



**Wanyama v Aristocrats Concrete Ltd (Employment and Labour Relations Cause 1077 of 2017) [2023] KEELRC 2945 (KLR) (17 November 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2945 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1077 OF 2017**

**B ONGAYA, J  
NOVEMBER 17, 2023**

**BETWEEN**

**TITUS OMONDI WANYAMA ..... CLAIMANT**

**AND**

**ARISTOCRATS CONCRETE LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the Statement of claim on 12.06.2017 through Mbigi Njuguna & Co Advocates. The claimant prayed for judgment against the respondent for:
  - a. Severance pay (15 days salary per month× 10 years worked) = Kshs.194,630
  - b. Unpaid salary for 90 days (3 months) Kshs.38,926 ×3 months =116, 778
  - c. Notice (3 months' salary) Kshs.38,926 ×3 months = Kshs.116,778.00.
  - d. Costs of the suit.
2. The Memorandum of response was filed on 24.08.2017 through Prof Albert Mumma & Co Advocates. The respondent prayed that the suit be dismissed with costs.
3. The claimant's case was that he was employed by the respondent on November 11, 2005 as a Moxy Dumper Operator earning a basic salary of Kshs.7,800 per month and a housing allowance of Kshs.1,600 per month.
4. The claimant states that he was a in that position for approximately ten years from 11.11.2009 to 31.03.2015 when he was unfairly terminated vide a letter which stated that his services were no longer required.
5. As at March 31, 2015 he was earning a gross salary of Kshs.38,926 with the net salary being Kshs.25,617.



6. The claimant states that he was never given an opportunity to be heard and no credible reasons were given as to why his services were no longer required.
7. On the part of the respondent it was argued that the claimant's letter of offer was a fixed term contract which was to subsist for 3 months each renewable over the period November 11, 2005 to February 11, 2016.
8. That there was no contract capable of enforcement in law existing as at March 31, 2015 between the claimant and the respondent for the claimant to merit the monies sought.
9. That there is no basis for service pay as sought. It is not provided in the employment contract between the claimant and the respondent. Further, that there is no basis for a claim for unpaid salary for 90 days (3 months) as sought by the claimant as all monies owing to the claimant from its fixed term contract were duly paid to the claimant.
10. The respondent states that there is no basis for a claim for 3 months' salary as sought because the letter of offer dated November 11, 2005 only provided for one week notice or one-week salary in lieu of notice.
11. The respondent's case was that the contract between the claimant and respondent was never renewed upon expiry.
12. The Claimant filed his submissions. However, there are no submissions on record on the part of the respondent. The Court has considered the parties' respective cases and makes finding as follows.
13. To answer the 1<sup>st</sup> issue the Court returns that parties were in initially in a fixed term contract for three months. The respondent alleges the contracts were renewed over the period of relationship. Further, the respondent alleges that the last of the three-months contracts was for the term ending March 31, 2015. However, the Court finds that there are no subsequent monthly contracts exhibited. The claimant testified thus, "Last day at work was March 31, 2015. I see my exhibit No.2. Is termination letter dated 31.03.2015 effective April 1, 2015?" The Court finds that while the initial contract was the three-months' contract, when it lapsed there is no evidence that it was renewed. The parties are found to have been in a month to month contract of service until the respondent issued the letter of termination of services dated 31.03.2015 conveying that the claimant's services were no longer required effective 01.04.2015 and to collect final dues on 10.04.2015.
14. To answer the 2<sup>nd</sup> issue, the Court finds the termination was abrupt without due notice. The claimant is awarded Kshs.38, 926.00 being one-month in lieu of notice and in view of section 35 of the Employment Act. The Court further finds that unpaid salary for 90 days was not established at all and, the 3 months' notice pay had no contractual basis.
15. To answer the 3<sup>rd</sup> issue, the Court finds that the termination was unfair. The respondent has offered no evidence to show that the claimant's services were indeed not required and the reason has not been shown to have existed as at termination as envisaged in section 43 of the Act. The claimant's submission is upheld. If indeed his services were not required, then it amounted to redundancy per section 40 of the Act but due procedure under the section was not invoked. The Court has considered the provisions in section 40 of the Act. The claimant worked without break from 11.11.2005 to 31.03.2015. It makes 9 complete years and due severance pay would be about 5 months' salary at half month salary. He is awarded  $9 \times 0.5 \times 38, 926.00$  for severance pay as claimed in amended claim making Kshs.175,167.00. having succeeded in his claim, the costs are granted.

In conclusion judgment is hereby entered for the claimant against the respondent for:



- a. Payment of Kshs.214,093.00 by 31.12.2023 failing interest at Court rates be payable thereon from the date of filing the suit till full payment.
- b. The respondent to pay costs of the suit.

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

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

