



**Auka v Manji Foods Industries Limited (Employment and Labour Relations Cause 353 of 2018) [2023] KEELRC 1478 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1478 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 353 OF 2018**

**M MBARÚ, J**

**JUNE 8, 2023**

**BETWEEN**

**CHRISTOPHER OGEKA AUKA ..... CLAIMANT**

**AND**

**MANJI FOODS INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. In April, 2017 the respondent employed the claimant as a driver. he worked until October 1, 2017 when he was summarily dismissed without payment of the salary due for September, 2017 and there was no notice or payment of terminal dues.
2. The claim is that the termination of employment was unfair on the grounds that there was no reason given or the claimant taken through a hearing process. At the time of his summary dismissal, the claimant was earning Kshs 18,000 per month which was an underpayment by Kshs 3,942 per month and he is claiming for the following terminal dues;
  - a. Notice pay Kshs 18,000;
  - b. Unpaid salary for September, 2017 at Kshs 18,000;
  - c. Underpayment at Kshs 3,500 towards rent at Kshs 17,500;
  - d. Payment in lieu of taking leave Kshs 18,000;
  - e. Accumulated underpayment Kshs 23,653; and
  - f. Damages for unfair termination of employment.
3. The claimant testified that in April, 2017 he was employed by the respondent as a driver until September 1, 2017 when the respondent refused to pay his wages. He had been allocated motor vehicle



- registration No xxxx which had an accident and later repaired and back on the road which can be proved by the police abstract he obtained after the accident.
4. The claimant also testified that the respondent's case that he was working and being paid for each job done is not true since his wages were paid monthly. He became a permanent employee of the respondent and paid a wage of Kshs 20,000 per month. No pay slip was issued since payments were done in cash but the respondent kept a book record and for 3 years he was in the service of the respondent. He had an accident along Malindi/Mombasa road but the vehicle had no damage.
  5. In response, the respondent's case is comprised of mere denials and that the claimant was not employed in April, 2017 as alleged and there was no employment on permanent basis. The claimant caused an accident while driving motor vehicle No xxxx on July 20, 2017 and on September 27, 2017 when this vehicle was written off. The claims made are without merit and should be dismissed.
  6. In evidence, the respondent called Christopher Unyoke Muthusi the human resource officer and who testified that the claimant's daily wage was accumulated monthly and paid in full. the claimant was allocated motor vehicle No xxxx but he caused a serious accident which was reported to the police and was a write off. The claimant had been employed as a casual and he did not require notice pay and a house allowance is not payable to a casual employee and the claims made should be dismissed.
  7. In the Memorandum of Claim at paragraph (5) and (6) the claimant's pleaded that he was employed in April, 2017 and on September 1, 2017 his employment was terminated after he had an accident along Malindi/Mombasa road. In his evidence he testified that he had worked for the respondent for 3 years. this contradiction is noted and the pleadings that were served upon the respondent reflected these facts.
  8. The respondent's case on the other hand is that the claimant was employed on a daily wage accumulated and pad monthly.
  9. A casual employee is defined under Section 2 of the [Employment Act](#), 2007 (the Act) as the employee who is employed daily and work ends at end of day with payment of the due wage. where such an employee continues to work continuously and without stoppage and the due wage is paid monthly, he becomes protected under the law in terms of Section 37 of the Act. the employee acquires rights and benefits under the law.
  10. The admission by the respondent's witness that the claimant's daily wage was accumulated and paid monthly removed him from being a casual employee to an employee protected by the law with rights and benefits.
  11. At the end of employment, whatever the reasons leading to termination of employment, pursuant to Section 18(4) of the Act, the employee should be paid his dues earned during employment.
  12. The claimant working as a driver in the year 2017 was earning Kshs 18,000 per month though he testified that he was earning Kshs 20,000 per month. The minimum wage in the year 2017 was Kshs 18,319.30 and the claimant was underpaid by Kshs 319.35. The claimant's evidence was that he was employed from April, 2017 to October 1, 2017 without giving the exact date of employment in April, 2017. The testimony was also that he had an accident on July 20, 2017 resulting in the termination of his employment. A tabulation of employment months should then be May to September, 2017 a period of 4 months and the underpayment is Kshs 1,277.20.
  13. Upon the respondent being served with summons, Section 10(6) and (7) of the Act required them to file work records as the employer. This is required to disprove the claims made especially that there was employment benefit paid in terms of housing or an allowance in lieu thereof in terms of Section 31 of the Act.



14. Section 28 of the Act gives a right to annual leave and for months less than a full year this should be prorated based on the basic wage and for 4 months the claimant is entitled to Kshs 4,275.
15. The claimant worked for the respondent for less than 4 months and within this time he caused an accident that resulted in the vehicle allocated being written off causing loss and damage to the employer contrary to Section 44(4) of the Act. To pay compensation beyond the terminal dues assessed above is to reward gross misconduct. Save, without evidence that the accumulated wages for September, 2017 was paid, for the 20 days worked he is entitled to Kshs 12,213.
16. Accordingly, judgment is entered for the claimant against the respondent in the following terms;
  - a. Wages for September, 2017 Kshs 12,213;
  - b. Leave pay Kshs 4,275;
  - c. House allowance Kshs 10,992;
  - d. Underpayments kshs 1,277.20; and
  - e. Each party shall bear own costs.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 8<sup>TH</sup> DAY OF JUNE, 2023.**

**M. MBARŪ**

**JUDGE**

**In the presence of:**

Court Assistant: Rahma

..... and .....

