



**Omondi v Repelectric (K) Ltd (Employment and Labour Relations Cause 2401 of 2017) [2023] KEELRC 1601 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1601 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2401 OF 2017**

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

**BETWEEN**

**GEORGE OKELLO OMONDI ..... CLAIMANT**

**AND**

**REPELECTRIC (K) LTD ..... RESPONDENT**

**JUDGMENT**

**Introduction.**

1. The claimant filed his claim dated 4<sup>th</sup> December 2017.

**Claimant's Case**

2. He says he was employed by the respondent on 6<sup>th</sup> February 2014 as a motor tester. His employment was permanent. He says he worked as usual but on 2<sup>nd</sup> June 2017 his employment was terminated without any just cause and in disregard of employment laws.
3. He says he was accused of working for a competitor. He says he tendered his resignation dated 2<sup>nd</sup> June 2017 and was not paid his dues. He says he resigned to follow his education trajectory. He says his dismissal was punitive and humiliating and he prays for damages as per his claim.

**Respondent's Case**

4. The respondent filed their response dated 9<sup>th</sup> February 2018. They said the claimant voluntarily resigned on 2<sup>nd</sup> June 2017 and he claimed he wanted to proceed for further education. He gave one month notice. The respondent says he issued claimant with a termination letter dated 30<sup>th</sup> June 2017 and his final Payslip. He says he issued claimant with a clearance certificate as well.
5. He further said that no damages are due to the claimant since he resigned voluntarily and was not dismissed. He prays the claimant's claim hereby be dismissed and costs be awarded to the respondent.



6. The claimant gave his evidence in court on 9<sup>th</sup> February 2023 and he again like in his claim admitted he resigned from his employment.
7. He says his prayers are for one month salary and unpaid leave and service pay. He says he only received payment of kshs 908/60. He also said that he is now working with a company known as Spinetex.
8. The respondent witness Rachel C. Wotton said that claimant resigned from his employment. She says claimant was engaged in an illicit parallel employment of a competitor. She affirmed tht they did not terminate the claimant unlawfully.
9. The court considered the claimant submissions dated 1<sup>st</sup> March 2023 and as well the respondent's submissions also dated 13<sup>th</sup> March 2023.

### **Analysis and Determination**

10. As per the claimant's letter of resignation there is no indication the claimant was forced to resign or that there were circumstances that would have justified constructive dismissal. In fact he admitted it was a three and a half years of great experience. He admitted he wanted to go for further studies. Furthermore in June 2017 the claimant signed for his June 2017 salary which indicated it was paid and his statutory deductions including NSSF and NHIF deductions were remitted.
11. The claimant from the evidence on record from both the claimant and the respondent resigned willingly and voluntarily and was paid his June 2017 salary though he was allowed to take leave for that month. He admitted that he received his June salary and in the payslip of June 2017 he signed acknowledging he had utilised his 9 days leave. He acknowledged in his clearance certificate of 30<sup>th</sup> June 2017 that he had received all is dues.
12. 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.
13. The respondent wrote a letter entitled letter of termination but it was a confirmation that claimant had resigned and hence the termination.
14. The employer can 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.
15. 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.
16. The claimant's case is not proved and is dismissed accordingly and none of his prayers are deserved.
17. Each party will meet their respective costs.
18. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 30<sup>TH</sup> 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

