



**Kenya Union of Commercial, Food and Allied Workers v Meera Umoja Kenya Limited (Cause 21 of 2020) [2023] KEELRC 628 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 628 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 21 OF 2020  
HS WASILWA, J  
MARCH 16, 2023**

**BETWEEN**  
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED  
WORKERS ..... CLAIMANT**  
**AND**  
**MEERA UMOJA KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant Union instituted this claim *vide* a memorandum of claim dated February 17, 2018, claiming that one of its member, Vincent Khaukwa Sinjira, was not paid his terminal dues after resignation. The Union prayed for the following reliefs;
  - a. 3 days worked in August, 2018 of Kshs 2,137.
  - b. Seventeen (17) unpaid leave days of Kshs 10,494.
  - c. Salary underpayment from 2014-2018 of Kshs 264,861.
  - d. Certificate of service
  - e. Cost of the suit to the Claimant.
  - f. Any other order the Honourable Court may deem fit to address the cause of Justice.

**Claimant's case**

2. The Claimant union stated that Vincent Khaukwa Sinjira is and has been its members and therefore that the filed this claimed on his behalf.



3. It is stated that the grievant was employed by the Respondent on the May 19, 2013 as a Shop assistant, earning a gross salary of Kshs 9,000 which was increased to Kshs 9500 in September, 2013 upon confirmation of his employment.
4. That the grievant served the Respondent continuously until August 18, 2018, when the grievant tendered his resignation notice to pursue further studies. The resignation was to take effect from August 21, 2018. At the time of tendering his resignation, the grievant was earning Kshs 12,555.
5. After resigning, the grievant followed up for the payment of his terminal dues till December, 2018 when he informed the Claimant of his predicament and instructed the Claimant to take up the issue on his behalf. The Claimant through its Branch secretary wrote a letter dated December 14, 2018, seeking to amicably resolved the issue. In response the Respondent indicated its unavailability until January 20, 2019.
6. The Union reported a trade Dispute on December 20, 2018, where Mr. George Aluto was appointed as a conciliator. The conciliator convened a meeting for the parties on April 25, 2019 but that the Respondent did not attend. Nevertheless, that the Respondent and the Claimant agreed to have the meeting at the conciliator's office on June 13, 2019 and even signed an agreement which was witnessed by the conciliator but that the Respondent failed to honour the said agreement, informing the filing of this case.
7. During hearing, the grievant testified as CW-1 and adopted his witness statement of February 17, 2020 and stated in summary that he served the Respondent until August 18, 2018, when he served his resignation letter in order to pursue further studies but that the Respondent refused to pay him his terminal dues.
8. Upon cross examination by Mahinda Advocates, the witness testified that he was an employee of the Respondent and a shop steward but that he was not given any employment letter. He stated that he tendered his resignation on August 18, 2018 but that he did not receive any response from the Respondent. He stated further that he reported the issue of non-payment of terminal dues to the labour office on December 21, 2018 but his dues have not been paid to date.

### **Respondent's Case.**

9. The Respondent entered appearance through the firm of Aminga, Opiyo, Masese and company advocates on the February 15, 2021 and filed preliminary objection dated 1<sup>st</sup> March, 2021 on the March 2, 2021, based on the following grounds;
  - a. That the Claimant lacks *locus standi* to file this suit against the Respondent.
  - b. That the claim is statute barred and is incompetent, fatally defective and an abuse of Court process as the same offends the provisions of section 90 of the [Employment Act](#).
10. After filling the Preliminary Objection, the firm of Aminga, Opiyo, Masese and company advocates, through their Chamber Summons of July 15, 2022, sought to cease acting for the Respondent which was allowed by the Court on the July 21, 2022. Soon thereafter, the firm of Mahinda & Maina Company Advocates took over the conduct of the matter with effect from September 2, 2022 and filed a defence to claim dated September 8, 2022 on January 31, 2023.



11. In their defence, the Respondent admitted to employing the grievant but denied receiving any resignation notice. It is stated that the Respondent responded to the Claimant's letter of August 14, 2018 by its letter of August 15, 2018.
12. It is averred that the grievant utilized all his leave days and any unutilized leave days was duly paid for, thus no leave was pending at the time of separation from the Respondent's employ.
13. During hearing, the Respondent and his advocate, did not show up as such the defence case was closed by the Court on the January 31, 2023.

#### **Claimant's Submissions.**

14. The Claimant submitted that the issue of non-payment of terminal dues was first raised with the Respondent who did not take any action until the matter was escalated to the Ministry of labour where parties discussed and agreed on how the grievant was going to be paid. Consequently, an agreement was drafted and signed by the parties in presence of the conciliator who witnessed the said agreement, thus the Respondent should be compelled to honour the said agreement. In support of this position, the Claimant relied on the case of *Kenya Union of Commercial Food and Allied Workers Union V Kamuga / Gaichanjiru FCS*, where Nzioki wa Makau J held that:-

“This dispute ought not have come to Court for the simple reason that the parties entered into an agreement at conciliation level and signed an agreement dated April 18, 2016. Absent any evidence of fraud, mistake or any factor that can vitiate a contract executed by willing parties, the Court cannot impose its decision on the contract of parties. The Conciliator having brought parties together and having worked out the deal between them was not in a position to refer the dispute to Court. It was resolved at conciliation and therefore the Claimant's members being the 28 Grievants are to be paid the outstanding dues amounting to Kshs 4,739,443.85 as claimed under paragraph 4 of the Claim. Each of the 28 Grievants is to receive the balance owed as part payment was made in respect of a majority of them...”

15. Based on the foregoing, the Claimant submitted that the Respondent's action was made without due regard to fair administrative action and therefore that it will meet the ends of justice for the Court to compel them to pay the grievant his terminal dues as agreed by the parties at the ministry of labour office on the June 13, 2019 and costs be awarded to the Claimant.
16. I have examined the evidence and submissions of the parties herein.
17. The Respondent raised a preliminary objection that the Claimant lacks locus standi to file this suit against the Respondent and that the claim is statute barred and incompetent and offends the provision of Section 90 of the *Employment Act* 2007.
18. I will first handle the issue raised in the preliminary objection; 1<sup>st</sup> being *Locus*.
19. This claim has been filed by the Claimant union Kudheihia on behalf of the grievant Vincent Khaukwa Sinjira who they aver was their member.
20. There is no evidence submitted to the contrary that the grievant was not a member of the union.
21. As to the claim being time barred, the grievant filed this claim in February 2020. He had resigned from the Respondent's employment in August 2018. Indeed the claim was filed within the 3 year limit envisaged under Section 90 of the *ELRC Act*.
22. The contention that the claim is time barred is therefore not true.



23. As concerns other merits of this claim, the claim of the grievant is for payment of his terminal dues. There is no indication that the grievant was paid his dues upon resignation from the Respondent.
24. At the time of resignation, the grievant was earning Kshs 12,555/= per month.
25. There is no evidence contrary to what is submitted by the grievant as the Claimants case proceeded and the Respondents presented no evidence to the contrary.
26. It is my finding that the grievant's case is proved and he is entitled to his terminal dues which I award as follows;
  1. 3 days worked in August 2018 of Kshs 1,255/=
  2. 17 days leave pay =  $17/21 \times 12,555 = 10,164/=$
  3. Salary underpayments as pleaded 252,530.30/=Total = 263,949.30  
Less statutory deductions
  4. Issuance of certificate of service.
  5. Respondent to pay costs of this suit plus interest at Court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 16<sup>TH</sup> DAY OF MARCH, 2023.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

