



**Motieri v Farmers United/One Acre Fund (Cause 84 of 2014)
[2023] KEELRC 2436 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2436 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 84 OF 2014
CN BAARI, J
OCTOBER 12, 2023**

BETWEEN

LEWIS ONYONI MOTIERI CLAIMANT

AND

FARMERS UNITED/ONE ACRE FUND RESPONDENT

JUDGMENT

Introduction

1. The Claimant in a Memorandum of Claim dated 22nd April, 2014, seeks an order for payment of damages for unlawful termination and terminal benefits.
2. The Respondent lodged a Statement of Defence and Counterclaim on 4th June, 2014. The Respondent from the Court record, sought time to settle the matter out of court, but which settlement was not realized culminating in the matter being fixed for full hearing.
3. The Claimant's case was heard on 28th March, 2023, when the Claimant testified in support of his case. He adopted his witness statement and produced documents filed in support of his case, and thereafter closed his case.
4. The Respondent's defence and counterclaim were set to be heard on 26th April, 2023, but there was no attendance for the Respondent on the hearing date resulting in the Court declaring the Respondent's case closed, and further dismissing the counter claim for non-attendance.
5. Parties were then allowed time to put in written submissions.
6. The Respondent filed a notice of change of Advocates and filed with it a motion for reinstatement of their defence and counter claim.



7. The Court fixed the motion for hearing on 12th July, 2023, but again on the hearing date, the Respondent's Counsel did not attend court to prosecute the application and the court dismissed the application on this basis.
8. The Respondent filed yet another application seeking to arrest this judgment and reinstate the Respondent's defence and counterclaim. The application was heard and determined on 9th October, 2023, with the Court dismissing the application, and issuing an order that this judgment be delivered as scheduled.
9. The Claimant filed submissions and which have been duly considered. The Respondent did not.

The Claimant's Case

10. The Claimant's case is that he was employed by the Respondent in various positions, first as a Procurement and Logistics Associate and also doubling up as a Warehouse Associate. He states that he later transitioned to the position of Logistics Associate. It is his further case that he was appointed to these positions on 27th August, 2013, 13th January, 2014 and 26th March, 2014 respectively.
11. It is the Claimant's case that his monthly basic salary was Kshs. 19,570. He further states that he earned an airtime allowance of kshs.5,000/= and transport allowance of Kshs.1,500/-, which brought his monthly gross salary to Kshs.26,070/=
12. The Claimant states that he worked for the Respondent dutifully, responsibly and with dedication and professionalism to his job, resulting in the growth of the Kisii Office field networks.
13. It is the Claimant's case that on or about 08/04/2014, he reported to his place of work as usual, but was later summoned by the Respondent's officials to the Respondent's board room, where he was served with two letters, one titled "Gross Misconduct" and another that was untitled, and the officials demanded that he signs the letters or they will call the police to arrest him.
14. The Claimant states that upon inquiry into the contents of the letters and the purpose of the meeting, the Claimant was not given any audience at all, but told by the Respondent's officials that his services had been terminated.
15. The Claimant states that he did not sign the documents, but instead, requested to contact his Advocate, a request the Respondent's officials rejected, and ordered him out of the office and the precincts of the Respondent's offices and warehouse.
16. It is the Claimant's case that prior to his dismissal, the Respondent's officials had threatened him with undisclosed consequences if he kept on asking questions about workers' welfare whenever the Respondent summoned meetings to discuss the issue of workers' welfare.
17. The Claimant states that he had requested to be excused from such meetings to avoid the dire undisclosed consequences, which seemed predetermined even when the Claimant kept quiet in the meetings.
18. The Claimant avers that he was targeted for dismissal by all means by the Respondent's officials because the Respondent made allegations against him without particulars, and which allegations were not substantiated whenever the Claimant requested for particulars.
19. The Claimant avers that he was not given any hearing at all by the Respondents prior to being dismissed.



20. The Claimant further states that his dismissal from the service of the Respondent is unfair and malicious, and a breach of the law on fair hearing as a tenet of natural justice, and the Respondent's own policies and procedures manuals produced in evidence before Court.
21. The Claimant further avers that the claims made by the Respondent in the letters were very general, vague and ambiguous, devoid of any particulars and that his dismissal was a wider scheme by the Respondent to do away with permanent employees to avoid paying them terminal dues so as to employ casuals only.
22. The Claimant states that prior to the notice he had been deployed to three departments and had not been paid a penny for the extra work he did as a Warehouse Associate.
23. The Claimant states that he caused a demand letter to be served upon the Respondent and that as at the time of filling this claim, there has been no response to his demand notice.
24. The Claimant avers that the Respondent has never paid him house allowance for the time he worked for it, and that he did not get any reimbursement of airtime and commuter charges. It is the Claimant's further case that his pay slips, expense tracking schedule and post pay statement from Safaricom have been produced in evidence before court.
25. The Claimant avers that the Respondent's employees treated him with a lot of discrimination and racism during his term of service.
26. The Claimant further states that at the instance of the Respondent, he worked for more than 672 hours over time for which he has not been compensated. The Claimant states that he was also not paid terminal dues.
27. The Claimant states that the Respondent subjected him to unfair dismissal leading to loss of his job which exposed him to great financial embarrassment, and for which he claims damages from the Respondent.
28. On cross-examination, the Claimant told this Court that he only had approval rights of purchase orders for two weeks and which rights were reversed.
29. It is the Claimant's further testimony that he never received any loan from the Respondent and neither was he issued with a warning letter prior to his termination. It is his evidence that he received both the warning letter and the dismissal letter all at once.
30. The Claimant further told the court that although he took his leave, it was at times not approved, and at other times, he would be recalled before completing his leave days.
31. The Claimant admitted not having produced evidence to confirm that he was entitled to six months' salary in lieu of termination notice.
32. The Claimant on cross-exam denied knowledge of instances when a supplier was paid twice for a single supply. He further denied knowing that a supplier named Hejabari was a supplier of the Respondent, and that he is not a director of the company.
33. The Claimant further denied that a meeting he attended with officials of the Respondent on 8th April, 2014, was a disciplinary hearing.
34. It is his prayer that his claim is allowed as prayed.



