



Maina v Repelectric (K) Ltd (Employment and Labour Relations Cause 2403 of 2017) [2023] KEELRC 1600 (KLR) (30 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1600 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2403 OF 2017**

**AN MWAURE, J
JUNE 30, 2023**

BETWEEN

REUBEN MUNGE MAINA CLAIMANT

AND

REPELECTRIC (K) LTD RESPONDENT

JUDGMENT

1. The claimant filed a memorandum of claim dated December 4, 2017.
2. He states he was employed by the respondent on July 1, 2004 as an office clerk. He says on July 1, 2017 he tendered his resignation letter and undertook to serve the one month notice. He says the respondent then chased him away under the pretext that he was sending him on leave.
3. He says he was then dismissed by the respondent in contravention of labour laws.
4. He says he was asked to go home and would be recalled for his salary and that did not happen. He now prays for damages as per the claim dated December 4, 2017 together with costs.

Respondent's case

5. The respondent filed a response dated February 9, 2018. The respondent denies the claimant was dismissed from employment but avers he resigned voluntarily on July 1, 2017 and he gave the excuse that he wanted to pursue personal engagement. He gave respondent a one month notice.
6. The respondent said he asked claimant to proceed on leave and would not be deducted those days and could go back on July 31, 2017 to clear with the respondent. He apparently reported on July 31, 2017 and was paid his dues.
7. Respondent avers claimant was not entitled to service pay as they used to remit statutory dues to NSSF.



8. The respondent prays that court do find claimant is not owed any damages and his claim should be dismissed and costs be awarded to the respondent.

Claimant's evidence in court

9. The claimant testified in court on February 8, 2023 and stated he did tender a resignation letter but was terminated before the notice period could expire. He says he received his salary and the payslip indicated his NSSF and NHIF dues were remitted.

Respondent's case

10. On that same day being February 8, 2023 the respondent witness Rachel Wotton testified in court and confirmed that the claimant resigned from their employment and she accepted his resignation. He says that they paid his terminal benefits.

Submissions

11. She says Spinetex was a company registered by her former employee who used to poach her employees and clients including the claimant.
12. The court considered the claimant's submissions dated March 1, 2023 and also the respondent's submissions dated March 13, 2023.

Analysis and determination

13. The claimant admitted he tendered a resignation letter dated July 1, 2017 and he was to serve for one month.
14. As per the letter there is no indication the claimant was forced to resign or that there were circumstances that would have justified constructive dismissal. In fact as per the letter the claimant had only praise for the respondent and appreciated the opportunity he was given to serve and to grow himself. Furthermore on July 31, 2017 the claimant signed acknowledgement for his July 2017 salary which indicated it was paid and his statutory deductions including NSSF and NHIF deductions were remitted.
15. The claimant from the evidence on record from both the claimant and the respondent resigned willingly and voluntarily and was paid his July 2017 salary though he was allowed to take leave for that month. He admitted that he received his July salary and in the payslip of July 2017 he signed acknowledging he had utilised his 15 days plus leave.
16. So under section 36 of *Employment Act* the claimant resigned voluntarily and there is no proof anywhere that he was terminated from employment unlawfully as he alleges in his pleadings and in his evidence. Either party to a contract of service can terminate employment without notice but subject to paying one month in lieu of notice.
17. The employer can however waive such a notice and will then pay the employee for the notice month and that is what the respondent did in this case. That therefore makes it evident the claimant received all his dues after he resigned from his employment.
18. In the case of *Kenneth Oniolo vs Majlis Resort Lanyu T/a Maylis case No 42 of 2018* which is similar to the case in this court the court held and the facts of the case did not support unlawful termination but was a clear case of voluntary resignation.
19. The claimant's case is not proved and is dismissed accordingly and none of his prayers are deserved.



20. Each party will meet their respective costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30TH DAY OF JUNE, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

