



**Hassan v Medivet Products Limited (Cause 629 of 2016)
[2023] KEELRC 785 (KLR) (29 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 629 OF 2016
J RIKA, J
MARCH 29, 2023**

BETWEEN

ALI GITUGI HASSAN CLAIMANT

AND

MEDIVET PRODUCTS LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, on 18th April 2016. He states that he was employed by the Respondent as a Casual Labourer, initially on 26th July 2004. He was assigned the role of a Machine Attendant, on a monthly salary of Kshs. 17,434.
2. He was confirmed in the role, and placed on a contract, on or about 1st November 2008. His salary was increased to Kshs. 24,411 monthly.
3. About 3rd June 2015 and 4th June 2015, he was going to work, when he found fellow Employees outside the Respondent's premises on a go-slow, demanding for payment of arrears of salary. A number of Employees including the Claimant were subsequently suspended. There was an agreement reached for the Employees to return to work, without victimization. However, the Respondent went against the terms of the return-to-work formula and dismissed the Claimant, and 4 other Employees.
4. The Claimant states that he was issued a letter to show cause and thereafter heard before an improperly constituted disciplinary committee. He states the Human Resource Manager who was part of the committee did not have a valid practicing certificate; there was no representation of the department in which the Claimant worked; it was alleged without proof, that the Claimant played a significant role in what was termed as an illegal strike; and the Claimant was denied his right to call colleagues as his witnesses at the disciplinary hearing. His contract was terminated unfairly, on 29th July 2015.



5. He further states that he was not paid fair remuneration for work of equal value; he was dismissed without the benefit of a warning; he was not accorded a chance to appeal; and all the requirements of the law were thrown out in haste.
6. He prays for Judgment against the Respondent for: -
 - a. Unpaid balance of dues at Kshs. 264,104.
 - b. Unpaid salary of 4 months under suspension at Kshs. 97, 644.
 - c. General damages.
 - d. Interest.
 - e. Costs.
7. The Respondent filed its Statement of Response on 3rd May 2016. Its position is that disciplinary proceedings took place in accordance with the law. The Respondent does not owe the Claimant any terminal benefits or damages. The Claimant was paid his terminal benefits which he acknowledged to be in full and final settlement. He discharged the Respondent. The Respondent urges the Court to dismiss the Claim with costs.
8. The Claimant filed a Reply to the Statement of Response on 28th May 2016. He reaffirms the contents of his Statement of Claim.
9. The Claimant gave evidence and closed his case, on 6th July 2022. Respondent's Director Manish Dodhia gave evidence on the same date and on 6th December 2022, when the hearing closed. The Claim was last mentioned on 24th February 2023, when Parties confirmed filing and service of their Submissions.
10. The Claimant adopted his Witness Statement and Documents on record, in his evidence-in-chief. He was employed as a Machine Attendant. Union Members went on a go-slow. The Claimant was issued a letter of termination subsequently. There was no letter to show cause, and no investigation. He was inside the premises during the go-slow. There was no notice to resume work. Employees had gone on without salaries for 6 months leading to the go-slow. The Claimant was compelled to accept what was offered.
11. Cross-examined, the Claimant told the Court that he was invited to a disciplinary hearing. The letter dated 25th June 2015 refers to conclusion of investigations. A letter to show cause was issued. The Claimant was a Member of the Union. There was a meeting involving the Union, Management and Federation of Kenya Employers [FKE]. The Union gave a proposal on terminal dues. The Claimant did not know if what he was paid, arose from the agreement involving his Union, Management and the FKE. It was different from what his Union computed. He was paid Kshs. 217,211. His Union was there when the amount was computed. He does not dispute that he received this sum. His problem was that the initial proposal offered him Kshs. 416,000. He did not understand how the figure changed. Redirected, the Claimant told the Court that he did not respond to the letter to show cause. He was not involved in the Union, Management and FKE meeting. He was not privy to the meeting. He was not advised what the sum of Kshs. 217,211 represented.
12. Director Manish Dodhia adopted his Witness Statement and Documents filed by the Respondent as exhibits A to K. Cross-examined, Dodhia told the Court that he is not the only Director of the Respondent. He did not have authority from his Co-Directors to represent them. He did not participate in investigations. He was a witness to what took place. The industrial action took place



next to his office. He did not participate in the meetings which were convened to resolve the industrial action. The industrial action was a strike, not a go-slow. The strike started on 3rd June 2015. The Management talked to the Employees. The Employees did not work in the afternoon. They were in the premises. A notice for resumption of work had been placed on the notice board. The Claimant was afforded a hearing. He conceded that he was heard. The Employees were not offered terminal dues under duress. The Union had computed Claimant's dues at Kshs. 416,171. The Respondent paid a gross amount of Kshs. 373,780. Less deductions, the sum paid was Kshs. 217,121. His Union and FKE were involved. There was no duress.

