of the [Employment Act, 2007](#) envisages written notice of termination of employment whilst section 41 of the Act obligates the employer to accord the employee an opportunity to be heard before taking the decision to end the contract.
11. The Grievant's oral testimony that he was denied entry into the workplace by a Manager named Mahesh on the morning of 11 September 2016 was not controverted nor rebutted.
12. In consideration of the unrebutted testimony and sections 35(1), 41 and 47(5) of the [Employment Act, 2007](#), the Court finds that the Respondent unfairly terminated the Grievant's employment.

### **Reinstatement or compensation**

13. 4 years have lapsed since the termination of the Grievant's employment and therefore reinstatement would not be practicable.
14. The Grievant served the Respondent for about 2 years.
15. The Court is, therefore, of the view that the equivalent of 3 months' gross salary as compensation would be appropriate in the circumstances (gross salary was Kshs 7,500/-).
16. The Respondent did not give the Grievant written notice and the Court will also allow one-month salary in lieu of notice.

### **Accrued leave**

17. The Grievant did not provide an evidential foundation to this head of the claim either in the field witness statement or during oral testimony and relief is declined.

### **Conclusion and Orders**

18. The Court finds that the Respondent unfairly terminated the Grievant's employment and he is awarded:
  - i. Compensation Kshs 22,500/-
  - ii. Pay in lieu of notice Kshs 7,500/-Total Kshs 30,000/-
19. Each party to bear own costs considering the anticipated social partnership between the parties.



**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 22<sup>ND</sup> DAY OF FEBRUARY 2023.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Union Mr Atella, Assistant General Secretary

For Respondent Mr Wafula instructed by Oguttu Mboya, Ochwal & Partners

Court Assistant Chrispo Aura

