



REPUBLIC OF KENYA



**KENYA LAW**  
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**Barasa & 3 others v Mason Services Limited (Cause 167, 84, 85 & 86 of 2018  
(Consolidated)) [2023] KEELRC 1055 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1055 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 167, 84, 85 & 86 OF 2018 (CONSOLIDATED)**

**NJ ABUODHA, J**

**APRIL 28, 2023**

**BETWEEN**

**DAVID BARASA ..... 1<sup>ST</sup> CLAIMANT**  
**JOSEPHINE LIANDA ..... 2<sup>ND</sup> CLAIMANT**  
**HELLEN SITAWA KHISA ..... 3<sup>RD</sup> CLAIMANT**  
**PONTIOUS BONIFACE OTYENGINO ..... 4<sup>TH</sup> CLAIMANT**

**AND**

**MASON SERVICES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This judgment is in respect of four suits which were heard together.
2. In the first suit, David Barasa , the Claimant vide a Statement of Claim dated 19<sup>th</sup> April 2018 and filed in court on 20<sup>th</sup> April 2018 sought for the following reliefs;
  - a. Declaration that the Claimant’s termination from employment was unlawful, unprocedural and unfair
  - b. The sum of Kshs. 566,761.49 as set out in the statement of claim.
  - 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.
3. In that statement of claim, the Claimant averred that at all material times he was orally employed by the respondent as a cleaner from November 2009 at a salary of Kshs 9,000 which amount was later in January 2016 increased to Kshs 13,500.



4. It was the Claimant's case that he was designated to do cleaning services at the Safaricom shop in Eldoret where he served until 1<sup>st</sup> June 2017 when he was unfairly terminated without any valid reason.
5. 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.
6. In the second suit, Josephine Lianda vide an amended statement of Claim filed in court on 26<sup>th</sup> September 2019, sought the following reliefs;
  - a. Declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair
  - b. The sum of Kshs. 450,887.49 as set out in the statement of claim
  - 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.
7. The 2<sup>nd</sup> Claimant averred that she was orally employed by the respondent as a cleaner from the year 2011 at a salary of Kshs 7,500 which amount was later in January 2016 increased to Kshs 13,500.
8. The Claimant averred that she served the Respondent until 1<sup>st</sup> June 2017 when she was unfairly terminated on account of redundancy on 1<sup>st</sup> June 2017.
9. The Claimant averred that the Respondent terminated her services without giving her any valid reason for the same and without following the right procedure laid down in the Employment Act.
10. It was the Claimant's case that the termination on account of redundancy was in total contravention of the procedure under Section 40 of the Employment Act.
11. The 3<sup>rd</sup> Claimant, Hellen Sitawa Khisa filed her amended statement of Claim on 26<sup>th</sup> September 2019, seeking the following reliefs;
  - a. Declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair
  - b. The sum of Kshs. 566,761.49 as set out in the statement of claim
  - 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.
12. According to the 3<sup>rd</sup> Claimant, she was orally employed by the Respondent as a cleaner as from November 2009 at a salary of Kshs 9,000 which amount was later in January 2016 increased to Kshs 13,500.
13. The Claimant averred that she served the Respondent until 1<sup>st</sup> June 2017 when she was unfairly terminated on account of redundancy on 1<sup>st</sup> June 2017.
14. It was the claimant's case that the termination on account of redundancy was in total contravention of the procedure under Section 40 of the Employment Act.



