



**Kenya Shoe & Leather Workers Union v Crown Industries Limited (Cause 1994 of 2017) [2023] KEELRC 243 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELRC 243 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1994 OF 2017  
L NDOLO, J  
FEBRUARY 2, 2023**

**BETWEEN  
KENYA SHOE & LEATHER WORKERS UNION ..... CLAIMANT  
AND  
CROWN INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant in this case is a registered trade union representing workers' interests in the shoe, leather, rubber and plastics sector. The Claimant brings the present claim on behalf of its member, Bernard Omuro (the Grievant) who was an employee of the Respondent.
2. The claim is contained in a Memorandum of Claim dated and filed in court on 6<sup>th</sup> October 2017. The Respondent filed a Reply on 24<sup>th</sup> September 2021.
3. At the trial, the Grievant testified on his own behalf and the Respondent called its Human Resource Manager, Anna Maragia and Supervisor, Justus Musau. Thereafter the parties filed written submissions.

**The Claimant's Case**

4. The Claimant states that the Grievant was employed by the Respondent on 1<sup>st</sup> August 2011, as a Machine Attendant. He worked as such until 9<sup>th</sup> June 2016, when his employment was terminated. At the time of termination, the Grievant earned a monthly basic salary of Kshs. 12, 425 plus a house allowance of Kshs. 1863.75.
5. The Claimant avers that on 16<sup>th</sup> May 2016, the Grievant fell ill upon which he went to hospital. The Grievant is said to have sent a message to his supervisor, Mr. Musau informing him that he would not report on duty as usual.



6. On 18<sup>th</sup> May 2017, the Grievant attended Zambezi Hospital where he was treated and given 5 days' sick off. Upon reporting to work on 23<sup>rd</sup> May 2017, the Grievant was sent back home on allegations that the sick off document he had presented was a forgery.
7. On 27<sup>th</sup> May 2017, the Grievant was issued with a show cause letter to which he duly responded. On 9<sup>th</sup> June 2017, he was issued with a summary dismissal letter.
8. The Claimant reported a dispute to the Cabinet Secretary, Ministry of Labour, in accordance with Section 62(1) of the *Labour Relations Act*. A Conciliator was duly appointed but the matter was unresolved at the conciliation stage.
9. The Claimant lays a claim for unlawful and unfair termination of employment on behalf of the Grievant and therefore seeks the following remedies:
  - a. One month's salary in lieu of notice.....Kshs. 12,425
  - b. Gratuity for 4 years.....24,850
  - c. 12 months' salary in compensation.....149,100
  - d. Certificate of service
  - e. Costs

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

10. In its Reply dated 16<sup>th</sup> June 2021 and filed in court on 24<sup>th</sup> September 2021, the Respondent admits having employed the Grievant by a contract of employment dated 1<sup>st</sup> May 2016.
11. The Respondent however denies that the Grievant's employment was unlawfully terminated and states that the Grievant failed to conduct himself within the precincts of his contract and the dictates of statute.
12. The Respondent adds that the Grievant's employment was characterised by insubordination and reckless disregard of his duties.
13. The Respondent states that the Grievant was issued with a show cause letter dated 23<sup>rd</sup> May 2016 to which he responded on 27<sup>th</sup> May 2016. The Respondent further states that prior to the dismissal, the Grievant had been given several show cause notices and warning letters on account of absenteeism and other forms of misconduct, coupled with poor performance.
14. According to the Respondent, the Grievant responded to the warning letters acknowledging his misconduct.
15. The Respondent's case is that the Grievant was summarily dismissed because of gross misconduct, by severally absenting himself from work without notifying his superiors. The Respondent asserts that the dismissal was well within the law as the Grievant had been given several warning letters.

### **Findings and Determination**

16. There are two (2) issues for determination in this case:
  - a. Whether Grievant's dismissal was lawful and fair;
  - b. Whether the Grievant is entitled to the remedies sought.



