



**Iriga v Gold Crown Beverages (Kenya) Limited (Cause 450 of 2019)  
[2023] KEELRC 2739 (KLR) (24 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2739 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 450 OF 2019  
DKN MARETE, J  
OCTOBER 24, 2023**

**BETWEEN**

**JAMES NGONDOKI IRIGA ..... CLAIMANT**

**AND**

**GOLD CROWN BEVERAGES (KENYA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of the Claimant's and Statement of Claim dated 8th July, 2019. The issue in dispute is herein cited as;  
  
Wrongful and/or unlawful termination of the Claimant's Employment agreement/contract by the Respondent, neglect and or refusal by the Respondents to pay the Claimant's lawfully accrued terminal benefits.
2. The Respondent in a Memorandum of Response dated 18th July, 2022 denies the claim and pray that the same be dismissed with costs.
3. The Claimant's case is that by a Written Employment Agreement dated 17th April, 2015, the Respondents engaged the claim as a Regional Sales Manager and reported directly to the National Sales Manager. He served Mount Kenya Region and earned Ksh.120,000.00 per month.
4. His other case is that by a letter dated 7th January, 2017, he was summarily dismissed for alleged unimpressive performance duties and was not paid is terminal benefits accruing in law including reimbursement for unlawful deductions made by the respondent without the Claimant's knowledge or consent.
5. He further avers that herein that the Respondent terminated the Claimant's services on the aforesaid date without notice and in total disregard of the provisions of Sections 41(1) and 44(3) of the [Employment Act](#), 2007.



6. He Claimant as follows;
  - Damages for unlawful termination  
(120,000 x 12 months) Kshs.1,440,000/=
  - Interest on Unlawful Deductions (car Loan)  
(255,000 x 0.14 CBK interest rate) Kshs.35,700/=
  - Interest for Unlawful Deduction (advance for tablet)  
(26,1000 x 0.14 + 26,100) Kshs.29,754/=
  - Total Kshs.1,505,000/=
7. He prays thus:
  - a. Accrued sum of the terminal dues of Kenya Shilling One Million Two Hundred and Thirty-seven Thousand (Kshs.1,505,000/= as particularized in paragraph 13 of the claim.
  - b) General Damages for breach of contract.
  - c) Costs of this suit
  - d) Interest in (a), (b) and (c) above at court rates
  - e) Any other relief as court may deem fit and just to grant.
8. The Respondent denies claim.
9. It is her case that the Claimant was engaged in contractor as pleaded and was to report to the General Manager - Domestic Sales and not otherwise. He earned Kshs.120,000.00 consolidated monthly salary.
10. The Respondent's further case is that the Claimant contract of employment entails attainment of set of agreed performance and that he could be deployed on the wished of the Respondent.
11. The Respondent's further case in answer to allegations of unfair deductions of the Claimant's salary is that this were made in terms of the contract and with the consent of the Claimant to which he did not protest, or all.
12. The Respondent further avers as follows;
  - i. By virtue of the nature of his duties and in line with his job description, the Claimant's performance in relation to the agreed performance targets could be assessed from periodic sales and related reports which were routinely discussed between him and his supervisors.
  - ii. The Claimant's performance over the course of time as depicted in such reports was below par and consistently failed to meet the set targets
  - iii. The Claimant's wanting performance was the matter of periodic discussions between him and his supervisors and he received every opportunity and support to improve on the same and
  - iv. On account of the missed performance targets, the Claimants did not diligently perform his duties but rather neglected to carry out his duties and/or perfumed them carelessly and improperly as a consequence which the Respondent was entitled and justified in law to bring to an end and employment relationship on grounds of gross misconduct.
13. The issues for determination therefore are;



