



**Onono v Chemartin Tea Company Limited (Cause E013 of 2022)
[2023] KEELRC 1053 (KLR) (28 April 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1053 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E013 OF 2022
NJ ABUODHA, J
APRIL 28, 2023**

BETWEEN

ALEX OCHOLA ONONO CLAIMANT

AND

CHEMARTIN TEA COMPANY LIMITED RESPONDENT

JUDGMENT

1. The Claimant in this case filed his Statement of Claim dated 14th April 2022 seeking for the following orders as against the Respondent;
 - a. Kshs 120,000 being payment of termination in lieu of notice
 - b. Kshs 830,000 being withheld salaries as particularized under paragraph 6
 - c. Kshs 1,440,000 being maximum compensation for unlawful termination.
 - d. Interest on (a), (b) and (c) from the date of filing suit till payment in full
 - e. Costs of the suit and interests thereon from the date of judgment till payment in full
 - f. Leave pay
2. It was the Claimant's case that at all material times to this cause, he was employed by the Respondent on 7th March 2005 as a Trainee Manager, a position he held until 17th October 2018 when he was promoted to the position of Estate Accountant where his salary was increased to Kshs 120,000.
3. The Claimant averred that the promotion to the position of estate accountant was a clear indication of his diligence in the execution of his duties.
4. It is the Claimant's case that vide a letter dated 14th January 2022, the Respondent purportedly laid the Claimant off, for one month beginning 15th January 2022 through to 15th February 2022 and that



- during the intervening period, the Claimant was paid no salary other than Kshs 15,000 which was termed as a salary advance.
5. According to the Claimant, on 17th February 2022, the Respondent's directors called him into a meeting and coaxed him to resign and accept the reduced salary as computation of his final dues and when he declined, the Respondent instructed the security officers to escort him out of the premises.
 6. The Claimant maintained that the actions of the Respondent , to wit, withholding of his salary , locking him out of his office, terminating his employment without any notice, constituted malice and illegal acts, meant to deprive him of his only source of livelihood.
 7. The Respondent filed an amended response to the Memorandum of claim and a counterclaim on 22nd June 2022.
 8. According to the Respondent, the Claimant was employed as a Trainee Manager on 7th March 2005 and then promoted to the position of Estate manager on 9th February 2016, a position he held until 21st August 2017, when his employment was terminated for failure to perform his duties diligently, causing division and discord within the Respondent's Board of Directors through misinformation and disinformation and, for loss of confidence of the Respondent's employees in the Claimant's leadership thereby adversely affecting the performance of the tea farm that the Respondent operated as its business.
 9. It was further averred that the Claimant was paid his dues in full and was re-employed afresh as the Estate Accountant on the 17th October 2018 and that contrary to the allegation that he was laid off for one month between 15th January 2022 and 15th February 2022, the claimant requested to take a one month leave wherein during that period, the respondent laid off several employees from 10th February 2022 to 30th April 2022.
 10. The Respondent further conflicted itself by stating that the Claimant sought to resign from his employment to which the Respondent had no objection subject to him submitting the resignation letter whereof the claimant declined to hand in his resignation letter, opting to subject the Respondent to unreasonable demands and eventually exiting a meeting that was called to discuss the issue and never returned.
 11. The Respondent averred that it did not terminate the Claimant's employment and that it is the Claimant who simply quit employment unlawfully and without notice contrary to the terms and conditions of his employment with the Respondent .
 12. As regards the Claimant's allegation that his last salary was Kshs. 120,000, the Respondent stated that the Claimant's salary was Kshs. 80,000 which salary was the gross salary that was subject to tax and other deductions.
 13. In the counterclaim, the Respondent averred that the Claimant left employment without notice contrary to the terms of his employment and the law and without handing over despite the critical nature of the services of the office he was holding , thereby occasioning untold inconvenience, damage and embarrassment for which the Respondent by way of counterclaim held the claimant squarely and wholly responsible.
 14. In the said counter claim, the Respondent prayed for judgment be entered against the claimant for;
 - i. Kshs 80,000 less tax and statutory deductions being one month's salary in lieu of notice of termination of employment.
 - ii. Costs of the counterclaim



