



Kenya Union of Commercial, Food and Allied Workers v Victoria Juice Company Limited (Cause 618 of 2019) [2023] KEELRC 1019 (KLR) (28 April 2023) (Judgment)

Neutral citation: [2023] KEELRC 1019 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 618 OF 2019
NJ ABUODHA, J
APRIL 28, 2023**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
VICTORIA JUICE COMPANY LIMITED RESPONDENT

JUDGMENT

1. By a memorandum of claim filed on September 17, 2019, the Claimant averred inter alia that:
 - i. Mr Samuel Swari Galmagaleh hereinafter referred to as the grievant was first employed by the Respondent on 8/8/2011 as a contract employee but was confirmed permanent on January 1, 2012 as a sighter. He was earning basic pay of Kshs 18,304/= as at the time of termination and or lockout. He was never paid house allowance for the period he served the Respondent despite the fact that he was eligible for it
 - ii. The Respondent business falls within the Claimant area of representation and therefore the grievant is rightfully represented. The Claimant is in the process of recruiting the Respondent Unionisable employees into its membership a matter which is being pursued independently. The grievant subscribes directly to the Union on monthly basis as provided for in within the Provisions of Section 49 of *Labour Relations Act, 2007*.
 - iii. On April 10, 2018 the grievant fell sick and went to hospital whereby he was diagnosed of Bronchitis & Malaria.
 - iv. On the same day he was placed under bed rest.
 - v. On April 11, 2018 when he reported for work he was denied access to the premises on allegations that he had absconded duties.



- vi. On June 11, 2018 the Claimant Branch Secretary Athi-River Branch made a follow up of the matter but again the Respondent did not yield.
 - vii. On July 26, 2018 The Claimant reported a dispute to the Minister.
 - viii. On September 19, 2018 the Cabinet Secretary through the Chief Industrial Relations officer appointed a conciliator.
 - ix. On March 25, 2019 the Conciliator wrote a letter inviting parties for a conciliation meeting which was to take place on 3/4/2019 but the Respondent neglected to attend.
 - x. On May 6, 2019 the conciliator issued a certificate of conciliator.
 - xi. It is the Claimants case that the Respondent failed to issue the grievant with letter of appointment contrary to the Law.
 - xii. That the grievant was never issued with any disciplinary letter nor termination letter hence bad in Law.
 - xiii. That the grievant was condemned unheard contrary to the provisions of [Employment Act, 2007](#), Constitution of Kenya and Rules of Natural Justice.
 - xiv. The Respondents failure to pay the grievant house allowance for the period he served was unfair/Unlawful.
 - xv. It is further the Claimants case that the Respondents failure to attend conciliation meetings was bad in Law hence untenable.
2. The Claimant therefore claimed from the Respondent:
 - a. A declaration that the Respondent's action was unlawful.
 - b. Payment of house allowance for 72 months' totalling to Kshs 197,640/=.
 - c. 21 days' leave for each year worked amounting to Kshs 14,734/=.
 - d. Ten days' salary Kshs 7,016/=.
 - e. One month's salary in lieu of notice Kshs 21,049/=.
 - f. 12 months' salary as a compensation for unfair termination.
 3. The Respondent thought served never entered appearance nor filed a response to the claim. The matter therefore proceeded as an undefended cause.
 4. At the hearing the Claimant repeated the allegation in the statement of claim and asked the Court to award him as prayed.
 5. According to the Claimant he got sick on April 10, 2018 and was taken to hospital, treated and given a sick off. When he returned to work on 1April 1, 2018, he was refused entry to his place of work. He was never issued with a termination letter. The Claimant produced medical notes and the sick sheet to support his allegation that he was unwell.
 6. Under Section 47(5) of the [Employment Act](#) the burden of proof that unfair termination has taken place in on the employee while the burden of proving, reason for termination is on the employer.
 7. The Claimant herein has reasonably shown that he was unwell. The Respondent never bothered to file a defence nor attend Court to counter the Claimant's allegations, the Court will believe him.



8. The Claimant had worked for the Respondent for approximately six years. He was terminated when he got unwell. This was unreasonable on the part of the Respondent as anyone can fall sick and be unable to report to work. In the circumstances an award of seven months' salary would adequately compensate the Claimant.
9. The Court therefore awards the Claimant as follows:
 - a. One month's salary in lieu of notice of termination 21,049
 - b. Salary of ten days 7,016
 - c. House allowance for 72 months 197,640
 - d. Leave pay for 21 days 14,734
 - e. Seven months' salary for unfair termination 147,343
 - f. Costs of the suit.
10. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 28TH DAY OF APRIL 2023

Abuodha J. N.

Judge

In the presence of:-

Munda for the Claimant

No appearance for the Respondent