13. Redirected, Dodhia restated that the Claimant was invited for disciplinary hearing. The Union was involved from the inception. The figure by the Union was a proposal. Parties consulted and reworked the figure. The Claimant was not coerced, in accepting payment.
14. The issues are: whether the Respondent terminated the Claimant's contract unfairly; whether the Claimant was paid the correct amount of terminal dues; and whether he merits general damages, salary for the period of suspension, costs and interest.

The Court Finds: -

15. The Claimant was employed by the Respondent, as a Machine Attendant on 26th July 2004, on a monthly salary of Kshs. 17,434. He was initially on casual engagement. He was confirmed as a regular Employee and placed on contract in the same position, effective 1st November 2008.
16. He states that on 3rd and 4th June 2015, he found fellow Employees on a go-slow. He suggests by this statement, that he was not involved in what he calls a go-slow, and what the Director stated was a strike. The Claimant states that he was suspended alongside other Employees. He did not explain why he was suspended, if he was not involved in the industrial action.
17. The record indicates that Employees went on strike on 3rd June 2015. Their Trade Union Representative George Gwako visited the factory on 3rd June 2015, and consulted the Employees. There was an agreement between the Union and the Respondent for the Employees to resume work the following day, 4th June 2015. The Respondent issued Notice to the Employees to return to work by 4th June 2015. The Employees did not resume, and the Respondent issued a Final Notice, calling on the Employees to resume work by 11.40 a.m. on 4th June 2015.
18. There was a meeting involving Manish Dodhia and Antony Kiritu [Management]; George Gwako, Abel Nyamamba, Edward Atunga, and Alfred Magare [Union]; and L.W. Kariuki [FKE], where an agreement on return-to-work was reached. Among other things, it was agreed that the Respondent would take disciplinary action against any Employee who refused to obey the agreement.
19. 5 Employees including the Claimant were dismissed pursuant to the return-to-work agreement. On 30th November 2015, FKE through its Manager Industrial Relations, L.W. Kariuki, recommended that summary dismissal is reduced to regular termination, to enable the 5 Employees to be paid terminal dues and 2 months' salary as compensation.
20. The Chemical and Allied Workers Union, which represented the Employees throughout, gave a tabulation of terminal benefits and compensation, in a letter dated 15th December 2015 to the Respondent. This included 2 months' salary as had been proposed by Kariuki. Notably the Union did not raise any questions on validity of termination reasons, or the procedure adopted. There was consensus that all that remained to be done, was computation of what the Claimant, and his colleagues should be paid.



21. The amount proposed by the Union with respect to the Claimant, amounted to Kshs. 416,171. According to the Claimant, he was paid Kshs. 217,711 instead. He claims at paragraph [a] of his prayers, that he should have been paid Kshs 513,815, way above what his Trade Union proposed. He does not explain in his Statement of Claim, how he arrived at this elevated figure. The proposal by the Union at Kshs. 416,171, was not final.
22. The Union Representatives, Management Representatives and FKE Representative, named at paragraph 18 of this Judgment reconvened on 19th January 2016, where the final figures payable to the 5 Employees were agreed. The Claimant was to be paid, and was paid Kshs. 217,711. The agreement is signed by no less than 4 Representatives of the Claimant's Trade Union. The amount is indicated in the agreement to be full and final settlement.
23. Allegations made by the Claimant, about failure to pay to him fair remuneration for work of equal value; his assertion that the Human Resource Manager did not have a current practicing certificate; that Director Dodhia did not have authority to testify from Co-Directors; and that the Claimant's department was not represented at the disciplinary hearing, are bare allegations, whose relevance or significance to the Claim, was not established by the Claimant.
24. It is misconceived for the Claimant to submit that he was not involved in the meetings leading to the settlement. He was represented by his Trade Union throughout. He was bound by the tripartite resolutions coming out of those meetings. If he has any battle to pick on the outcome, he should pick his battle with his Trade Union, not his former Employer. The dispute was resolved satisfactorily, within the trade disputes structure, to which the Claimant was subject.

It Is Ordered: -

- a. The Claim is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF MARCH 2023.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono

Khaduli & Asa Associates, Advocates for the Claimant

Kiarie, Kariuki & Githii Advocates for the Respondent