Analysis and Determination

35. I have considered the pleadings, the witness' oral testimony and the Claimant's submissions. The issues for determination are:
- i. Whether the Claimant was unfairly terminated; and
 - ii. Whether he is entitled to the remedies sought?

Whether the Claimant was unfairly terminated

36. The Claimant herein claims to have been unfairly terminated from the service of the Respondent . His assertion is that he was terminated without notice and without any form of fair hearing. He produced in evidence two unsigned letters dated 8th April 2014, which he claims were handed over to him and that he was required to sign them to accept the conditions of termination of his employment set in the letter.
37. The Respondent wrote the Claimant a letter dated 8th April, 2014, referenced 'gross misconduct', requiring him to attend a meeting to make representation on allegations of unlawfully separating the Respondent's company from its inventory at 9 a.m of the same day. The letter further informs the Claimant to attend the meeting with a representative of his choice.
38. In yet another letter similarly dated, the Respondent summarily dismissed the Claimant from service. The letters herein referred, corroborate the Claimant's testimony on how his services with the Respondent were terminated.
39. Section 41 of the *Employment Act*, 2007 states thus on fair procedure:
- “41(1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”
40. The Claimant's assertion is that he was not accorded fair process and which assertion is confirmed by the letters issued to him to show cause, while at the same time being issued with a dismissal letter. The Respondent without a doubt violated the express provisions of Section 41 of the *Employment Act* and the Constitutional requirements on fair labour practice and fair administrative action.
41. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, the Court observed as follows:
- “The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges, he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible.



Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”

42. The Respondent herein did not make the slightest attempt to accord the Claimant fair process and which renders the dismissal unfair and unlawful.
43. I thus find and hold that the Claimant’s dismissal from the services of the Respondent is unfair and unlawful.

Whether the Claimant is entitled to the reliefs sought

44. The Claimant vide his memorandum of claim, seeks an order for payment of damages for unlawful termination as well as payment of his terminal benefits.
45. The finding that the Claimant’s termination is unfair, entitles him to compensation in accordance with Section 49 and 50 of the *Employment Act*, 2007. (*Benjamin Langwen v National Environment Management Authority* (2016) eKLR.)
46. The Claimant was first employed by the Respondent in July, 2013. His services were subsequently terminated in April of 2014, which is less than a year of service. In *Kenya Ports Authority v Festus Kipkorir Kiprotich* [2014] eKLR the court held that the measures of compensation should be guided by the statutory capping at the time of termination.
47. Further, in *Elizabeth Wakanyi Kibe v Telkom Kenya Ltd* [2014] eKLR the Court cited the case of *D.K. Marete v Teachers Service Commission* Cause No. 379 of 2009 where it was held that remedies are not aimed at facilitating the unjust enrichment of aggrieved employees, they are meant to redress economic injuries in a proportionate way.
48. Considering the period for which the Claimant was in the service of the Respondent, coupled with his confirmation that he is currently employed, I deem an award of four (4) months’ salary sufficient compensation for the unfair termination, and which is hereby awarded.
49. The Claimant’s claim for six months’ salary in lieu of notice is not supported by the contract between the parties. The letter of appointment/contract, provides a one-month termination notice and not six months.
50. In the circumstances, the Claimant is awarded one-month salary in lieu of termination notice.
51. The Claimant did not lead any evidence to prove his claims on account of extra days worked, overtime, underpayment and relocation allowance. The claims fail and are dismissed.
52. The Claimant’s pay slips are prove that his gross salary included airtime and commuter allowance. The claims equally fail and are dismissed.
53. In whole, the Court makes orders as follows:
 - i. A declaration that the Claimant’s dismissal is unfair
 - ii. That the Respondent pays the Claimant four (4) months’ salary as compensation for the unfair termination at Kshs. 104,280/-
 - iii. An award of one-month salary in lieu of notice at Kshs. 26,070/-
 - iv. Costs of the suit and interest until payment in full.



54. Judgment of the Court.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS 12TH
DAY OF OCTOBER, 2023.**

CHRISTINE N. BAARI

JUDGE

Appearance:

N/A for the Claimant

Mr. Otieno present for the Respondent

Christine Omolo- C/A

