



Parsitau v Kongoni Game Conservation Ltd (Employment and Labour Relations Cause 423 of 2016) [2023] KEELRC 1457 (KLR) (8 June 2023) (Judgment)

Neutral citation: [2023] KEELRC 1457 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 423 OF 2016**

HS WASILWA, J

JUNE 8, 2023

BETWEEN

REMPEIYAN PARSITAU CLAIMANT

AND

KONGONI GAME CONSERVATION LTD RESPONDENT

JUDGMENT

1. The claimant instituted this claim vide a Memorandum of claim dated 10th October, 2015, alleging to have been unfairly terminated and seeking for compensation for the unfair termination. He sought for the following reliefs;
 - i. A declaration that the termination of the claimant was unfair, wrongful, unlawful and illegal.
 - ii. Find the claimant is eligible to payment of;-
 - a. Days worked and not paid in January, 2015 of Kshs. 1,865.
 - b. Underpayment of Kshs 21, 632.
 - c. Overtime pay of Kshs 1,343.
 - d. Prorate leave of Kshs 2,612.
 - e. Severance pay of Kshs 22,384.
 - f. 12 months compensation as per section 49(c) of the Employment Act of KSHS 116,400.
 - g. Certificate of service.
 - iii. Costs of this suit.



2. The summary of the claimant's case is that he was employed by the Respondent as security guard with effect from August, 2010 at a monthly salary of Kshs. 8,680. That he worked for the Respondent until 5th January, 2015 when he was abruptly terminated without notice while earning Kshs. 9,700 per month.
3. He stated that he worked faithfully for the Respondent and preserved a good employment record without any warning or disciplinary proceedings.
4. During hearing, the claimant maintained that he was employed in 2010 and fired on 5th January, 2015 for allegedly failing to go to work. He stated that he was not subjected to any disciplinary hearing before the termination.
5. The Respondent entered appearance through Agricultural Employers Association on 6th December, 2016 and filed a response to claim on 19th December, 2016 admitting to employing the claimant but with effect from 30th December, 2011 till 5th January, 2015 when he was terminated for absenteeism.
6. The Respondent stated that the claimant absented himself from work without permission from 29th December, 2014 till 4th January, 2015 when he was issued with a show cause letter through his security supervisor which he declined receipt and in turn threatened the supervisor forcing the Respondent to terminate his services with immediate effect.
7. The Respondent stated that the claimant has severally failed to turn up for work without any excuse, earning himself a verbal warning.
8. It is averred that despite terminating the claimant summarily under section 44 of the *Employment Act*, he was paid one-month pay in lieu of notice. He declined the other prayers and on severance pay, it stated that the claimant is not entitled to severance pay because the termination was not as a result of redundancy, neither is he entitled to compensation because the termination was justified.
9. The Respondent did not participate in the hearing of this case and therefore did not file any Submissions.

Claimant's Submissions.

10. The Claimant submitted on two issues; whether the summary dismissal of the claimant was justified, wrongful or unlawful and whether the claimant is entitled to the prayers sought.
11. It was submitted that the claimant was not given a warning letter or subjected to any disciplinary proceedings before the termination was actualized, contrary to the provisions of *the Constitution* and the *Employment Act*.
12. It was submitted that even if the claimant was indeed terminated under the provisions of section 44 of the *Employment Act*, he ought to have been subjected to disciplinary procedure before the said termination was effect. Therefore the termination was unfair in the circumstances.
13. The Claimant in conclusion submitted that since the case herein was not opposed by evidence, the same should be allowed as prayed.
14. I have examined all evidence and submissions by the claimant herein.
15. The respondent failed to attend the hearing despite service on 13/4/2023 and therefore the claim proceeded exparte.



16. The claimant established that he was an employee of the respondent and worked for them from 2010 to 2015 – a period of about 5 years.
17. There is no reason submitted before court that led to the dismissal of the claimant.
18. There is also no indication that the claimant was subjected to any disciplinary proceedings.
19. The claimant's case remains uncontroverted.
20. I find for the claimant in the circumstances and I award him as follows;-
 1. 5 days worked and not paid = $9,700 \times 5 = 1,865/=$
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 2. Underpayment as pleaded 21,632/=
 3. Overtime pay as pleaded = 1,343/=
 4. Prorate leave of 7 days = 2,612/=
 5. 8 months salary as compensation for unlawful termination
= $8 \times 9,700 = 77,600/=$
TOTAL = 105,052/=
Less statutory deductions
 6. Issuance of a Certificate of Service
 7. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF JUNE, 2023.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Muthanwa for Claimant – present

Respondents – absent

Court Assistant – Fred

