



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wekesa v Soloplant Kenya Ltd (Cause 91 of 2017)  
[2023] KEELRC 700 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 700 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 91 OF 2017  
B ONGAYA, J  
MARCH 24, 2023**

**BETWEEN**

**BENSON WEKESA ..... CLAIMANT**

**AND**

**SOLOPLANT KENYA LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the statement of claim on 19.01.2017 through Rabala & Company Advocates. The amended statement of claim was dated 24.02.2022 and filed through Musyoki Mogaka & Company Advocates. The claimant prayed for judgment against the respondent for:
  - a. A declaration that the claimant's termination from employment was unfair, unlawful, and unprocedural.
  - b. The claimant be paid his terminal benefits as set out in paragraph 12 of the amended memorandum of claim amounting to Kshs. 3, 357, 467.96.
  - c. Interest plus costs.
  - d. Any other order that this Honourable court may deem just.
2. At paragraph 12 of the amended memorandum of claim the claimant claimed as follows:
  - a. Payment of one-month in lieu of the notice Kshs. 20, 773.00.
  - b. Severance payment for 14 years and 9 months  $15/26 \times 20773 \times 14$  years = Kshs. 167, 781.92.
  - c. Leave days' balance as at 31.03.2016 Kshs.4, 892.00.
  - d. Service payment 18 days of each year  $18/26 \times 20773 \times 14$  years = Kshs. 201, 338.31.
  - e. One-month salary in lieu of redundancy notice Kshs.20, 773.00.



- f. Salary for 4 days worked in March 2016  $4/26 \times 20773 =$  Kshs. 3, 195.85.
  - g. Overtime for 4 hours every night for 14 years and 9 months Kshs. 2, 757,610.44.
  - h. Public holidays for 14 years 9 months Kshs.2, 757,610.44.
  - i. 12-months' salary compensation for unlawful and unfair termination  $12 \times 20773 =$  Kshs.249, 276.00.
  - j. Total Kshs.3, 536, 695.96
  - k. Less amount paid Kshs.179, 228.00
  - l. Amount owed Kshs. 3, 357, 467.96.
3. The claimant alleged he was employed by the respondent from 01.05.2001 to 04.03.2016. The employment was by letter dated 01.05.2001 to the position of security guard at a basic salary of Kshs.4, 500.00, house allowance of Kshs.675.00, and gross being Kshs.5, 175.00. he alleged that he used to report at work at 6.00pm and check out at 6.00am and he claimed payment for unpaid extra hours of work. The claimant stated that the respondent breached sections 40 and 41 of the *Employment Act* and contravened Article 41 of the Constitution of Kenya. His case was that he was paid Kshs. 179, 228.00 in terminal dues which was below statutory terminal benefits.
4. The respondent filed the memorandum of response on 19.04.2017 through Muiruri & Wachira Advocates. The respondent admitted to have employed the claimant as a security guard and as at termination the claimant earned agreed basic salary of Kshs.18, 063.75 plus allowances making a gross of Kshs. 21, 773.00 per month. Further, during the service the claimant received warning letters due to misconduct such as the one dated 19.12.2011. The respondent further pleaded as follows. The claimant was paid in lieu of termination notice per letter of appointment. The reason for termination was closure of the eEnterprise at the claimant's duty station so that his services were no longer needed. The claimant knew at inception of the business the respondent had leased the business premises at Magana area in Nairobi since 2000 and for 15 years. The lease lapsed by effluxion of time in 2015 and the respondent had to relocate its offices at Nairobi and the claimant's services were therefore no longer needed. The respondent's case was that it was entitled to terminate the contract of service by paying the contractual one-month salary in lieu of termination notice. He was paid terminal dues calculated per statutory provisions. The reason for termination in the notice of termination dated 04.03.2016 was clear, the claimant was offered terminal dues promptly, he complained to the Private Security Workers Union, and at the Labour Office. The complaint was resolved and the claimant paid promptly. The claimant was paid as follows:
- a. Kshs. 20, 773.00 in lieu of notice.
  - b. Per section 40(1) (g) of *Employment Act*, 2007 Kshs. 145, 411.00 severance payment at 15 days for each of the 15 years of service.
  - c. Kshs.4, 892.00 for due leave days.
  - d. Net pay on (a) to (c) above was Kshs. 133, 838 after lawful deductions.
  - e. A further Kshs. 250, 000.00 was paid in overtime as was claimed making Kshs.179, 228.00 in net payment and he signed a certificate releasing the respondent from further liability.
5. The respondent pleaded that the suit had been filed in bad faith and should be dismissed with costs.



