



**Ogutu v Abyssinia Iron and Steel Ltd (Cause 66 of 2018)
[2023] KEELRC 2989 (KLR) (22 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2989 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 66 OF 2018
S RADIDO, J
NOVEMBER 22, 2023**

BETWEEN

PETER ALOYCE OGUTU CLAIMANT

AND

ABYSSINIA IRON AND STEEL LTD RESPONDENT

JUDGMENT

1. The questions for determination are:
 - i. Whether the Respondent terminated the Claimant's employment unfairly?
 - ii. Whether the Respondent underpaid the Claimant?
 - iii. Appropriate remedies.
2. The Cause was heard on 25 September 2023. Peter Aloyce Ogutu (the Claimant) and the Human Resource Manager with Abyssinia Iron & Steel Ltd (the Respondent) testified.
3. The Claimant filed his submissions on 18 October 2023, and the Respondent on 30 October 2023.
4. The Court has considered the pleadings, evidence and submissions.

Underpayment of wages

5. The Claimant alleged underpayment of wages in the Memorandum of Claim and prayed for Kshs 20,362/-.
6. The filed witness statement which was adopted as part of the evidence did not make any reference to this head of the claim.
7. The Claimant did not mention this head of the claim during oral testimony.



8. This head of the claim was not proved.

Unfair termination of employment

9. The Claimant asserted that the Respondent unfairly terminated his contract without notice or hearing after working for 3-months on 5 December 2016.
10. On the circumstances leading to the alleged termination, the Claimant testified that he had been tasked to transport some goods to Kitale and on reaching Kakamega, he was arrested by the Police on account of worn out tyres, was charged and fined Kshs 30,000/- which the Respondent paid and that upon returning to work he was sent away after a week.
11. The Respondent admitted that the Claimant was its employee as a driver but that he voluntarily retired, was issued with a Certificate of Service as well as a comfort letter to assist him obtain his retirement benefits from the National Social Security Fund (documents produced by the Claimant).
12. Under section 47(5) of the *Employment Act*, 2007 it was imperative for the Claimant to show that an unfair termination of employment had occurred. The Claimant did not disclose the name of the particular Manager with the Respondent who sent him away.
13. A copy of the statement produced by the Claimant show that he was born in 1961, making him 55 years old in 2016. The Respondent gave him a letter to help him obtain his terminal benefits. It is probable that the Claimant resigned or retired.
14. The Claimant did not prove unfair termination of employment.

Conclusion and Orders

15. From the foregoing, the Court finds that the Claimant did not prove breach of contract in respect to payment of wages or unfair termination of employment and the Cause is dismissed with no order on costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN MIGORI ON THIS 22ND DAY OF NOVEMBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Nyanga & Co. Advocates

For Respondent Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura

