



**Mudebi v Mega Garment Industries Kenya (EPZ) Limited (Cause  
384 of 2017) [2023] KEELRC 2472 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2472 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 384 OF 2017  
M MBARÚ, J  
OCTOBER 12, 2023**

**BETWEEN**

**ANJELINA NAITI MUDEBI ..... CLAIMANT**

**AND**

**MEGA GARMENT INDUSTRIES KENYA (EPZ) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. On 6 July 2015, the respondent employed the claimant as a mass machinist and worked until 6 October 2015 when her employment was terminated without good cause. At the time, the claimant was earning a gross wage of Kshs. 12,745 per month.
2. The claim is that employment was terminated without payment of terminal dues and the claimant is seeking payment of compensation, days worked from 6 September to 6 October 2015 and costs.
3. The claimant testified in support of her case that her employment was unfairly terminated on 6 October 2015. At the time she had not taken her annual leave days and the record filed by the respondent stating that she took her annual leave days is not correct. On the material day, she was summoned by her supervisor Joseph who told her to go back home. The records show that she worked on 5 October 2015 until 5pm and was never issued with notice of absconding duty through physical notice or through her postal address and the one noted at P.O. Box 26 Butula is not her postal address.
4. The claimant testified that her wages would be paid through her DTB bank account and the records show she was at work from 22 September to 21 October 2015.
5. In response, the respondent's case is that the claimant was an employee based on contract dated 5 July 2015. The respondent has a biometric log system wherein each employee has an assigned number as such when an employee logs in the system it automatically reflects the date, time, employment user ID, name, department, designation, terminal ID and authentication results.



6. The claimant applied and was allowed leave of absence from 6 to 10 October 2015 and was supposed to report back on 12 October 2015 but failed to do so. Attempts to reach her were futile.
7. On 21st October 2015 the respondent posted notice to the claimant giving 7 days to report on duty or her employment would be terminated. The claimant was also given notice to clear for payment of her terminal dues but she continued to abscond duty and failed to give reasons why she remained absent from work which was in breach of her employment contract. Through notice dated 21 October 2015, the respondent dismissed the claimant from her employment and the claim should be dismissed with costs.
8. In evidence, the respondent called Duncan Kavita the human resource manager who testified that the claimant applied for leave days from 6 to 10 October 2015 which was approved and was to resume on 12 October 2015 but she failed to do so. The respondent called her to no avail and on 21<sup>st</sup> October 2015 a notice to show cause issued but there was no response. The notice was copied to the labour officer. The claimant never resumed duty and her file is still open for clearance and payment of terminal dues.
9. The last contract was to run from 5 July 2015 to 23 December 2015. The claimant was paid for October 2015 through her bank account. Pay for 10 days worked is still pending subject to clearance and return of company property and uniforms. The claimant absconded duty and hence not entitled to compensation. The notice terminating employment was posted to P.O. Box 26 Butula the address the claimant gave upon her employment.
10. At the close of the hearing, parties agreed to file written submissions.
11. From the pleadings, evidence and written submissions, the issues which emerge for determination is whether there was unfair termination of employment.
12. In employment and labour relations, the employer is the custodian of work records. When a claim is filed, pursuant to Section 10(6) and (7) of the [Employment Act](#), 2007 the employer has the legal duty to file work records.
13. The response that has respondent has biometric log-in system wherein each employee has an assigned number, and that when an employee logs in the system it automatically reflects the date, time, employment user ID, name, department, designation, terminal ID and authentication results is not challenged. Such a system is allowed to ensure keeping of work attendance records.
14. The response that the claimant was under a contract running from 5 July 2015 to December 2015, the permanent address of the claimant is not registered. There is a name, date of birth, employee number, ID number and employment details.
15. Section 10(2) of the [Employment Act](#), 2007 requires the employment contract to give comprehensive details of the employee including the following;
  - (2) A written contract of service shall state—
    - (a) the name, age, permanent address and sex of the employee;
    - (b) the name of the employer;
    - (c) the job description of the employment;
    - (d) the date of commencement of the employment;
    - (e) the form and duration of the contract;



- (f) the place of work;
  - (g) the hours of work;
  - (h) the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;
  - (i) the intervals at which remuneration is paid; and
  - (j) the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and
  - (k) any other prescribed matter.
16. The permanent address of the employee is a legal requirement and should be included in the employment contract.
17. An employee who absents herself from duty commits gross misconduct and is subject to summary dismissal subject to the employer adhering to the provisions of Section 44(4)(a) read together with Section 41(2) of the Empowerment Act, 2007. The employer must issue the employee with notice to attend and make her representations. The notice must issue to the employee.
18. Where the employer alleges that the employee absconded duty, the permanent address registered in the contract of service becomes relevant. To send the notice to any other address is to negate the provisions of Section 10(2)(a) read together with Section 41(2) of the Act.
19. Without any permanent address of the claimant having been registered in the contract dated 5 July 2015, sending the notice to show cause to P.O. Box 26 Butula was fishing without possible results. There is no work record to suggest that this address belonged to the claimant. Sending the notice to the Labour Officer with regard to the alleged absence of the claimant cannot sanitise the respondent from its legal duty to register the permanent address of the claimant.
20. Without proof that the claimant absconded duty and where she did she was issued with notice to allow her to make her representations, her evidence that she reported back to work after taking leave and her supervisor Joseph sent her away is correct. Without being taken through the due process that is mandatory in terms of Section 41 of the *Employment Act*, 2007 employment terminated unlawfully and without any reasons, this is unfair.
21. The claim for payment of compensation for unlawful termination is found justified. The claimant was earning a gross wage of Kshs. 12,748. An award of 3 months' gross wage is hereby found appropriate compensation all at Kshs. 38,244.
22. For days worked from 6 September to 6 October 2015, the claimant shall attend and clear for payment of her pending terminal due.
23. Accordingly, judgment is hereby entered for the claimant against respondent with an award of Ksh. 38,244 compensations for unlawful and unfair termination of employment; the claimant shall attend and clear with the respondent for processing of her terminal dues including wages for days worked and not paid due to failure to clear. 50% costs to the claimant.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 12 DAY OF OCTOBER, 2023.**

**M. MBARŪ**

**JUDGE**



In the presence of:

Court Assistant: Japhet

..... and .....

