



**Bandi v Mason Services Limited (Cause 166 of 2018)
[2023] KEELRC 1054 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1054 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 166 OF 2018
NJ ABUODHA, J
APRIL 28, 2023**

BETWEEN

NICHOLAS IGADITSI BANDI CLAIMANT

AND

MASON SERVICES LIMITED RESPONDENT

JUDGMENT

1. In the instant case, the Claimant herein vide an amended Statement of Claim dated 20th September 2019 and filed in Court on 26th September 2019 sought for the following reliefs against the Respondent;
 - a. A declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair
 - b. The sum of Kshs. 375,637.49
 - c. Certificate of service
 - d. Costs of this suit and interests at courts rate from the time of filing suit until payment in full
 - e. Any other relief , further better relief the Honourable court may deem just and fit to grant.
2. In that statement of claim, the Claimant averred that at all material times he was orally employed by the Respondent as a cleaner sometimes in 2013 at a salary of Kshs. 9,000 which amount was later in January 2016 increased to Kshs. 13,500.
3. It was the Claimant's case that he was designated to do cleaning services at the Safaricom shop in Eldoret where he served until 1st June 2017 when he was unfairly terminated without any valid reason.
4. The Claimant stated that the respondent terminated his services without following the right procedure laid down in the [Employment Act](#) and failed to give a fair reason for termination.



5. The Respondent filed an amended Statement of Defence on 11th October 2019 denying the claim and averred that the Claimant was retained during the period it had a contractual relationship with Safaricom Company Limited , which contract lapsed on 30th November 2016 and that it was granted short term extensions from 1st December 2016 to 31st March 2017; 1st April 2017 to 31st March 2017 and 13th June 2017 to 30th June 2017 and that thereafter the Claimants were retained during the extension periods of the said contract between 1st December 2016 to 31st March 2017; 1st April 2017 to 31st March 2017; 1st April 2017 to 31st May 2017 and 13th June 2017 to 30th June 2017.
6. The Respondent maintained that the circumstances under which its contract with Safaricom Company Limited lapsed was beyond its control and as such the claimants alleged termination does not fall within the meaning and interpretations of sections 41,43 and 45(2) of the [Employment Act](#).
7. The Respondent maintained that the claimant was paid all his terminal dues in accordance with the provisions of the [Employment Act](#) at the time his employment lapsed.
8. The suit was then set down for hearing on 12th July 2022 where the Claimant testified as CW1. He adopted his witness statement recorded on 20th September 2019 as his evidence in chief. CW1 basically reiterated the contents of the amended statement of claim and maintained that he was not paid his terminal dues.
9. On cross examination, he denied ever going on leave and maintained that he used to work during public holidays
10. On re-examination, CW1 conceded that he was aware that the contract between the respondent and Safaricom had lapsed.
11. The Respondent called Stephen Njoroge who testified as RW1. He introduced himself as one the respondent's Managing Director and adopted his witness statement recorded on 7th May 2018 and a further witness statement sworn on 8th October 2019 as his evidence in chief . He also relied and produced the bundles of documents filed on 7th May 2018 as his exhibits in this case.
12. RW1 told the court that the Respondent had a cleaning service contract with Safaricom to provide cleaning services in their shops all over that country and that the said contract between Safaricom and the Respondent lapsed on 30th June, 2017.
13. According to RW1, the Claimant had been informed in 2016 about the said lapse of the contract through a memo dated 15th November 2016 which was sent to all team leaders and in this case, the same was communicated to David Barasa who was the team leader for Eldoret Safaricom branch.
14. RW1 maintained the termination of employment of the Claimant was due to the expiry of the contract with Safaricom.
15. He stated that all employees were paid their terminal dues as evidenced by the bank statements at page 23 of the Respondent's bundle of documents.
16. RW1 averred that the payments were not salaries but *ex gratia* depending on how long each employee had worked.
17. In cross examination, RW1 maintained that all communications were done through David Barasa as the team leader and that that the Respondent would inform its staff when the contracts expired and of the extensions.



18. With that evidence from the rival parties, the court directed parties to file their respective written submissions which submissions were simultaneously filed on 21st September 2022

Determination

- 19. Upon analysing the pleadings, the evidence before me and the submissions on record, I find that the main issues for determination is whether the Claimants were unfairly terminated from employment and if so, what reliefs should this Court grant.
- 20. In determining the issue as to whether the claimants were unfairly and unlawfully terminated from employment, it is important to note that the claimants claimed that they were terminated on account of redundancy whereas the respondent has maintained that the Claimants were lawfully terminated and paid their dues after the contract of service between Safaricom and the Respondent lapsed.
- 21. The principal reason put forward by the Respondent was the contract between itself and the Safaricom lapsed and that this was something that was beyond its control.
- 22. The Respondent adduced evidence to show that the claimants were paid what RW1 called benefits on ex gratia basis.
- 23. The claimant’s nature of work was dependent on the contract between the Respondent and Safaricom and as such, when the said contract expired , it follows that the Respondent had a valid and fair reason for not taking the Claimant’s contracts beyond 30th June 2017.
- 24. Just like in fixed term contracts, employees hired for the performance of a task whose completion is determinate, do not have the legitimate expectation that they would remain in employment beyond the completion of the project unless the contract for their hire provided otherwise. To this extent the Court is persuaded that the respondent had no obligation to retain the claimant and his colleagues beyond the period that the contract it had with Safaricom. The claim for unfair termination of employment is therefore found without merit and is hereby dismissed with costs.
- 25. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF APRIL, 2023

DELIVERED VIA VIRTUAL COURT THIS 28TH DAY OF APRIL 2023

ABUODHA J. N.

JUDGE

In the presence of:-

.....for the Claimant

..... for the Respondent

