



**Mwinzi v Athi River Marble & Granite Ltd (Cause 356 of 2018)
[2023] KEELRC 2408 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2408 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 356 OF 2018
DKN MARETE, J
OCTOBER 3, 2023**

BETWEEN

MUSYOKA FRANCIS MWINZI CLAIMANT

AND

ATHI RIVER MARBLE & GRANITE LTD RESPONDENT

JUDGMENT

1 This matter was originated by way of the Claimant’s Memorandum of Claim dated March 13, 2028. The issue in dispute is herein cited as;

Failure by the Respondent to pay terminal benefits to the claimant.

2 The Respondent in a Response to statement of claim dated April 28, 2024 denies the claim and prays that the same be dismissed with costs.

3 The claimant’s case is that on or about February 1, 2012, he was employed as a Stone Mason by the Respondent. His pay was Kshs.24,240.00 per month.

4 The claimant’s further case is that he served with loyalty and diligence until March 1, 2016 when he was declared redundant with no payment of terminal dues. These are as follows;

1. Salary arrears (May 2015 – Feb 2016) 24,240x10 Kshs. 242,000

2. Annual leave pay (24,240/30x21x1) Kshs. 16,968

He claims and prays thus;

i. The sum of Kshs.259,368 as particularized in paragraph 5 of the claim as particularized in paragraph 5.

ii. Cost of this suit



- iii. Interest in (i) and (ii) above.
 - iv. Any other relief as the Court may deem just.
- 5 The Respondent's case is a denial of the claim. It is her case that the claimant has no justifiable claim against her and that he is not entitled to the prayer sought. These are vague and misconceived and should be dismissed with costs.
- 6 The Respondent further case is a denial of paragraphs 5 and 6 of the claim which are a tabulation of the dues owing to the claimant. She deems this fictitious for reasons of being vague and misconceived.
- 7 The claimant in his written submissions dated April 13, 2023 reiterates his claim whereas he Respondent does not furnish any.
- 8 The issues for determination therefore are;
1. Was the Claimant an employee of the Respondent.
 2. Whether the Claimant is owed terminal dues as claimed.
 3. Is the Claimant entitled to the relief sought
 4. Who bears the costs of this cause.
- 9 This is a very interesting matter. No party went out of his way to overtly fight their respective cases. I find that the Claimant was an employee of the Respondent and the basis of the Claimant's supplementary list of documents adduced and had in his favour. This beside the Claimant's tallying Claimant's witness statement and demand letter dated June 7, 2021, drawn by Kituo Cha Sheria.
- 10 The probable case tilts in favour of Claimant on both a balance of probabilities and also preponderance of evidence. He has a more glaring case as opposed to the Claimant mere denial.
- 11 Further, the Respondent only present a sham defence in all senses of the word. It does not answer to the claim or issues raised in the claim, or at all. It merely denies and rubbishes the claim but does not offer any substantial defence to the claim. It therefore has no standing for consideration as a defence to the claim. I therefore find that the Claimant was an employee of the Respondent and is entitled to the relief sought. And this answers the 1st issue for determination.
- 12 The 2nd issue for determination is whether the Claimant is owed terminal dues as claimed. He is. The Claimant's case comes out overwhelmingly in support of his claim. The defence is hollow if not completely absent. I therefore find that the Claimant is entitled to the relief sought.
- 13 I am therefore inclined to allow the claim and offer relief as follows;
- i. Salary accessed - Ksh.242,000.00
 - ii. Amount issue pay - Ksh. 16,968.00
Total of claim - Ksh.259,368.00
 - iii. The costs of this suit be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 3RD DAY OF OCTOBER 2023.

D. K. NJAGI MARETE

JUDGE

Appearances



1. Mr. Okello instructed by Okello & Lusenaka Advocate for the Claimant.
2. No appearance for the Respondent.

