



REPUBLIC OF KENYA



KENYA LAW
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Mwakulomba v Tahir Sheikh Said Transporters (T.S.S) Limited (Cause 923 of 2017) [2023] KEELRC 1404 (KLR) (8 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1404 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 923 OF 2017**

M MBARŪ, J

JUNE 8, 2023

BETWEEN

GEOFFREY MBOGO MWAKULOMBA CLAIMANT

AND

TAHIR SHEIKH SAID TRANSPORTERS (T.S.S) LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Memorandum of Claim on December 18, 2017 and served the respondent but there was no appearance or response paid.
2. The claim is that the respondent employed the claimant on June 2, 2013 as a claims manager at a wage of Ksh. 35,000 per month but his employment was terminated in February, 2016 while earning Ksh. 57,857 per month. He claimed that he got instructions from the respondent to direct the Kenya Shipping Clearing and Warehouses Workers Union to dismiss the employees but he declined. The claimant was threatened with a warning notice dated 2nd November 2016. He was then accused of not applying for an off duty to attend a pressing domestic issue. When he reported back to work on January 3, 2017 when he received a call from the director advising him not to report on duty since he had been summarily dismissed. the claimant picked his letter and notice on January 6, 2017.
3. The claim is that employment was terminated without a hearing or any good cause and the claimant is seeking the following dues;
 - a. Notice pay ksh. 57,857;
 - b. Service pay for 4 years ksh. 115,714;
 - c. Compensation for 12 months.
4. The claimant testified to support his case and also filed work records.



Without any response, the claim herein is not challenged.

The essence of employment and labour relations is to ensure that before employment is terminated, the employee must be taken through the due process of the law whatever misconduct or gross misconduct has been committed. In the case of *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, held that;

... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination.

5. Without any response, there being no evidence that the claimant was given a hearing before his employment was terminated, this resulted in unfair termination of his employment contrary to section 45 of the *Employment Act*, 2007.
6. The claimant was last earning ksh. 57,678 which is due in notice pay pursuant to section 35 of the *Employment Act*, 2007.
7. On the findings that there was unfair termination of employment, compensation is due and is hereby awarded at one month's gross wage at ksh. 57,678.
8. On the claim for gratuity for 4 years, the claimant filed a CBA between the respondent and Kenya Shipping, Clearing and Warehouses Workers Union. The claimant also filed various payment statements indicating payments of union dues to the trade union but the name of the subject employee is blocked.
9. The claimant filed his payment statement for the months of July and August, 2016 and he has no union deductions. The payment statement has remittances to NSSF and NHIF. He is hence removed from seeking payment of a gratuity or service pay.
10. Accordingly, judgment is hereby entered for the claimant against the respondent in the following terms;
 - a. Compensation ksh. 57,678;
 - b. Notice pay Ksh. 57,678; and
 - c. Each party shall bear own costs.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8TH DAY OF JUNE, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Rahma

..... **and**

