



**Onyango v Abbysinia Iron & Steel Ltd (Cause 360 of 2017)  
[2023] KEELRC 1005 (KLR) (3 May 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1005 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 360 OF 2017**

**S RADIDO, J**

**MAY 3, 2023**

**BETWEEN**

**WILLIAM OMULLO ONYANGO ..... CLAIMANT**

**AND**

**ABBYSINIA IRON AND STEEL LTD ..... RESPONDENT**

**JUDGMENT**

1. The Cause was heard on 14 February 2023. William Omullo Onyango (the Claimant) and a Human Resources Manager with Abbysinia Iron & Steel Ltd (the Respondent) testified.
2. The Claimant filed his submissions on 16 March 2023, and the Respondent on.
3. The Court has considered the pleadings, evidence and submissions.

**Unfair Termination Of Employment**

**Procedural fairness**

4. The Claimant contested the procedural Fairness of his dismissal on 13 December 2016, on the grounds that there was no prior notice nor any due process.
5. The Respondent issued a show-cause dated 13 December 2016 to the Claimant. The notice outlined 3 allegations against the Claimant and requested him to respond within 48 hours.
6. The Claimant acknowledged receipt of the show-cause and he responded on 16 December 2016.
7. On 16 January 2017, the Respondent invited the Claimant to attend a disciplinary hearing set for 19 January 2017. The Claimant attended the hearing and he was informed of dismissal through a letter dated 20 January 2017.



8. The Court is satisfied that the Respondent complied with the requirements of procedural fairness as contemplated by sections 35(1) and 41 of the Employment Act, 2007.

### **Substantive Fairness**

9. Sections 43 and 45 of the Employment Act, 2007 places a burden on the employer to prove the validity and fairness of the reasons leading to the termination of an employment contract.
10. The reasons leading to the dismissal of the Claimant were participating, instigating and inciting employees to attack and assault a supervisor on 8 December 2016 and 10 December 2016.
11. The minutes of the disciplinary hearing which were produced in Court by the Respondent show that the supervisor who was allegedly attacked by the Claimant was the first witness. The minutes also indicate that the supervisor went for medical treatment and reported to the police and that the Claimant and others were charged before the Winam Magistrates Court (another supervisor who was also attacked and one who witnessed the attacks also testified during the disciplinary hearing).
12. Based on the record (minutes of the disciplinary hearing), which the Claimant did not impeach during the Court hearing, the Court is satisfied that the Claimant was involved in misconduct which warranted his summary dismissal.
13. The Court also notes that at paragraph 4 of the Memorandum of Claim, the Claimant pleaded that he was dismissed on 13 December 2016. The same assertion was repeated in the witness statement which the Claimant adopted.
14. The Claimant did not attempt to amend the dates or explain the discrepancy as to the exact date of dismissal.
15. With the above conclusions, the Claimant does not merit an award of compensation or pay *in lieu* of notice.

### **Accrued leave**

16. The Claimant prayed to be awarded Kshs 162,000/- on account of leave spread over 6 years.
17. Section 28(4) of the Employment Act, 2007 circumscribes the number of leave days which can be carried forward to 18 months.
18. On the basis of the provision, the Claimant would only be entitled, if at all, to leave for the 18 months leading to the separation.
19. Leave records produced by the Respondent show that the Claimant's leave for 2014/2015/2016 was encashed and he was paid and acknowledged the payment.
20. The head of the claim is thus not merited.

### **Conclusion and Orders**

21. In consideration of the foregoing, the Court finds no merit in the Cause and it is dismissed with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 3<sup>RD</sup> DAY OF MAY 2023.**

**Radido Stephen, MCI Arb**

**Judge**



**Appearances**

**For Claimant Odhiambo Ouma & Co. Advocates**

**For Respondent Omondi, Abande & Co. Advocates**

**Court Assistant Chrispo Aura**

