



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Anyanga v Eggen Joinex Limited (Cause 215 of 2018)
[2023] KEELRC 1240 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1240 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 215 OF 2018**

L NDOLO, J

MAY 25, 2023

BETWEEN

KELVINE SHIKOBE ANYANGA CLAIMANT

AND

EGGEN JOINEX LIMITED RESPONDENT

JUDGMENT

Introduction

1. In this dispute, the Claimant alleges unlawful termination of his employment by the Respondent. The Claimant sets out his case in a Memorandum of Claim dated 22nd February 2018 and the Respondent states his defence in a Reply dated April 17, 2018.
2. The matter went to full trial where the Claimant testified on his own behalf. The Respondent called its Assistant Human Resource Manager, Michael Rotich. Thereafter, the parties filed written submissions.

The Claimant's Case

3. The Claimant states that he was employed by the Respondent on May 29, 2006, as a general labourer.
4. The Claimant claims to have earned a monthly salary of Kshs 16,250 as at the time of leaving the Respondent's employment on July 3, 2017.
5. Regarding the events leading to the termination of his employment, the Claimant states that on June 24, 2017, he and a driver were assigned the duty of delivering water to the Respondent's site in Kiambu, after which they were instructed to deliver iron sheets to the Respondent's factory in Industrial Area.



6. The Claimant further states that while at the factory, they were asked by the Respondent's Manager, one Mr. Justin whether they had been given a dumper wheel while in Kiambu, to which they responded in the negative.
7. The Claimant adds that the Manager directed them to go and see the Director, a Mr George who suspended them for four (4) days.
8. The Claimant avers that on July 3, 2017, he reported to work but the Director told him not to undertake any duties. He claims to have been directed to write an apology letter, which he did. The Claimant states that the Director thereafter ordered him out of the Respondent's premises and directed him not to report back without the dumper wheel.
9. The Claimant's case is that the Respondent's action of ordering him out of the premises, without subjecting him to due process amounted to unlawful and unfair dismissal. He therefore claims the following:
 - a. One month's salary in lieu of notice.....Kshs 16,250
 - b. Salary for the month of June 2017.....16,250
 - c. Unpaid overtime for the month of June 2017.....9,180
 - d. Unpaid off days for the month of June 2017.....2,437
 - e. 12 months' salary in compensation.....195,000
 - f. Costs plus interest

The Respondent's Case

10. In its Reply dated April 17, 2018 and filed in court on April 27, 2018, the Respondent admits having employed the Claimant as pleaded in the Memorandum of Claim.
11. The Respondent states that its dumper wheel got lost while in the care, custody and control of the Claimant, which the Claimant admitted by way of an apology letter. The Respondent maintains that it was justified to dismiss the Claimant.
12. The Respondent claims to have given the Claimant a chance to be heard and the Claimant, on his own volition, chose to write an apology letter.
13. The Respondent further states that the Claimant was advised to collect his terminal dues but he did not do so.

Findings and Determination

14. There are two (2) issues for determination in this case:
 - a. Whether the Claimant has made out a case of unlawful and unfair termination of employment;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

15. According to the evidence on record, the termination of the Claimant's employment was caused by the loss of a dumper wheel that had been entrusted to the Claimant and his colleague. The Claimant himself wrote an apology letter on account of the loss and although he claimed to have been coerced



to write the apology, he did not adduce any evidence of coercion. Further, the Claimant made a report to the police regarding the loss.

16. With this overwhelming evidence, the only conclusion to make is that the Respondent had a valid reason for terminating the Claimant's employment as required by Section 43 of the Employment Act. The only misstep is that the Claimant was not subjected to the due procedure set by Section 41 of the Act, which is mandatory in all cases of misconduct.
17. As held by the Court of Appeal in its decision in Cooperative Bank of Kenya Limited v Yator [2021] KECA (KLR) even in cases of gross misconduct which if proved would lead to summary dismissal, an employer must follow the procedural fairness dictates of Section 41 of the Employment Act. This did not happen in the present case thus rendering the termination procedurally unfair.

Remedies

18. In the result, I award the Claimant six (6) months' salary in compensation. In arriving at this award, I have taken into account the Claimant's long service but also his contribution to the termination.
19. I further award the Claimant one (1) month's salary in lieu of notice plus his salary for the month of June 2017.
20. The claims for overtime and off days were not proved and are dismissed.
21. Finally, I enter judgment in favour of the Claimant as follows:
 - a. 6 months' salary in compensation.....Kshs 97,500
 - b. 1 month's salary in lieu of notice.....16,250
 - c. Salary for the month of June 2017.....16,250
 - Total.....130,000
22. This amount will attract interest at court rates from the date of judgment until payment in full.
23. The Claimant will have the costs of this case.
24. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF MAY 2023

LINNET NDOLO

JUDGE

Appearance:

Miss Omamo for the Claimant

Mr. Mwaniki for the Respondent