15. The 4<sup>th</sup> Claimant, filed his amended statement of claim in court on 20<sup>th</sup> September 2019, seeking the following reliefs against the Respondent;
  - a. Declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair
  - b. The sum of Kshs. 450,887.49 as set out in the statement of claim
  - 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.
16. In that statement of claim, the 4<sup>th</sup> Claimant stated that he was orally employed by the respondent as a cleaner from the year 2011 at a salary of Kshs 7,500 which amount was later in January 2016 increased to Kshs 13,500.
17. The 4<sup>th</sup> Claimant averred that he served the Respondent until 1<sup>st</sup> June 2017 when she was unfairly terminated on account of redundancy on 1<sup>st</sup> June 2017.
18. It was the 4<sup>th</sup> Claimant's case that the termination on account of redundancy was in total contravention of the procedure under Section 40 of the Employment Act.
19. The Respondent filed an amended Statement of Defence on 11<sup>th</sup> October 2019 denying the claim and averred that the Claimants were retained since November 2009 to 30<sup>th</sup> November 2016 when the Respondent's contract of provision of cleaning and landscaping with Safaricom Company lapsed and that thereafter the Claimants were retained during the extension periods of the said contract between 1<sup>st</sup> December 2016 to 31<sup>st</sup> March 2017; 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2017; 1<sup>st</sup> April 2017 to 31<sup>st</sup> May 2017 and 13<sup>th</sup> June 2017 to 30<sup>th</sup> June 2017.
20. 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.
21. The Respondent maintained that the claimants were paid all their terminal dues in accordance with the provisions of the Employment Act at the time their employment lapsed
22. The suit was then set down for hearing on 12<sup>th</sup> July 2022 where the 1<sup>st</sup> Claimant, David Barasa testified as CW1. He adopted his witness statement recorded on 20<sup>th</sup> September 2019 as his evidence in chief. CW1 basically reiterated the contents of the amended statement of claim.
23. CW1 admitted to never seeing the memo on termination of the contract between the Respondent and Safaricom. In the end, CW1 informed the court that they were never paid their terminal dues.
24. On cross examination, he denied ever going on leave during the time he was in employment and that he never received Kshs. 49,752 although from the bank transactions he admitted that the account number was his.
25. CW1 further stated he was called by a Mr Mbogo and told to inform his team not to report to work on 1<sup>st</sup> July 2017 and that they later learnt from Safaricom staff that the contract with them had lapsed.
26. CW1 maintained that they never went on leave and that further, they worked on Sundays and during public holidays.



27. The Respondent called as witness, one Stephen Njoroge who stated that he was the respondent's Managing Director. He adopted his witness statement recorded on 7<sup>th</sup> May 2018 and a further witness statement sworn on 8<sup>th</sup> October 2019 as his evidence in chief and also relied on the documents filed with the response to the Claim.
28. RW1 told the court that the Respondent had a cleaning service contract with Safaricom to provide cleaning services in their shops all over the country and that the said contract between Safaricom and the Respondent lapsed on 30<sup>th</sup> June, 2017.
29. According to RW1, the Claimants had been informed in 2016 about the said lapse of the contract through a memo dated 15<sup>th</sup> November 2016 which was sent to all team leaders and in this case, the same was communicated to CW1, David Basara who was the team leader of Eldoret Safaricom branch.
30. RW1 maintained the termination of employment of the Claimants was due to the expiry of the contract with Safaricom.
31. It was stated that all employees were paid their terminal dues as evidenced by the bank statements at page 23 of the Respondent's bundle. RW1 averred that the payments were not salaries but were ex gratia depending on how long each employee had worked.
32. In cross examination, RW1 maintained that all communications were done through CW1, David Basara as the team leader and that that the respondent would inform its staff when the contracts expired and of the extensions.
33. With that evidence from the rival parties, the court directed parties to file their respective written submissions which submissions were simultaneously filed on 21<sup>st</sup> September 2022

### **Determination**

34. 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.
35. 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.
36. 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.
37. The Respondent adduced evidence to show that the claimants were paid what RW1 called benefits on ex gratia basis.
38. The Claimants nature of work was dependant on the said contract between the respondent and Safaricom and as such, when the said contract expired, it follows that the Respondent has a valid and fair reason for not taking the Claimants contracts beyond 30<sup>th</sup> June 2017.
39. 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 claimants beyond the period



that it had a contract with Safaricom. The claim for unfair termination of employment is therefore found without merit and is hereby dismissed with costs.

40. It is so ordered.

**DATED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL, 2023**

**DELIVERED VIA VIRTUAL COURT THIS 28<sup>TH</sup> DAY OF APRIL 2023**

**ABUODHA J. N.**

**JUDGE**

**In the presence of:-**

.....for the Claimant

..... for the Respondent

