



**Kanjau v Kenya Power and Lighting Co Ltd (Cause E005 of 2022)
[2023] KEELRC 2297 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2297 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E005 OF 2022
ON MAKAU, J
SEPTEMBER 29, 2023**

BETWEEN

EPHRAIM MUTHAMBUKI KANJAU CLAIMANT

AND

KENYA POWER AND LIGHTING CO LTD RESPONDENT

JUDGMENT

1. By a statement of claim dated 6th October 2021, the claimant alleged that his employment of 30 years had been terminated by the respondent unlawfully and unfairly on 6th January 2021. He averred that his Constitutional rights to fair Labour Practices and fair administrative action were also violated by the respondent. Therefore he prayed for the following reliefs:-
 - a. A declaration that the claimant's termination was in violation of the claimant's constitutional rights in particular Articles 41 and 47 of *the Constitution* of Kenya, 2010.
 - b. A declaration that the claimant's termination was in violation of Sections 41, 43, 44 and 45 of the *Employment ACT* No.11 of 2007 and was therefore unfair;
 - c. Compensation for:
 - I. Violation of the Claimant's constitutional rights as envisaged under Articles 41 and 47 of *the Constitution* of Kenya, 2010 and
 - II. Violation of the Claimant's employment, legal and contractual rights.
 - d. Compensation for unlawful loss of employment calculated at Kshs.126,243/- multiplied by 12 months totaling to Kshs.1,514,916/=
 - e. One month's salary of kshs.126,243/- as compensation in lieu notice.
 - f. Interests in (d) and (e) above at court rates.



- g. Costs of this suit.
 - h. Any other relief that this Honorable court may deem fit to grant.
2. The respondent filed response dated 4th August 2022 accompanied by witness statements and supporting documents denying liability but never participated in the hearing and therefore only the claimant gave evidence in this suit.

Evidence

3. The claimant testified as CW1 and adopted his written statement dated 6th October, 2021 as his evidence in chief. He also produced 6 documents as exhibits. His evidence in brief is that he was employed by the respondent in 1988 as a General work and served diligently until for 30 years. His monthly salary was reviewed upto Kshs.126,243.00.
4. On 6th January 2021, he was shocked by the termination of his employment for alleged involvement in illegal rerouting of electricity poles. He denied the alleged misconduct and contended that the said allegations were not substantiated by evidence. He further stated that he was subjected to unjust and unfair disciplinary proceedings in which the respondent had a pre-determined verdict of dismissing him. He was also denied legal representation.
5. Finally he faulted the employer for dismissing him without benefits and prayed for award of the reliefs sought in his claim.

Submission

6. The claimant submitted that his employment was unlawfully terminated. He contended that the termination was not justified and fair procedure was not followed as required by section 45 of the *Employment Act*. He further contended that the accusation was baseless and he was denied hearing before the termination. He contended also that he was off duty on the material day and no evidence was adduced in this court to prove that he was present at the scene of re-routing of the poles. Being off duty, he submitted that it was not possible to access the hiab and other equipment for the said work.
7. He relied on the case of *Walter Ogal Anuro vs Teachers Service Commission* (2013) eKLR where the court held that for termination of employment to pass the test of fairness test, there must be both substantive and procedure fairness.
8. In view of above matters, the claimant submitted that he is entitled to the reliefs sought including salary in lieu of notice, compensation for unlawful termination and costs.

Issues for Determination

9. There is no dispute that the claimant was employed by the respondent until 6th January 2021 when he was dismissed. The issues for determination are:-
 - a. Whether the termination was unfair and unlawful.
 - b. Whether the claimant is entitled to the reliefs sought.

Unfair termination

10. Section 45 of the *Employment Act* provides that:-

“(1) No employer shall terminate the employment of an employee unfairly.



- (2) A termination of employment by an employer is unfair if the employer fails to prove –
- a. That the reason for the termination is valid;
 - b. That the reason for the termination is a fair reason -
 - i. Related to the employee’s conduct, capacity or compatibility, or
 - ii. Based on the operational requirements of the employer; and
 - c. That the employment was terminated in accordance with fair procedure.”

11. The claimant testified that he was off duty on the date when he is alleged to have participated in the illegal re-routing of electricity poles. The respondent has not adduced any evidence to prove that the claimant was on duty or that he was present at the scene of the said offence. There is also evidence of what role he played in the alleged illegal re-routing of the poles. Without such evidence I must find and hold that the respondent has failed to prove that the dismissal of the claimant was grounded on valid and fair reason.

12. In addition, the claimant’s evidence that he was not accorded a fair hearing before the termination has not been rebutted by the respondent. Consequently, the failure to prove a valid reason, and that fair procedure was followed, leaves the court with one conclusion that the dismissal of the claimant from employment was unfair and unlawful. I gather support from the case of *Walter Ogal Anuro v Teachers service Commission* (2013) eKLR cited by the claimant.

Reliefs

13. In view of the matters above I find that the claimant is entitled to declaration that the termination of his employment was unfair and unlawful and a violation of his right to fair labour practices and fair labour practices and fair administrative action.

14. In view of the foregoing, he is entitled to compensation under section 49(1) of the *Employment Act*. First, I award him one month salary in lieu of notice being Kshs.126,243.00. Secondly I award him 12 months gross salary as compensation for unfair termination considering that he served for 30 years without any warning letter, and further that there was no valid reason proved to justify the dismissal. This works to Kshs.1,514,916.00.

15. In conclusion I enter judgment for the claimant declaring his dismissal from employment unfair and ordering the respondent to pay him Kshs.1,641,159.00 plus costs and interest at court rate from the date hereof. However, the award is subject to statutory deductions.

DATED, SIGNED AND DELIVERED AT NYERI THIS 29TH DAY OF SEPTEMBER, 2023.

ONESMUS N MAKAU

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 15th April 2020, this judgment has been delivered



to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