The Evidence

15. The Claimant testified on 26th October 2022 as CW1 and adopted his witness statement recorded on 14th April 2022 as his evidence in chief. CW1 stated that he was employed by the Respondent and was paid a salary of Kshs 120,000 as approved by the Respondent's directors. He contended that he never absconded duty but was prevented from entering the Respondent's premises by the Respondent's security.
16. On being cross examined by Counsel Ochieng, the Claimant stated that his salary was reduced in February 2021 to Kshs 80,000 and later on, in April and May 2021, it was reduced further to Kshs 40,000 then paid Kshs 80,000 until September 2021.
17. It was his testimony the payrolls were generated by the payroll clerk and that the manager supervised all the payrolls.
18. He further stated that as the Estate Accountant, he was in-charge of generating financial statements and keeping records of payments and not generation of payrolls
19. CW1 stated that he was sent on layoff on 14/1/2022 and that he never asked for the same. He confirmed that he came back from layoff on 15/2/2022 and that on 16/2/2022 he was invited to a meeting and asked to resign on condition that he gets paid Kshs 80,000 and that when he declined to resign he was chased out of the respondent's premises.
20. He stated that he reported the issue at the Labour Office on 25/2/2022
21. The Respondent called its Estate manager, Mr Moses Chepkwony who testified as RW1.
22. According to RW1, the claimant was employed as a Trainee Manager in 2005 and later he was appointed as an Estate Manager.
23. RW1 stated that the Claimant was terminated in August 2017 on the grounds that he had caused disharmony in the company vide a termination letter dated 21st August 2017 where he was paid all his dues which he acknowledged payment.
24. According to RW1, the Claimant was re-employed in 2018 in the position of an Estate Accountant at a salary Kshs 70,000 and that the Claimant increased his own salary to Kshs 120,000.
25. RW1 explained to the court that salary increment is done by the board after deliberations and that in this case, the board never sat to increase the Claimant's salary.
26. It was averred that when the board noticed the irregularity, the Claimant's salary was reduced to Kshs 80,000 which salary the Claimant accepted after a meeting was held.
27. RW1 maintained that the claimant earned Kshs 80,000 from March 2021 to February 2023 and that the claimant never complained about the reduction.
28. RW1 stated that the Claimant informed the Respondent that he wanted to resign but gave several ultimatums among them being, paid all his dues before resignation which did not sit well with the respondent who wanted him to resign first and then be paid.
29. It was contended that the claimant then absconded work only to return in March 2022 to pick his belongings.
30. According to RW1, the Claimant was not terminated from work nor was he prevented from accessing the respondent's premises.



31. On cross examination, RW1 conceded that reduction or increment of salary is a decision of the board of directors and that a person whose salary is to be increased or reduced has to attend such a meeting which in the instant case, the Claimant was not invited to the meeting where his salary was reduced.
32. RW1 also admitted that the Claimant was never issued with a show cause letter.
33. The respondent called its Accounts clerk, Susan Meto who testified as RW2 and Samuel Lenantare RW3 who introduced himself as the Respondent's Security supervisor. RW2 and RW3 reiterated what RW1 had stated.
34. With that evidence, the Respondent closed its case and the parties were directed to file written submissions.

Determination

35. I have considered the pleadings before me, the evidence of the parties as well as the submissions filed by the counsels for the respective parties and I find that the main issue for my determination is whether the Claimant was terminated unfairly from employment and if so, what reliefs should this Court grant.
36. The Respondent has maintained that it did not terminate the claimant from work and that he absconded after the Respondent refused to bow to pressure of heeding to his demands before he could resign. In other words, that the Claimant wanted to resign but on his own terms which according to the Respondent was not tenable.
37. The employers defence of absconding duty by an employee has been dealt with by this Court in several decisions. This court in the case of *Simon Mbiti Mbane v Inter Security Services Ltd* [2018] eKLR pronounced itself on the issue and held that,

“An allegation that an employee has absconded duties calls upon an employer to reasonably demonstrate that efforts were made to contact such an employee without success.”
38. In the instant case, it has not been demonstrated that efforts were made by the respondent to reach the Claimant after he allegedly absconded duty.
39. It is therefore my finding that the Respondent has not discharged this onus on a balance of probability. That is, establishing that the Claimant indeed absconded duty and that he took reasonable steps to contact the Claimant. In any case, no warning letter or any documentation whatsoever has been tabled before court to demonstrate that this allegation is true.
40. The defence of the Claimant absconding duty does not stand and as such, on a balance of probability, it follows that the claimant's version of how he was terminated from employment after he refused to resign holds water.
41. Flowing from the above analysis, I find and hold that the Claimant was terminated unfairly and also, that there was no procedural fairness in the process leading to his termination within the meaning of Section 45(2) of the Employment Act.
42. It is important that I address the issue of the Claimant's salary variation. The Respondent's witness RW1, averred that the Claimant was re-employed in 2018 in the position of an Estate Accountant at a salary Kshs 70,000 and that the Claimant increased his own salary to Kshs 120,000.
43. I find this to be a bit absurd considering that the RW1 conceded that the Claimant was not invited to the meeting where his salary was reduced and neither was he invited to explain the discrepancy in his salary.



44. It was incumbent on the respondent to do a thorough investigation over the issue and get to the root of the issue as the same was gross misconduct.
45. In my view, the way the issue was handled casually by the Respondent leaves a lot to be desired and it only follows that the variation and reduction of the Claimant's salary was without any basis.
46. The claimant having worked for a considerable period of time and having been hired afresh after his first contract, the relationship with the respondent can be assumed to have been initially good. It was not clear what prompted the claimant to want to resign leading to the stalemate that led to him being dismissed for absconding duties. An award of six months' salary as compensation for unfair termination should adequately compensate the claimant.

The Respondent's Counterclaim

47. As mentioned, the Respondent filed a counterclaim against the Claimant on the allegation that the Claimant absconded employment without notice contrary to the terms of his employment. These allegations were however not proved and as such, I find that Respondent's counterclaim was not proved and is hereby dismissed.
48. The Claimant is therefore entitled to the reliefs he is seeking and award him as follows;
Kshs.
 - a. One month's salary in lieu of notice 120,000
 - b. Withheld salaries 830,000
 - c. Six months' salary as compensation for unfair termination 720,000
Total 1,670,000
 - d. Costs in the suit
 - e. The claim for leave pay is disallowed as no evidence was led to prove them.
49. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY OF APRIL, 2023

DELIVERED VIRTUALLY THIS 28TH DAY OF APRIL 2023

ABUODHA J. N.

JUDGE

In the presence of:-

..... for the Claimant

..... for the Respondent

