



REPUBLIC OF KENYA



**Wabwire v Techno Steel Industries Limited (Cause 993 of 2017)
[2023] KEELRC 1659 (KLR) (6 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1659 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 993 OF 2017
MN NDUMA, J
JULY 6, 2023**

BETWEEN

BENSON WABWIRE CLAIMANT

AND

TECHNO STEEL INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. The claimant filed suit on May 31, 2017 seeking the following reliefs:-
 - (a) Arrear salary for the month of August, 2016 – Kshs.11,623.
 - (b) One month salary in lieu of notice – Kshs.11,625.
 - (c) Payment in lieu of untaken leave for 1 year – Kshs.9,389.
 - (d) Service pay at the rate of 20 days salary for the completed one year of service Kshs.6,706.7
 - (e) Damages for unlawful dismissal.
2. C.W.1, the claimant testified that he was employed by the respondent as a general worker on April 2, 2014 until August 30, 2016 at a monthly salary of Kshs.11,625.
3. That on August 30, 2016, the director of the respondent ordered the claimant to leave the company premises as the claimant had instituted a Civil Suit against the respondent in respect of injuries sustained in the course of duty.
4. That the termination was without any notice; notice to show cause or any hearing.
5. That the termination was unlawful and unfair and the claimant prays to be granted the reliefs sought.



6. Under cross-examination, the claimant confirmed he had filed a Work Injury Claim at Kajiado Court and the case was heard and determined and that he was awarded damages for the injuries sustained at work. That the respondent paid the claimant the decretal sum.
7. That the claimant was then chased away in the month of August, and was not paid salary nor given any notice. He was also not paid any terminal benefits. The claimant stated that he claims payment of gratuity calculated at 15 days salary for each completed year of service as provided in the last contract of service.
8. The Claimant stated that he had not taken annual leave for that year.
9. R.W.1 Noah Solitei testified that he was a Senior records officer of the respondent and that he maintained the payroll. R.W.1 stated that between the years 2015 to 2016, he did not have a record of any Work Injury as alleged by the claimant. R.W.1 stated that the claimant did not file any civil suit against the respondent as alleged.
10. R.W.1 stated that the claimant received salary for the month of August, 2016. That after he received his salary he stopped reporting to work from August 29, 2016 as per the master roll of the respondent.
11. That the claimant received service pay for the contract between 2014 and March 2016 when that contract ended.
12. That the new contract for the period 2016 to 2017 was not completed so no service gratuity was paid.
13. That the claimant had obtained a welfare loan from the respondent in the sum of Kshs.5,500 which he had not paid.
14. That the respondent admitted owing the claimant Kshs.4,187 in lieu of leave days not taken.
15. R.W.1 under cross-examination insisted that the claimant was not chased from work but he absconded duty without notice.
16. R.W.1 stated that the claimant had a clean record and had no warning letter. That since the employment of the claimant was not terminated by the respondent, no hearing took place. That the suit be dismissed with costs.

Determination

17. The issue for determination is whether the employment of the claimant was terminated verbally by a director of the respondent on August 30, 2016 for having sued the company or the claimant absconded work as alleged by R.W.1.
18. The claimant produced a letter of demand written by Ong'uti and Company Advocates dated September 16, 2016 to the respondent in which it was alleged that the employment of the claimant was terminated verbally by a director of the respondent because the claimant had filed a civil suit against the company due to a work related injury.
19. There is no evidence that the respondent responded to this letter at all.
20. In its response to the suit filed on April 4, 2018, the respondent made a bare denial that the claimant absconded work on 29th August, 2016 after receiving the August, 2016 salary.
21. The claimant states that he was not paid salary for the month of August, 2016 when he was chased away. The claimant stated that he obtained judgment against the respondent for the work injury sustained



- and the respondent paid the decretal sum. R.W.1 denies that the claimant was ever injured nor that he had filed any suit.
22. The claimant explained that the suit records were left with his advocates hence he could not produce them before this Court.
 23. The Court has evaluated the veracity and credibility of the two versions of events narrated by the claimant vis a vis by R.W.1 and finds no reason why the claimant would invent such a story and abscond his work without any reason. R.W.1 stated that the claimant had a clean record and had no warning at work.
 24. It boggles the mind why the claimant would suddenly abscond work. The Court finds the version told by the claimant more plausible and credible and finds that the claimant was on August 30, 2016 chased away from work for having sued the respondent. The Court finds that the claimant was not paid salary for the month of August, 2016 since R.W.1 did not produce a payslip to that effect yet the Court has copies of payslips filed by the claimant in respect of some of the months he was paid his salary.
 25. R.W.1 admitted that the claimant had not taken his leave days and they owed him for the days not taken.
 26. R.W.1 also confirmed that the claimant had been paid service gratuity up to the month of March, 2016. The claimant is therefore entitled to gratuity for the month of April, to August, 2016 (5 months) as per the contract of employment.
 27. R.W.1 admitted that no notice was given or hearing conducted before the separation. The Court finds that the respondent did not follow due process before unlawfully terminating the employment of the claimant.
 28. The respondent violated sections 36, 41, 43 and 45 of the Employment Act, 2007 and the termination of the employment of the claimant was unlawful and unfair.
 29. The claimant is entitled to compensation for the unfair termination of his contract of service. The claimant had seven (7) months left to the end of the contract. The claimant suffered loss and damage for no good cause. The claimant did not contribute to the termination. The claimant was not paid terminal benefits upon the termination. The claimant suffered loss and damage. The Court having considered the provisions of sections 49(1) (c) and (4) awards the claimant the equivalent of two (2) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs.(11,625 x 2) – Kshs.23,250.
 30. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
 - a. Arrear salary for August, 2016 – Kshs.11,625
 - b. One month salary in lieu of notice – Kshs.11,625.
 - c. Payment in lieu of untaken leave days – Kshs.4,187.
 - d. Service pay for the completed 5 months service in the year 2016 – Kshs 3,353.
 - e. Compensation – Kshs.23,250.
Total award Kshs,54,040
 - f. Interest at Court rates from date of judgment till payment in full.
 - g. Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 6TH DAY OF JULY, 2023.



MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Ong’uti for claimant

Mr. Ondete for Respondent

Ekale: Court Assistant

