



**Murtiony v Nyayo Tea Zones Development Corporation (Cause 126 of 2017) [2023] KEELRC 430 (KLR) (20 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 430 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 126 OF 2017  
NJ ABUODHA, J  
FEBRUARY 20, 2023**

**BETWEEN  
RICHARD KIPCHIRCHIR MURTIONY ..... CLAIMANT  
AND  
NYAYO TEA ZONES DEVELOPMENT CORPORATION ..... RESPONDENT**

**JUDGMENT**

1. By a memorandum of claim filed on June 20, 2014, the claimant pleaded that he worked for the respondent in 2008 until 2013 when the respondent unlawfully terminated his service and refused to pay his dues.
2. The claimant averred his termination was unlawful because his union was not informed of the intention to declare him redundant, no leave pay was given, no notice or one month's salary in lieu of leave was paid and further that no severance pay was made.
3. The claimant further averred that during the period he worked for the respondent he was grossly underpaid and he worked overtime but was not paid. He further stated that he worked on rest-days without pay.
4. The claimant therefore sought from the respondent the sum of Kshs 545,430/25 being terminal dues owed and compensation for unfair termination.
5. In response to the claim, the respondent denied that the claimant was its employee and in the alternative stated that if at all the claimant was its employee, the respondent paid him all his dues and that the employment was lawfully terminated. The respondent thus pleaded that the claimant not having proven his employment status with the respondent, his claim for unlawful termination, unpaid leave and severance pay must fail.



6. At the oral hearing only the claimant appeared and the Court being satisfied that there was proper service proceeded with the matter *ex-parte*.
7. The claimant stated in his evidence that in 2012 he was working for the respondent. He further stated that he recorded a witness statement on June 19, 2014 which he relied on as his evidence in chief. The Court however noted that no such witness statement was on record. It was the claimants evidence that in 2012 he was loading tea on trucks when he got an accident. The accident involved the respondent's vehicle. He got injured, however the respondent never attended well to his injuries he sued for his injuries and was consequently dismissed by Mr Kipkirui, the Factory Manager. He was not issued with a dismissal letter. The claimant further stated that he relied on the documents filed with the claim as well as supplementary list of documents.
8. In a claim for unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred rests on the employer, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer. The Court however would like to point out that the two burdens are mutually exclusive and failure by one party to discharge their part of the burden does not lessen the burden cast upon the other by law.
9. The respondent herein failed to attend Court hence the averments contained in the claim remained uncontested.
10. The claimant on its part claimed he was the respondent's employee and produced proceedings in RMCC No 14 of 2013 filed against the respondent. The claim was in respect of an accident the claimant was involved in. the same was successful prosecuted and by a letter dated May 29, 2015 the respondents counsel forwarded a cheque of Kshs 302,500 in settlement of the declared sum. To this extent the claimant proved he was the respondent's employee and indeed was injured in the course of his employment.
11. The claimant further alleged that during the period he worked, he worked overtime without being paid. The claimant however neither in his pleadings nor testimony before the Court elaborated beyond his pleadings the nature of the work he did that made him work overtime on a daily basis. The claimant further failed to produce any payslip or pay document to show his salary or wages did not include overtime. The same applies to claim for leave. These heeds of claim are therefore rejected.
12. The respondent did not appear in Court to defend itself against claim for unfair termination. The Court therefore relying on the burden cast upon the respondent by law inevitably arrives at the conclusion that there was no valid or justifiable reason for the termination of the claimant's service and that such termination was not carried out in accordance with this law.
13. The claimant stated that he worked for the respondent from 2008 and left in 2012. This was approximately 5 years. He did not produce any evidence of any special skills for the work he was performing for the respondent. He stated that he was tea loader. Hence he qualified as a general worker. The Court therefore is of the view that an award of seven months salary would be adequate compensation for unfair termination.
14. The court therefore awards the claimant as follows.
  - a. One months salary in lieu of notice Kshs 10,777.15



b. Seven months' salary as compensation for unfair termination Kshs 75,444.05

Kshs 86,217.20

c. Costs of the suit

15. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2023**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