## The Dismissal

17. The Grievant was dismissed by letter dated 9<sup>th</sup> June 2016 stating as follows:

“RE: Summary Dismissal of Your Services.

This has reference to your reply letter to our show cause notice dated 27<sup>th</sup> May, 2016 whose contents therein were noted but unacceptable to the management due to the fact that you did not notify the management as soon as is reasonably practicable of your absence and the reason for it. We were forced to replace your position by engaging another deserving Mwananchi due to your continued absence.

In view of the above therefore, we do not have an option but summarily dismiss your services on the grounds of gross misconduct for absenting yourself from the place appointed for the performance of your work for seven (7) consecutive days (i.e. from 16<sup>th</sup> up to 23<sup>rd</sup> 2016) without leave or any other lawful cause. This is in compliance with section 44(4)(a) of the *employment act* 2007 (Laws of Kenya).

You are instructed to collect your final dues for days worked and leave earned from the cash office any time any day during working hours.

Thank you.

For Crown Industries Ltd.

(signed)

Human Resources Manager.”

18. The reason for the Claimant’s dismissal, as disclosed in this letter is unauthorised absenteeism from work. While acknowledging that he was indeed absent from work, the Grievant testified that he was unwell and that he had notified his supervisor, by a text message, that he would not be able to report to work.
19. By his own admission, the Grievant was absent from work from 16<sup>th</sup> May 2016 until 23<sup>rd</sup> May 2016. He admitted that he did not communicate to the Respondent’s management regarding his absence. The Respondent was therefore not aware of the Grievant’s whereabouts until he showed up on 23<sup>rd</sup> May 2016 with a sick sheet, whose authenticity the Respondent doubted.
20. As held in *Ayub Kombe Ziro v Umoja Rubber Products Limited* [2022] eKLR under Section 30 of the *Employment Act*, the responsibility of procuring and presenting a medical certificate to confirm inability to work on account of illness lies with the employee. The same provision requires the employee to communicate this inability to the employer as soon as is practically possible.
21. In this case, the Grievant waited for a whole week before informing his employer of the reason for his absence from work. His absence was therefore unauthorised and the Respondent had a valid reason to terminate his employment as required under Section 43 of the *Employment Act*.
22. That settled, the next question is whether in executing the termination the Respondent observed due procedure. It is on record that the Grievant was issued with a show cause letter to which he duly responded. It is however also on record that he was not invited to a disciplinary hearing.
23. In the submissions filed on behalf of the Respondent, it was argued that an oral hearing was not necessary, ostensibly because the Grievant was a habitual absentee. I disagree, it is now well settled that



the right to be heard under Section 41 of the *Employment Act* includes an opportunity for oral hearing (see *Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd* [2013] eKLR).

24. In the result, I find and hold that the Respondent short-circuited the mandatory disciplinary process decreed by Section 41 of the Employment rendering the termination procedurally unfair.

### **Remedies**

25. In light of the foregoing findings, I award the Grievant one (1) month's salary in compensation. In arriving at this award I have taken into account the Grievant's length of service, moderated by his negative employment record as documented.
26. I further award the Grievant one (1) month's salary in lieu of notice.
27. Regarding the claim for gratuity, the Respondent referred the Court to the decision in *Pathfinder International Kenya Limited v Stephen Ndegwa Mwangi* [2019] eKLR where the Court of Appeal held that a claim for gratuity must be supported by a provision in the contract of employment, collective bargaining agreement or statute. The Claimant did not substantiate the basis for this claim which therefore fails and is disallowed.
28. In the ultimate, I enter judgment in favour of the Grievant in the sum of Kshs. 24,850 being one month's salary in compensation and a further one month's salary in lieu of notice.
29. I also direct the Respondent to issue the Grievant with a certificate of service.
30. Each party will bear their own costs.
31. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 2<sup>ND</sup> DAY OF FEBRUARY 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

**Mr. Maina (Union Representative) for the Claimant**

**Mrs. Ochieng for the Respondent**

