



**Ndolo v Amazon Freight Limited (Cause 1258 of 2016)
[2023] KEELRC 1864 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1864 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1258 OF 2016
NZIOKI WA MAKAU, J
JULY 27, 2023**

BETWEEN

WINFRED NDUKU NDOLO CLAIMANT

AND

AMAZON FREIGHT LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated June 2, 2016 seeking against the Respondent for payment of her terminal dues and for compensation for the wrongful termination of her employment. She prayed for judgment against the Respondent for an Order that the Respondent pays her the said terminal dues as espoused in her Claim plus interest thereof as from the date of termination of employment until payment in full. Further, she sought for costs of the suit plus interest thereon and for any other relief this Court may find just and fit to grant. The Claimant averred that the Respondent employed her in 1998 under permanent terms until it wrongfully terminated her services on May 1, 2015 without any justifiable reasons and or cause. That after the termination, the Respondent declined and or refused to pay her due payments being: one month’s salary in lieu of notice; leave pay for 2015; house allowance; service pay for 17 years; unpaid salary for March, April and May 2015; 12 months’ salary as compensation for wrongful termination; and NSSF for the 17 years.
2. In replying, the Respondent filed a Statement of Response dated August 15, 2016 averring that the services of all its employees including the Claimant ceased in February 2015. That it had employed the Claimant on contract basis to serve only one of its clients namely Kodak and that all the employees knew about it as well. That therefore when the said contract it had with the then Kodak terminated in February 2015, the services of all its employees were consequently terminated. It was the Respondent’s position that together with all the other employees, the Claimant was paid her respective dues soon thereafter and there were no outstanding claims whatsoever. That it also gave the requisite notices of termination of service to the said employees. According to the Respondent, the monthly salary paid to the Claimant was all inclusive and that she had accepted the same since she was working on contractual



basis. It further averred that the Claimant worked as a Manager and was in charge of registering all the Respondent's employees with NSSF and also in charge of forwarding payments thereof on a monthly basis. That it was not aware that the Claimant had wilfully omitted to register herself and to forward her dues as expected. In the upshot, the Respondent prayed for the dismissal of the Claimant's claim with costs.

3. The Claimant's Reply to the Respondent's Response was that her employment was not conditioned on the existence of any contract between the Respondent and the said Kodak, and or any other company. She thus denied the Respondent's assertions including that she ever received her final benefits and prayed for the dismissal of the Respondent's Response with costs.

Evidence

4. The Claimant testified that the Respondent had employed her as Warehouse Manager and that she started out as a Supervisor. She recounted that on the said May 1, 2015, she was to resume work and that she had received the termination letter on February 1, 2015 while on maternity leave. She further testified that the Respondent only paid her March 2015 salary upon termination and that her salary was Kshs 30,000/-. That she had also produced in court bank statements to show the payments, which were made on a monthly basis and asserted that she was seeking Kshs 1,763,030/- and costs of the suit.
5. The Court declared the Defence Case closed as they were absent despite being served.

Claimant's Submissions

6. The Claimant submitted that as the Respondent failed to attend court to give evidence, her evidence remained uncontroverted and all the dues claimed were not disputed. That she was therefore entitled to all the dues sought as prayed for in her Claim. It was the Claimant's further submission that the Respondent did not follow due process of law as it for instance did not give her notice and neither did the alleged cessation of contract with Kodak Limited exonerate it from following the law. In addition, termination of her contract was unlawful as there were no plausible reasons for the same and the Respondent did not tender any evidence to confirm that the contract between it and Kodak Limited had since ceased to exist so as to justify redundancy. That secondly, the Respondent did not follow the redundancy procedure as laid down by the law.
7. The Claimant submitted that the Respondent's failure to follow the law in terminating her lawful contract attracts damages and that she was also entitled to the NSSF dues that the Respondent deducted from her salary but failed to remit to the said body. She also prayed for costs of the case.
8. The Respondent did not file any submissions.
9. It is not automatic that where a defendant does not attend to defend a suit that the plaintiff present at the hearing gets judgment in their favour. The Claimant had a burden to prove her case and as such, the Court will determine the case on the basis of the evidence before it. The Claimant asserts she was underpaid. She also seeks the payment of her NSSF dues. She did not attach her contract, the payslips or the NSSF statements to show the non-remittance of statutory deductions or the non-payment of lawful wages. As such, the Claimant's claim was tenuous at best as the only document she availed was her employment ID and the letter of termination which indicated the reason for the termination. The Respondent had a contract on which her employ eas hinged and upon that collapsing the Respondent ceased employment of all its employees including the Claimant as evidenced by the documents filed by the Respondent as well as the termination letter of the Claimant. In the upshot, the Claimant's suit was unmerited and is accordingly dismissed with no order as to costs.

It is so ordered.



DATED AND DELIVERED AT NAIROBI THIS 27TH DAY OF JULY 2023

NZIOKI WA MAKAU

JUDGE

