



REPUBLIC OF KENYA



**Njiiri v Mars Wrigley Confectionery (K) Limited (Cause E006 of 2022)
[2023] KEELRC 2951 (KLR) (17 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2951 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE E006 OF 2022
B ONGAYA, J
NOVEMBER 17, 2023**

BETWEEN

PATRICK MWONGERA NJIRI CLAIMANT

AND

MARS WRIGLEY CONFECTIONERY (K) LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Memorandum of claim on 27.04.2022 through Kyalo Muia & Company Advocates. The claimant prayed for judgment against the respondent for:
 - a. A declaration that the claimant's termination of employment by the respondent was unlawful, unfair and in breach of the provisions of the *Employment Act* Cap 226, laws of Kenya.
 - b. An order be made directing the respondent to pay the claimant all his terminal dues.
 - c. An order be made directing the respondent to pay the claimant damages under the Labour Institutions Act}}, 2007.
 - d. General damages for wrongful, unlawful and unfair termination of employment.
 - e. General damages for loss of expected earnings.
 - f. Costs of the suit and interest.
 - g. Any other or further relief as this Honourable Court may deem fit and just.
2. The memorandum of response was filed on 14.07.2022 through Obura Mbeche & Company Advocates. The respondent prayed that the suit be dismissed in its entirety with costs to the respondent.
3. The claimant's case was that he was employed by the respondent as a machine operator from 09.01.2017 up to 15.03.2022 when his services were unlawfully terminated by the respondent.



4. The claimant states that at the time of the termination of his employment, he was earning a basic salary of Kshs.106,542/=.
5. The claimant states that during his employment with the respondent, a period of five years, he was a diligent and committed employee and never received a warning letter.
6. That on the night of 02.03.2022 he was on night shift when an accident occurred past 10:30 pm. That while he was picking glucose from a rack by moving the machine called Walk Behind, the tank tipped sideways to the left hand side and fell to the ground. The claimant states that he reported the incident to his line manager, one Madam Christine, who advised that he takes photographs and sends the same to her.
7. The claimant states that with the help of the night shift manager, one Madam Janet, they secured the fallen tank and confirmed that there was no spillage or damage to the same and the glucose was then taken to an area called the Hot box.
8. The claimant pleaded that the incident was an accident, and that despite his written explanation, the respondent proceeded to terminate his services.
9. On the part of the respondents it is admitted that the claimant was an employee of the respondent, however, it is stated that he earned a monthly basic salary of Kshs 53,271 and a monthly house allowance of Kshs.10,609.63.
10. That on 02.03.2022 while on night shift duty, the claimant was involved in a safety incident at the raw material warehouse where he tampered with ideal working conditions before undertaking movement of 1.3T glucose resulting in topping of a pallet of glucose 39 from the walk behind owing to the unsafe working conditions.
11. That arising from that incident the claimant was invited to show cause by way of the respondent's letter dated 07.03.2022 as preliminary investigations had revealed that the claimant had intentionally switched off the lights in the area before undertaking the activity.
12. That the claimant tendered his written response on 08.03.2022 admitting to switching off the lights in the incident area before undertaking transfer of the glucose which action was in breach of the established respondent's incorporated, level 2, SES: SES Guideline.
13. That as a consequence the claimant was issued with a letter dated 08.03.2022 inviting him to a disciplinary hearing which was held on 09.03.2022, where he was accorded an opportunity to be heard.
14. That thereafter his employment was terminated effective 15.03.2022. with the respondent computing and paying his terminal dues at the sum of Kshs.378,229.33.
15. That at the time of termination the claimant had an ongoing bank loan of Kshs.534,793.70 and the respondent deducted the monthly payment of Kshs.28,828.
16. The respondent maintains that the claimant's termination was lawful, procedural and for justifiable reason.
17. The parties filed their respective submissions. The Court has considered the parties' respective cases and makes finding as follows.
18. To answer the 1st issue, the Court returns that the parties were in a contract of service.
19. To answer the 2nd issue, the Court returns that the contract of service was terminated by the letter dated 15.03.2022.



20. To answer the 3rd issue, the Court returns that the termination was not unfair both in procedure and substance. In particular, the claimant received the show cause letter, he responded, he attended the disciplinary hearing and the letter of termination followed. Due procedure of a notice and a hearing per section 41 of the Act was accorded to the claimant per section 41 of the *Employment Act*, 2007. In the letter dated 08.03.2022 the claimant admitted allowing unauthorised persons to access to a restricted area and further, in his testimony, he admitted switching off lights. He is found to have indeed breached the operating standards as was alleged and leading to his dismissal. He confirmed switching off some of the lights in an area of operation but. the operating standards as prescribed, required such an area not to have partial lighting. He confirmed that he had thereby breached the operating standard not to switch off the lights and for the area to be well lit with the light from the lights, some of which he had switched off. After the accident, he admitted in his testimony that his line manager accessed the restricted area but without the prescribed written permission. He also confirmed that prior to the Manager accessing another person known as Richard had also accessed the area in breach of the operating standard as Richard had no written permission or permit. He then testified that it was his obligation to issue access permits but he had not signed and completed the permit form he had initially given to Richard prior to the accident. He dropped prayer for terminal dues as they had been paid. Further, he testified that he had not performed his duties on discussing with his team of five (5) members and signing the risk assessment document per operating standards. The Court finds that the reason for termination was not unfair as envisaged in section 43 of the Act as it related to the claimant's contact, compatibility and the beach of the respondent's operational requirements.
21. The 4th issue is on remedies. No submissions were made for the claimant to specifically justify the remedies as claimed and prayed for. As urged for the respondent, none is justified.
22. The claimant's suit has failed and is liable to dismissal with costs.
23. In conclusion judgement is hereby entered for the respondent against the claimant for dismissal of the suit with costs; and, the Deputy Registrar to cause the court file returned to the Machakos Sub-Registry forthwith.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 17TH NOVEMBER, 2023.

BYRAM ONGAYA

PRINCIPAL JUDGE

