



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oduor v Kenchic Limited (Cause E821 of 2017)  
[2023] KEELRC 1711 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1711 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E821 OF 2017**

**MN NDUMA, J**

**JULY 6, 2023**

**BETWEEN**

**KENNEDY OMONDI ODUOR ..... CLAIMANT**

**AND**

**KENCHIC LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed on 4/5/2017 seeking the following reliefs:-
  - a. A declaration that the dismissal was unlawful and unfair.
  - b. Reinstatement to previous employment position.
  - c. Unpaid salary of Kshs.31,800.
  - d. Staff gratuity (1 month salary x 5 years) of Kshs.159,00.
  - e. Unexpired value of the contract (Kshs.31,800 x 9 months) Kshs.286,200/=
  - f. Salary in lieu of notice (Kshs.31,800 x 2 months) Kshs.63,600/=
  - g. Overtime dues for 2 hours every week for 5 years (2/48 hours x 52 weeks x 5 years x salary 31,800) – Kshs.433,500.
  - h. General and exemplary damages for unlawful termination and defamation.
  - i. Costs.
2. C.W.1, the claimant testified that he was employed by the respondent on 9/6/2011 in various capacities. That he worked continuously until the employment was terminated by a letter dated 13/1/2017.



3. In the said letter of termination, the claimant was to be paid salary up to 13/1/2017; two months' salary in lieu of notice not served; payment in lieu of 63 leave days not taken; Kshs.7,500 being accrued leave travel allowance and equivalent of fifteen days (15) salary for each completed year of service.
4. In his testimony, the claimant admitted having been paid Kshs.176,561.35. The claimant testified that these were his final dues and that he signed a letter of release in full and final settlement of all dues owed to him by the respondent and that he would not seek any further compensation or reinstatement from the respondent upon receipt of the payment.
5. The claimant admitted before Court that he signed the letter of indemnity voluntarily. The claimant however under re-examination stated that the indemnity was not in respect of the suit before Court.
6. The claimant stated that his employment was terminated without the respondent giving him opportunity to be heard. The claimant testified that he was served with a notice to show cause but was not given opportunity to be heard thereafter before the termination. The claimant stated that the termination was unlawful and unfair and that he be compensated for the loss of his job.
8. R.W.1 Romeo Jamoza testified that the claimant was a Data Analyst of the respondent and earned Kshs.31,800 at the time of termination. That the claimant had a two year written contract from 1/11/2015 to 31/10/2017. That the termination took place a month before the contract ended because the claimant had violated company policy by disclosing confidential information to farmers to the detriment of the respondent.
9. The claimant admitted that he had released the said report to the farmers but the claimant explained that this was a routine report released to farmers quarterly and was not confidential. R.W.1 stated that he was not employed by the respondent at the time the claimant left employment. However, the claimant's conduct was contrary to the respondent's Code of Business Ethics as outlined in the Employees handbook. That that action warranted summary dismissal but the respondent had opted to only terminate the employment of the claimant and paid him terminal benefits upon the termination.
10. That the claimant was issued with a show cause notice dated 11/1/2017 and that the claimant in his response dated 12/1/2017, confirmed having shared the document containing confidential information. That the claimant was subsequently subjected to the Respondent's internal disciplinary process and was found guilty of gross misconduct. That the hearing was scheduled for 12/1/2017 but the claimant did not attend the hearing. The respondent proceeded to terminate the employment of the claimant and was issued with a termination letter dated 13/1/2017. That the claimant was paid all terminal benefits set out in the letter of termination and was given a certificate of service.
11. That the claimant was paid Kshs.176,561.35. That the claimant had initially refused to receive the terminal benefits but subsequently entered into an agreement with the respondent for payment of the said Kshs.176,561.35 as full settlement of the claim herein.
12. That the terminal dues were collected by the claimant at the respondent's office on 2/10/2019 in full and final settlement of the claim and the claimant signed a certificate of final dues paid dated 2/8/2019 produced before Court. R.W.1 prays that the suit be dismissed with costs.

### **Determination**

13. The issues for determination in this matter are:-
  - (a) Whether the termination of the employment of the claimant was for a valid reason following a fair procedure.



- (b) Whether the claimant compromised the intended suit by signing a release letter in full and final settlement of all claims against the respondent.
- (c) If the claimant is entitled to the reliefs sought.
14. The parties filed final submissions in this matter which the Court has carefully considered together with the testimony by the claimant vis a vis that by R.W.1. Though the claimant testified that his dismissal was not for a valid reason, and that he was not given a fair hearing before the termination of his employment, the claimant admitted that on 2/8/2019, after he had filed this suit signed a Certificate of final dues upon receipt of terminal dues from the respondent in the sum of Kshs.176,561.35. R.W.1 produced before Court the said Final Dues Certificate signed by the claimant and the respondent on 2/8/2019. The certificate reads:-
- “I Kennedy Omondi Owuor of ID Number 22928225 hereby acknowledge receipt of Kshs (in words, One hundred and Seventy Six thousand five hundred and sixty one and thirty five cents (176,561.35) being part of my final dues arising from my former employment with Kenchic Limited.
- I also confirm that I left the services without any injuries sustained during my working period and I have no further claims against whatsoever including claims for reinstatement into my job or to further compensation arising out of termination of my contract of service.
15. In his testimony before Court, this claimant admitted that he received the said final terminal dues and that he signed the said final dues certificate voluntarily.
16. A literal interpretation of the aforesaid document leads this Court to the inevitable conclusion that the claimant freely and voluntarily, indemnified the respondent from any further claims arising from the termination of employment between himself and the respondent. It is material that this agreement was freely and voluntarily signed by the parties during the pendency of this suit.
17. It is strange for the claimant having received the money in full and final settlement to turn around in Court and testify that the settlement did not compromise this suit. The Court finds that this suit was indeed compromised by the parties on 2/8/2019 when the claimant and a representative of the respondent, one Maureen Njoroge freely and voluntarily appended their signatures to the “Final Dues Certificate” before Court.
18. This Court finds that this suit was compromised and the claim before Court has no merit at all.
19. In any event the Court is satisfied that the respondent had a valid reason to terminate the employment of the claimant in terms of Section 43(1) and (2) read with 45 of the *Employment Act*, 2007.
20. The respondent had also followed a fair procedure in terminating the employment of the claimant.
21. Furthermore, the respondent had in the first instance offered to pay the claimant the full terminal benefits but the claimant had initially declined to receive the same but changed his mind afterwards as found in this judgment.
22. In the final analysis, the suit has not merit and is dismissed in its entirety.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 6<sup>TH</sup> DAY OF JULY, 2023.**

**Mathews N. Nduma**

**Judge**



**Appearances**

M/s Namalosi for claimant

M/s Imbuga for respondent

Ekale: Court Assistant

