



**Mwau v Afri Piping Systems Limited (Cause 136 of 2019)
[2023] KEELRC 1397 (KLR) (8 June 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1397 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 136 OF 2019
MN NDUMA, J
JUNE 8, 2023**

BETWEEN

GERSHON MWONGELA MWAU CLAIMANT

AND

AFRI PIPING SYSTEMS LIMITED RESPONDENT

JUDGMENT

1. The suit is premised on an amended Statement of Claim dated February 28, 2022. Summons to enter appearance dated March 24, 2022 together with the Amended Statement of Claim were served on the Respondent by a process server named Tom M Kayere as per affidavit of service dated April 22, 2022.
2. The respondent did not enter appearance nor file a statement of response.
3. The suit proceeded as undefended suit on February 6, 2023 by the claimant (CW 1) adopting the witness statement dated February 28, 2022 and produced documents dated February 28, 2022 as his evidence before the Court. They were marked as exhibits '1' to '6'. The claimant then filed written submissions dated February 28, 2023.
4. The claimant testified that he was unlawfully and unfairly dismissed from employment by the respondent.
5. That he was employed as an Accounts Administrator at a monthly salary of Kshs 140,000 on March 27, 2017. That he performed his duties diligently until February 6, 2019 when he was verbally suspended by the Managing Director Mr. Ashu Sennik in the company of Mr Vinod Nair, the Operations Manager of Desbro Engineering Limited a sister company. That the claimant was told to resume on February 16, 2019 but when he did, the claimant was informed that he had been dismissed from employment. CW 1 testified that the dismissal was not preceded by any notice; notice to show cause and/or any opportunity to be heard. The claimant stated that he was not provided with any reason



for the dismissal. That dismissal was not for a valid reason and the respondent did not follow a fair procedure. That he was not paid *in lieu* of notice and was not given a certificate of service.

6. That he prays for payment *in lieu* of one month notice in the sum of Kshs 140,000; compensation for unfair and unlawful dismissal; provision of Certificate of Service; costs and interest.
7. The testimony by the claimant was not rebutted. The Court is satisfied that the claimant was employed by the respondent for a period of two (2) years as an accountant. That at the time of summary dismissal, the claimant earned Kshs 140,000 per month. That the dismissal was not preceded by any notice; notice to show cause or a hearing. That the dismissal violated the provisions of Section 36, 41, 43 and 45 of the Employment Act, as was held in the case of Mary Chemweno Kiptui vs Kenya Pipeline Company Limited [2014] eKLR and the case of Alphonse Machanga Mwachanya vs Operation 690 Limited [2013] eKLR.
8. That the Court finds that the summary dismissal was unlawful and unfair and the claimant is entitled to payment in lieu of one month notice and to compensation in terms of Section 49(1) (c) and (4) of the Employment Act, 2007.
9. That in this regard, the claimant did not contribute to the dismissal; the claimant was shocked by the sudden dismissal without a hearing and any valid reason. The claimant had served diligently for a period of two years. The claimant lost unlawfully means of livelihood and suffered loss and damage. The claimant was not compensated for the loss and was not paid terminal benefits to ameliorate the sudden loss. The claimant was not given a certificate of service to ease his getting an alternative job. The Court awards the claimant, compensation equivalent to two (2) months' salary for the unlawful dismissal in the sum of Kshs 280,000 thereof.
10. In the final analysis, the Court enters judgment in favour of the claimant against the respondent as follows:-
 - (a) Kshs 140,000 *in lieu* of notice.
 - (b) Kshs 280,000 in compensation.
 - (c) Certificate of Service to be granted in 30 days.
Total award: Kshs 420,000
 - (d) Interest at Court rates from date of judgment till payment in full.
 - (e) Costs of the suit.
11. It is so ordered.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 8TH DAY OF JUNE, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Muringi for the claimant

Ekale: Court Assistant

