



**Kostany v Keroche Breweries Limited (Cause 446 of 2019)
[2023] KEELRC 1935 (KLR) (4 August 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1935 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 446 OF 2019
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

GLORIA CHEROP KOSTANY CLAIMANT

AND

KEROCHE BREWERIES LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Memorandum of claim on July 5, 2019 through Mutai & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant's termination of employment was wrongful and unfair.
 - b. The sum of Kshs 3,680,000 as particularized in paragraph 8 of the claim.
 - c. General damages.
 - d. Interest in (ii) above at the court rates from date of filing this claim & interest in (iii) above from judgment until payment in full;
 - e. An order that the respondent promptly issues a certificate of service.
 - f. Costs of this suit.
 - g. Any other relief as the court may deem just.
2. The Statement of response was filed on August 22, 2019 through Kilukumi & Company Advocates. The respondent prayed that the suit be dismissed with costs.
3. Through a notice of change of advocates dated May 9, 2023 the firm of Waruiru Karuku & Mwangale Advocates replaced the firm of Kilukumi & Company Advocates as acting for the respondent.



4. By chamber summons application dated May 29, 2023 the firm of Waruiru Karuku & Mwangale Advocates prayed for orders that the firm be granted leave to cease acting for the respondent.
5. On May 30, 2023 the claimant's claim came up for hearing, on which date there was no appearance on the part of the respondent, and the court proceeded to hear the claimant, who gave testimony and closed her case.
6. By a notice of motion application dated July 20, 2023 the respondent counsel Waruiru, Karuku & Mwangale Advocates applied to the court seeking to arrest the delivery of judgement scheduled for July 24, 2023.
7. The court on July 24, 2023 ordered that;
 - a. Judgment will be delivered on August 4, 2023 at 9:30 am or thereafter
 - b. The application may be served and affidavit of service filed today for further directions and may be ... and after delivery of judgment.
 - c. In the interest of justice, the time for the respondent to file and serve submissions as ordered on May 30, 2023 is extended to until close of Wednesday July 26, 2023 and the respondent at liberty to comply accordingly.
8. The claimant's case was that she was employed as a marketing manager by the respondent on April 24, 2018 and her employment commenced on May 2, 2018, with a gross monthly salary of Kshs 230,000/=.
9. That she served a six (6) months' probation period and was subsequently confirmed through the respondent's letter dated October 1, 2018. On November 30, 2018 the respondent terminated the employment of the claimant, it is the claimant's case that the respondent did not accord her a hearing and no reason for termination was tendered to her.
10. Through counsel, she wrote the respondents a demand letter on February 27, 2019, which prompted the respondent's human resource department to call her for a meeting at the respondent's headquarters to discuss an amicable settlement.
11. That the respondent paid the claimant Kshs 565,000/= as terminal benefits. The claimant states that she filed suit to pursue damages for unfair and unlawful dismissal from employment, as no valid reason was given for dismissal, and she was not accorded a hearing as envisioned by the employment act.
12. The Court has considered all the material on record. The Court returns that there was no unfair termination because the termination was per the separation termination clause and which was consistent with section 36 of the Employment Act. The parties appear to have met after the termination letter and all dues were paid per exhibit on final dues computation. The only amount not paid per termination clause was one month salary of the agreed three months salaries which is awarded at Kshs 230,000.00. To the extent that the claimant had claimed and prayed for amounts already paid, each party to bear own costs of the suit.
13. In conclusion judgment is hereby entered for the claimant against the respondent for:
 - a. Payment of Kshs 230, 000.00 by October 1, 2023 failing interest at Court rates to be payable there on at Court rates from the date of filing the suit till full payment.
 - b. Each party to bear own costs of the suit.

Signed, dated and delivered by video-link and in court at Nairobi this Friday 04th August, 2023.

BYRAM ONGAYA, PRINCIPAL JUDGE



