



**Ambani v Funsclapes Ltd (Employment and Labour Relations Cause  
2426 of 2017) [2023] KEELRC 2067 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2067 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 2426 OF 2017**

**AN MWAURE, J  
AUGUST 4, 2023**

**BETWEEN**

**ALFRED MUTENO AMBANI ..... CLAIMANT**

**AND**

**FUNSCAPES LTD ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The claimant filed is claim dated 6<sup>th</sup> December 2017 praying for declaration of unfair and unlawful termination.

**Claimant's case**

2. The claimant says he was employed by the respondent on 7<sup>th</sup> June 2016 and was deployed at their Thika road mall branch.
3. He says he worked as a technician and while in his normal duties he hurt his eye and the same was severely damaged. He says he sought treatment diligently but never regained his eye sight.
4. He says the Director of occupational safety and health services assessed the damage to his eye at Kshs 432,000/- being 30% damages. He says the order was made in June 2017 but todate he has never been paid. He says that he instructed his advocate to demand for his money but the respondent accused him of soliciting for money from a client instead of advising client to pay through the accepted card system which was the only accepted mode of payment.
5. He says a client can only pay through a credit system. He further says he was in any event a technician and was not responsible for processing any payment.



6. He says sometime on 18<sup>th</sup> November 2017 the manager Mr Agosa informed him since he persisted in demanding to be paid for the injuries he could either resign or be terminated. He says he refused to resign. He says the manager informed him his services had been terminated. He says the time of termination he was earning Kshs 15,000/-.
7. He prays for compensation as per his claim.

### **Respondent's case**

8. The respondent filed his claim dated 14<sup>th</sup> March 2022. The respondent admits the claimant admitted he was employed by the respondent as a technician and that he sustained injuries in his left eye. He says the claimant failed to wear a protective gear as required by the company's policy.
9. He says they facilitated the claimant to get treatment in various facilities. He further says the claimant was awarded compensation of kshs 432,000/- by the directorate of occupational safety and health.
10. The respondent says they have declined to pay the claimant the compensation as they have a workman compensation cover with Mayfair Insurance Company and they had been following the compensation until the claimant was suspended and the process stalled.
11. The respondent admits they have not refused to pay the claimant the compensation even though claimant was negligent when the accident took place and was not wearing protective gear.
12. He also says they suspended claimant as he was caught receiving monies from clients at work place contrary to the company's rules. He said they would produce CCTV footage at the hearing to prove this averment.
13. He says he did not sack the claimant but that the claimant he left work and refused to meet the respondent's officials to discuss the issue.
14. Respondent says the claimant is not entitled to the claims he had prayed in the claim but that he is the one who owns the respondent's money for losses they made due to his misdeeds.
15. The respondent prays the claimant's case be dismissed with costs.
16. Claimant made his evidence in chief in court on 6<sup>th</sup> March 2023. He reiterates the evidence contained in the memorandum of claim. He says he was paid ksh 432,000/- but he paid for his treatment.
17. The respondent did not call a witness and court did not have sight of his submissions.
18. Claimant's submissions dated 22<sup>nd</sup> March 2023 were considered by the court.

### **Determination**

19. The gist of the matter in this case is whether the claimant was unlawfully terminated for demanding for injuries compensation incurred at the place of work.
20. The claimant says he was terminated when his advocate wrote a demand letter asking for is compensation for injuries sustained during the course of his work. There was no termination letter and indeed the respondent avers he only suspended the claimant to investigate cases where he used to demand demand cash from their clients. The respondent produced no document to prove that he put the claimant on suspension or even took him through disciplinary action.
21. It is trite law that an employer who considers to terminate an employee must give him a valid reason why he is considering terminating him.



22. Section 43(1) of *employment act* provide as follows:

In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

23. This then is read with section 45(1) of *employment act* which also states as follows:

No employer shall terminate the employment of an employee unfairly.

24. And finally the respondent did not give any evidence of having given the claimant a chance to explain himself in the presence of a fellow worker of his choice or a shop floor union representative. There is no evidence that claimant was given a notice or reason for termination.

25. In the case of *Muthaiga Country Club vs KUDHEIHA Workers* (2017) eKRL where the court held:-

“The grievant having denied, through their witness, the reasons given for their dismissal, discharged their obligation under section 47(5) of the act by laying the basis for their claim that an unfair termination of employment had occurred. This brought into play section 43(1) and 47(5) of the act that places the burden upon the appellant to prove the alleged reason for termination of the grievants employment, and justify the grounds for the termination of the employment.

26. In view of the above the court holds that a part from the respondent claiming that the claimant was demanding money from their client’s contrary to company’s policy the respondent failed to prove their claim with the support of documentary evidence or to call witnesses to support their claim. The respondent fell short of proving a case of fair termination against the claimant’s employment hence judgment is entered in favour of the claimant and is awarded the following:

## REMEDIES

26.

- (1). One month salary in lieu of notice kshs 15,000/-
- (2) Unpaid days in the November 2017 (18 days) Kshs 9,000/
- (3) Untaken leave days claim is not proved how it was arrived at and is not allowed.
- (4) Compensation for unlawful termination at 4 months considering the claimant worked for the respondent for a short period of time kshs 60,000/-
- (5) Costs of the suit are awarded to the claimant
- (6) He is as well also awarded interest at court rates from date of judgment till full payment.
- (7) So total award is Kshs 84,000/-

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 4<sup>TH</sup> DAY OF AUGUST 2023.**

**ANNA NGIBUINI MWAURE**

**JUDGE**



## **ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the [Civil Procedure Rules](#), which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of [the Constitution](#) which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of [the Constitution](#) and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

**ANNA NGIBUINI MWAURE**

**JUDGE**

