



Gikundi v Kenya National Chambers of Commerce & Industry & another (Employment and Labour Relations Cause E013 of 2021) [2023] KEELRC 1528 (KLR) (16 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1528 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E013 OF 2021
ON MAKAU, J
JUNE 16, 2023

BETWEEN

DAVID MUTUMA GIKUNDI CLAIMANT

AND

**KENYA NATIONAL CHAMBERS OF COMMERCE &
INDUSTRY 1ST RESPONDENT**

KENNETH MWENDA MUTHINJA 2ND RESPONDENT

JUDGMENT

1. By a statement of claim dated April 1, 2021 the claimant alleges that he was employed by the respondents from August 1, 2018 until April, 2020 when he was dismissed unlawfully. Therefore he seeks the following reliefs:-
 - a. Declaration that the termination was unlawful and illegal.
 - b. I month leave - Kshs 50,000.00
 - c. One month lieu notice salary - Kshs 50,000.00
 - d. Unpaid salary for 3 months 3 x 50,000.00. - Kshs 150,000.00
 - e. Unlawful termination. - 12 x 50,000.00 Kshs 600,000.00
TOTAL Kshs 850,000.00
 - f. Under payment of wages
 - g. General damages
 - h. Costs of the suits



- i. Interest on prayers I, ii, iii, iv, v, above.
2. The respondents never entered appearance and the suit was disposed of by filing written submissions based on the evidence on record.

Evidence

3. The claimant adopted his written statement filed in court on April 1, 2021 and a list of documents including a demand letter, his employment contract and his bank statements as his evidence. In his written statement he stated how he was employed by the 1st respondent Meru County Chamber since the year 2014 as a County Executive Officer. His monthly basic salary was Kshs 50,000.00 and worked until April, 2020 when one Joshua Mungania, the 1st respondent's vice-chairman told him to see the chairman (2nd respondent).
4. At the meeting with the 2nd respondent, he was given a cheque for one month salary and the 2nd respondent told him that his job has ended. No reason was given but the 2nd respondent told him to come for his dismissal letter at a later date. The claimant contended that the termination was unfair and unlawful, and prayed for judgment as per his claim.

Submissions

5. It was submitted for the claimant that his employment was terminated unfairly and unlawfully contrary to section 45 of the *Employment Act*. It was contended that the claimant was not served with a prior notice or paid salary in lieu of notice, the reason for the termination was never explained to him, the termination was procedurally unfair as he was not accorded a fair hearing, the principles of justice and equality were not followed, he was not paid his salary arrears of three months and he was not given a certificate of service. For emphasis, the case of *Daniel Kiplagat Kipkeibut v SMEP Deposit Taking Micro Finance Limited (2016) eKLR* was cited.

Issues for determination

6. Having considered the pleadings, evidence and submissions, the following issues arise for determination:-
 - a. Whether the termination of the claimant's employment contract was unfair and unlawful.
 - b. Whether the reliefs sought are merited.

Unfair termination

7. Section 45 of the *Employment Act* provides that
 - ' (1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove –
 - a. That the reason for the termination is valid;
 - b. That the reason for the termination is a fair reason -
 - i. Related to the employee's conduct, capacity or compatibility, or



- ii. Based on the operational requirements of the employer; and
- c. That the employment was terminated in accordance with fair procedure.'

8. In this case, the uncontroverted evidence is that the claimant was employed by the 1st respondent from 2014 until April 2020 when his services were terminated by the 2nd respondents. The court has seen a contract of employment made on 1st August 2018. The claimant remained in service until April 2020 when his services were terminated. He has produced bank statement to prove that the 1st respondent continued to pay him salary until February 2020 albeit in bits.
9. In view of the foregoing observations, I find that the claimant has proved by evidence that he remained in continuous employment after the lapse of the 6 months term contract. The contract was not for a fixed term, otherwise the parties would have indicated so after the lapse of the initial written contract. Accordingly the claimant was protected from unfair termination by section 45 of the [Employment Act](#).
10. The claimant had contended here that the reason for the termination was not explained to him and he was not accorded hearing or a prior notice or even paid salary in lieu of notice. The respondent never filed any pleading or tendered evidence to rebut the claimant's case. Consequently, I find and hold that the respondents have failed to discharge their burden of proof that the termination was grounded on valid and fair reason and that fair procedure was followed. As such I must hold that the termination was unfair and unlawful within the meaning of section 45 of the [Employment Act](#).

Reliefs

11. In view of the above finding, the claimant is entitled to a declaration that the termination of the claimant was unfair and unlawful. He is also entitled to salary in lieu of notice and compensation for unfair termination under section 49 and 50 of the said Act. Although the contract provided for a termination notice period of two (2) weeks, the minimum statutory notice period for an employee drawing salary on interval of one month is 28 days which is basically one month notice period. Therefore I award him Kshs 50,000.00 as salary in lieu of notice.
12. As regards compensation, the claimant sought for an award of 12 months gross pay. However, I award him 3 months gross salary equaling to Kshs 150,000.00 considering that he served only for about two years but without any warning letter or disciplinary issues.
13. The claimant alleged that before the termination he had salary arrears of three (3) months equaling to Kshs 150,000.00. The said claim has not been controverted and it is therefore granted.
14. However, the claim for underpayment of wages lacks particulars and supporting evidence. It therefore stands dismissed. Likewise the claim for general damages is also declined for being vague. Finally, the claim for leave is dismissed for lack of particulars and evidence.
15. In conclusion, I enter judgment for the claimant against the respondents in the following terms:-
Notice - Kshs 50,000.00
Compensation - Kshs 150,000.00
Salary arrears - Kshs 150,000.00
Kshs 350,000.00



The award is subject to statutory deductions. However the claimant will have costs and interests at court rate from the date of the judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2023.

ONESMUS N. MAKAU

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 April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