6. The claimant testified to support his case and the respondent's witness (RW) was Adada Okado, the respondent's Human Resource Manager.
7. The final submissions were filed for the parties. The Court has considered the material on record and returns as follows.
8. To answer the 1<sup>st</sup> issue, there is no dispute that the parties were in a contract of service as urged in their respective cases.
9. To answer the 2<sup>nd</sup> issue, there is no dispute that the claimant's employment was terminated by the letter of termination dated 04.03.2016 and effective the same date. The reason for termination was that the claimant's work station was closed down. The termination was abrupt.
10. To answer the 3<sup>rd</sup> issue, the Court returns that the reason for termination existed as at termination and was genuine as envisaged in section 43 of the *Employment Act*, 2007. By his own testimony, the claimant confirmed that his work station was indeed closed.
11. To answer the 4<sup>th</sup> issue the Court returns that the procedure adopted by the respondent was unfair. In particular, the respondent failed to prepare the claimant and the respondent failed to serve the claimant and the area labour office the mandatory redundancy notice under section 40 of the Act. It was unfair termination on account of procedural unfairness. The Court has considered that the claimant signed the certificate of release on 10.06.2016 upon being paid Kshs.250, 000.00. However, the Court finds that the certificate of release did not defeat the claimant's right to urge a case of unfair or unlawful termination. At best the certificate of release was contractual and could not defeat statutory protections on fairness of termination of a contract of service.
12. On remedies as prayed the Court returns as follows:
  - a. For payment of one-month in lieu of the notice Kshs. 20, 773.00 was paid per March 2016 pay slip and as urged for the respondent the payment is not due.
  - b. Severance payment for 14 years and 9 months  $15/26 \times 20773 \times 14 \text{ years} = \text{Kshs. } 167, 781.92$  was paid as per the pay slip for March 2016 and as submitted for the respondent it is declined.
  - c. Leave days' balance as at 31.03.2016 Kshs.4, 892.00 was paid per payslip of March 2016 as urged for the respondent and is declined.
  - d. Service payment 18 days of each year  $18/26 \times 20773 \times 14 \text{ years} = \text{Kshs. } 201, 338.31$  is not due per section 35 (6) of the Act as urged for the respondent and is declined because the claimant was a member of NSSF.
  - e. One-month salary in lieu of redundancy notice Kshs.20, 773.00 appears not paid as envisaged in section 40 of the Act prescribing two notices, one mandatory (which the respondent has shown to have purported to pay in lieu, and another in view of redundancy again under section 40 of the Act). The claim is allowed as due.
  - f. Salary for 4 days worked in March 2016  $4/26 \times 20773 = \text{Kshs. } 3, 195.85$  appears paid per March 2016 pay slip as full march salary was computed. The prayer will fail.
  - g. For overtime for 4 hours every night for 14 years and 9 months Kshs. 2, 757,610.44, as submitted for the respondent, the claimant confirmed receiving the overtime payment as was agreed after intervention by the trade union. It is that specific payment for which the claimant executed the certificate to release the respondent. The Court finds that the claimant must be bound accordingly. Further and as submitted for the respondent the claimant has not



provided a base for which he applied to arrive at the amounts claimed. Further, as a continuing injury it ceased on the date of termination and the claimant introduced the claim belatedly (in the amended claim dated 24.02.2022 together with the other continuing injury on public holidays for 14 years 9 months Kshs.2, 757,610.44). As at the date of the amendment the time of limitation being 12 months from the date of cessation thereof had long lapsed and the claims must have been afterthoughts that were clearly time barred. They are both declined accordingly.

- h. For 12-months' salary compensation for unlawful and unfair termination  $12 \times 20773 =$  Kshs.249, 276.00 the claimant has shown it was procedurally unfair. However, he did not have a clean record of service in view of the warnings. The reason for termination has been found to have been fair and genuine on account of the redundancy situation flowing from closure of the claimant's work station. The Court has considered the payments already made or awarded to the claimant that substantially satisfy the statutory provisions. The Court finds that an award of one-month salary will meet ends of justice making Kshs. 20, 773.00 accordingly.
- i. The claimant has marginally succeeded. The Court has considered the historical background of the dispute under which the claimant had an opportunity to negotiate his claims (and the respondent appears to have cooperated) but the claimant opted to engage in incremental and instalment claims culminating in the filing of the instant suit. Thus, each party will bear own costs of the suit.

In conclusion judgment is hereby entered for the claimant against the respondent for:

- a. Payment of Kshs.41, 546.00 by 02.05.2023 failing interest to be payable thereon at Court rates from the date of this judgment till full payment.
- b. The declaration the termination on account of redundancy was procedurally unfair.
- c. Each party to bear own costs of the suit.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
FRIDAY 24TH MARCH, 2023**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

