



**Chapia v Alankar Manufacturing Limited (Cause 1042 of 2018)
[2023] KEELRC 1964 (KLR) (31 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1964 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1042 OF 2018
NZIOKI WA MAKAU, J
JULY 31, 2023**

BETWEEN

ALEXANDER WESA CHAPIA CLAIMANT

AND

ALANKAR MANUFACTURING LIMITED RESPONDENT

JUDGMENT

1. The Claimant avers that the Respondent unlawfully terminated his employment and has refused/neglected to pay him his terminal benefits and other monies owned to him. The Claimant averred that he was employed by the Respondent as a Machine Operator and he worked diligently until August 2017 when his employment was terminated summarily by the Respondent. The Claimant averred that he worked continuously since employment and that in August 2017 the Respondent dismissed the Claimant without due process and procedure. It is the Claimant's contention that the dismissal was done maliciously and without due process and procedures. The Claimant averred that his monthly salary was Kshs. 16,847/-. He thus sought one month's salary in lieu of notice – Kshs. 16,847/-, terminal dues of Kshs. 11,700/- and unpaid leave for 3 years – Kshs. 11,700/-. He also sought the certificate of service as well as costs of the suit and interest on the sums claimed.
2. The Respondent denied that it unlawfully terminated the Claimant's employment and has refused/neglected to pay him his terminal benefits and other monies owed to him. The Respondent denied the averments in the Memorandum of Claim that on or about August, 2017 the Respondent dismissed the Claimant without due process and procedure and put the Claimant to strict proof. The Respondent denied the Claimant's contention that the dismissal was done maliciously and without due process and procedures. It was denied that the Respondent purported to summarily dismiss the Claimant without following the right procedures.



3. The Respondent avers that it does not owe the Claimant any dues or any outstanding payments whatsoever. The Respondent denies having been served with any demand whatsoever. It thus prays that the Claimant's Claim be dismissed with costs.
4. The Claimant testified and the Respondent having been served failed to attend the hearing. The Claimant thereafter filed submissions to the following effect. The Claimant submitted that he appeared in court and gave oral evidence in support of his claim. He submitted that the issues for determination before this Honorable Court are:
 - a. Whether the Claimant was employed by the Respondent and
 - b. Whether the dismissal of the Claimant followed laid down procedures.
5. The Claimant submitted that the Respondent did not follow any of the laid out reasons for termination as well as the procedure to be followed by an employer per the *Employment Act* Cap 226 of 2007. It was submitted that in the circumstances, the Claimant's claim has not been controverted and that the Respondent did not appear before court in the matter so that the Claimant could cross examine the Respondent. It was submitted that it is imperative to note that the Respondent failed to appear in court for hearing. It was submitted that the Claimant was employed by the Respondent as a Machine Operator. It was submitted that in the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR the court held that

'... For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for termination while procedural fairness addresses the procedure adopted by the employer to effect the termination. In the present case, I find no evidence of either desertion of duty or fair termination by the Respondent. I thus return a finding that the termination of the Claimant's employment. was unfair both substantially and procedurally'
6. The Claimant submitted that it is on record that none of the above was done by the Respondent. The Claimant submits that he had proved the employment relationship with the Respondent and the Respondent failed to prove any valid reasons for the termination, and there is no tangible proof of desertion hence unfair termination has been established. It was submitted that for the reason that the Respondent unfairly terminated the Claimant, the Court was urged to find the action by the Respondent unlawful and award the Claimant as prayed in his suit.
7. The Claimant asserts unfair termination and thus seeks various remedies including payment for leave, notice pay as well as service. The Claimant did not avail any document save the contract for services rendered between 2nd January 2012 and 30th April 2012. There was no other document offered as evidence. There is no proof that demand was made or payment sought for the alleged unpaid sums. The Claimant was a general worker and earned Kshs. 8,722.75. The Claimant never approached the Ministry of Labour at Industrial Area to report the dispute as required since his level of earnings are well within the parameters for the Labour Officer to deal. As such, his claim is found to lack merit and is accordingly dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF JULY 2023

NZIOKI WA MAKAU

JUDGE