1. Whether the Claimant's termination was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the refund claimed and interests on the unlawful deductions.
  3. Whether the Claimant is entitled to the damages claimed
  4. Who bears the costs of the suit and interests?
14. The 1st issue for determination is Whether the Claimant's termination was wrongful, unfair and unlawful.
15. The claimant in her written submission dated 8th May, 2023 foments a case of unlawful termination of employments and seeks to rely authority of Kenfreight (E.A) Limited v Benson K. Nguti [2019] eKLR on unfair termination where the court of Appeal held as follows;
- [12]... on the issue whether the termination was unfair, the Judges found that it is considered unfair to terminate a contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair; that the reason related to the employee's conduct, capacity, compatibility or is based on the operational requirements of the employer. That the employer must also prove that the termination was in accordance with fair procedure and that the burden on the employee is only limited to asserting that an unfair termination has occurred. In a nut shell, the Court upheld the trial Court's decision that the termination was unfair.
16. He further seeks to rely on Section 47(5) of the *employment Act*, 2007 which intermittently revolves the burden of proof of unfair termination of employment depending on the respective cases of the parties.
17. The Respondent submits that in assessing a claim under this limb, the Court is called upon to exercise judicial discretion applying the comprehensive guidelines set out in Section 49(4) of the *Employment Act*, 2007. In this respect, we invite this court to note that from the material on record, the Claimant was engaged by the Respondent during the period between 17/04/2015 to 7/01/2015. His length of service therefore was about 1 year 8 months or thereabouts.
18. The Respondent's other case and submission that it is clear from pages 1 and 2 of the Respondent's bundle of documents that the Respondent treated the Claimant's termination of employment as a normal termination and paid him salary in lieu of notice. The said documents also confirm that the Respondent paid to the Claimant service pay/gratuity even though he was, from the pay slips on record, a contributing member of NSSF. In the premises, we submit that an award by way of compensation on the basis of 3 months' gross salary would be fair and reasonable and urge Your Lordship to award the same. In this regard we humble urge Your Lordship to consider and apply the reasoning in Joseph Omondi Owino vs- EpcO Builders Company Limited [2019] eKLR where a similar award was made to an employee whose length of service before termination was 2 years. We urge Your Lordship to ignore the submissions made on behalf of the Claimant that it took him 2 years to secure another employment opportunity as it is really not based on any evidentiary material that is on record.
19. The Respondent further submits that the alleged interest on car loan deductions is fallible in that there is no basis in law for the claim made under this limb. ... Section 19(1)(h) of the *Employment Act*, 2007 permits wage deductions on account of loans. From this perspective therefore, there is nothing objectionable in our humble view that any deductions were made on the Claimant's pay slip in this regard without any protestation from him whatsoever. At any rate, it is instructive in our view that



none of the reliefs made in the Statement of Claim invite this court to make a determination, one way or the other, as to whether or not such deductions were lawful.

20. Further, and without prejudice to the foregoing, she submits that in so far as the claim under this limb relates to alleged interest accrued prior to commencement of the proceedings herein, the same would as a matter of the law have been untenable. It is trite law that interest claimed prior to date of suit is a matter of substantive law and may only be claimed on the basis of a contractual stipulation. For the foregoing proposition, we respectfully refer Your Lordship to the decision of the Court of Appeal in *New Tyres Enterprises Ltd vs Kenya Alliance Insurance Company Ltd* [1988] eKLR.
21. The Respondent's case overwhelmed that of the Claimant on balance of probabilities and preponderance of evidence.
22. On the basis of evidence adduced before this court, her case is the more probable. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.
23. The 2<sup>nd</sup> issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he becomes disentitled to the relief sought.
24. I am therefore inclined to dismiss the claim with orders each party bears their costs of the same.

**DELIVERED, DATED AND SIGNED THIS 24<sup>TH</sup> DAY OF OCTOBER 2023.**

**D. K. NJAGI MARETE**

**JUDGE**

**Appearances:**

- 1. Nyamwea instructed by Ondieki Mogambi & Associates Advocates for the Claimant.**
- 2. Mr. Mutua instructed by \*Mutua Waweru Advocates for the Respondent.**

