



**Karanja v Geosurve Systems Limited (Cause 803 of 2016)
[2023] KEELRC 2290 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2290 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 803 OF 2016
MN NDUMA, J
SEPTEMBER 28, 2023**

BETWEEN

ZACHARY WAWERU KARANJA CLAIMANT

AND

GEOSURVE SYSTEMS LIMITED RESPONDENT

JUDGMENT

1. The claimant was employed as a surveyor on 14/5/2014 at a monthly net salary of Kshs 30,000. At the time of separation the claimant earned Kshs 50,000 per month. The termination of employment was by a letter dated 21/3/2016. The letter said that the termination was due to lack of opportunity and work in the office. That the company could no longer sustain the employment of the claimant. Termination was with effect from 22/3/2016 the following day.
2. The respondent promised to pay March and April, 2016 salary in full. Claimant testified that he did not receive notice of termination; warning; nor notice to show cause or any hearing to explain why the employment should not be terminated. The claimant said that it was not true that there was no more survey work to be done. That projects of the respondent were still going on. C.W.1 said that he had no written contract of employment. The claimant stated that he worked in a Kenya Power and Lighting Company project but the respondent had other projects where the claimant could still serve. That this project was still going on when the dismissal took place. The claimant said he was not paid in lieu of notice and the April salary was also not paid. That his colleague Esther had her employment also terminated at the same time and for same reason.
3. The claimant stated that he had a payslip to prove his salary and employment. That the salary was paid via an Equity account.
4. The Respondent called Charles Gathogo (RW.1) in defence of the case. He said he was a Surveyor and Director of the respondent. R.W1 said that the claimant was not a permanent employee. That he was



first employed as an intern. That the claimant was paid salary for March and April upon termination. He however did not produce any documents to that effect. R.W.1 said that the respondent explained to the claimant that the Kenya Power & Lighting Company contract was over and so there was no more work for him. That was the reason given for the termination in the letter. That other employees had their employment terminated for the same reason. That the suit has no merit and it be dismissed.

Determination

5. The parties filed written submissions which the Court has carefully considered together with the testimony by the claimant and that by R.W.1. It is not in dispute that the claimant was employed by the respondent vide a verbal contract of employment. The claimant demonstrated that he was employed on 14/5/2014 and the employment was terminated by a termination letter dated 21/3/2016.
6. In terms of the letter, the company did not have work for the claimant since the Kenya Power & Lighting Company project he was serving under as a Surveyor had lapsed. The claimant disputed this fact. It is evident that the respondent did not issue a termination notice to the claimant on grounds of redundancy in terms of Section 40 of the *employment Act* if indeed the termination was due to there being no work. Again, the respondent did not notify the Ministry of Labour of the intended redundancy as required under Section 40(1) of the *Act*.
7. The claimant was not given any opportunity to be heard before the termination took place. The claimant testified that he was not paid salary for the days worked in the month of March, 2016 and in lieu of one month notice. The respondent did not produce any evidence to rebut this evidence. The Court finds that indeed the claimant was not given any notice of termination and was not paid *in lieu of* notice. That the claimant was not paid in lieu of 20 accrued leave days as claimed and for 15 days overtime worked in the month October, 2015. R.W.1 was unable to rebut this clear evidence by the claimant.
8. The Court finds that the claimant was paid Kshs 50,000 salary per month vide Equity Bank account. That the termination by the respondent violated Sections 36, 40, 41, 43 and 45 of the *Employment Act, 2007* in that no notice was issued for the termination to the claimant nor to the Ministry of Labour and terminal benefits were not paid in terms of the law upon termination. That due process was not followed before the termination occurred.
9. The Court finds that the claimant has proved his case on a balance of probabilities and that the Court grants him all the terminal benefits claimed and set out in the Statement of Claim as follows:-
 - (i) Kshs 36,000 being arrear salary for the 22 days worked in March, 2016.
 - (ii) One month salary in lieu of notice being Kshs 50,000.
 - (iii) Payment *in lieu of* 20 days accrued leave days Kshs 36,000.
 - (vi) Kshs 37,500 being payment of overtime worked and not paid.

Compensation

10. The Court has found that the termination was unlawful and unfair and the claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the *Employment Act, 2007*. In this regard, the claimant did not contribute to the termination, the termination was both procedurally and substantively unfair. The claimant had served the respondent without blemish for a period of two (2) years. The respondent aggravated the situation by not giving the claimant notice of termination and failing to pay *in lieu of* notice. The claimant suffered loss and damage. The Court has considered similar



cases of *Francis Mathira Kyule v Lavington Security Limited* - Cause No. 2255 of 2014 [2019] eKLR and Cause No 1479 of 2013 - *Dennis Mbuvi v Raj Shab T/A Kenya Motor Sports Club and Restaurant* and the circumstances set out above to award the claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair termination in the sum of Kshs 200,000.

11. In the final analysis, judgment is entered in favour of the claimant against the respondent as follows:-
- (a) Kshs 200,000 in compensation.
 - (b) Kshs 159,000 being terminal benefits set out above.
Total: Kshs 359,000.
 - (c) Interest at Court rates from date of judgment till payment in full.
 - (d) Costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 28TH DAY OF SEPTEMBER, 2023.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Kirimi for claimant

Mr. Githinji for Respondent

