



**Karuga v Style Industries Ltd (Cause 110 of 2017)  
[2023] KEELRC 3359 (KLR) (13 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3359 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 110 OF 2017  
DN NDERITU, J  
DECEMBER 13, 2023**

**BETWEEN**

**MARY NJAMBI KARUGA ..... CLAIMANT**

**AND**

**STYLE INDUSTRIES LTD ..... RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. The claimant commenced this cause by way of a memorandum of claim dated 27<sup>th</sup> February, 2017 filed in court on 6<sup>th</sup> March, 2017 through Tombe & Co Advocates. As expected, the statement of claim is accompanied with a verifying affidavit, claimant's written statement, a list of documents, and copies of the listed documents.
2. The claimant is seeking the following -
  - a. The respondent's dismissal of the claimant was unfair and unlawful thus amounted to wrongful dismissal and unfair termination.
  - b. Payment of the claimant's terminal benefits. amounting to Kshs.308,893.55.
  - c. The respondent to pay costs of this suit.
  - d. Interest on (b) above.
3. The liquidated particulars of the above prayers are set out as follows –
  - a. One month's salary in lieu of notice.....Kshs. 11,553.90
  - b. Unpaid wages.....Kshs. 69,323,40



- c. Leave allowance due.....Kshs. 24,937.20
  - d. Underpayment of wages.....Kshs. 51,690.25
  - e. Unpaid housing allowance.....Kshs. 7,742.00
  - f. Compensation for unfair termination.....Kshs.138,646.80
- Total amount due Kshs.308,893.55
4. On 21<sup>st</sup> March, 2017 the respondent through Federation of Kenya Employers (FKE) entered appearance and filed a defence to the claim on 18<sup>th</sup> September, 2017, praying that the claimant's cause be dismissed with costs for want of merits. A list of documents and copies of the listed documents was filed alongside the defence.
  5. The claimant's case was heard before Mbaru J on 24<sup>th</sup> January, 2019 when the claimant (CW1) testified and closed her case.
  6. When the matter came up for directions before this court on 8<sup>th</sup> June, 2022 it was directed by consent that this court proceeds from where Mbaru J had left.
  7. The defence was heard on 24<sup>th</sup> October, 2022 when Duncan Lumati (RW1) testified and the defence was closed.
  8. Subsequently, counsel for both parties addressed the court and summed up their respective client's case by way of written submissions. Mr. Tombe for the claimant filed his submissions on 2<sup>nd</sup> February, 2023, and Miss Obonyo for the respondent filed on 8<sup>th</sup> March, 2023.

## **II.The Claimant's Case**

9. The claimant's case is expressed in the memorandum of claim, the oral and documentary evidence by the Claimant (CW1) and the written submissions by her Counsel. The same is summed up as hereunder.
10. In her statement of claim the claimant states that she was an employee of the respondent as a machine operator at the respondent's premises in industrial area, Nakuru town, for a period of three years and one month, from August, 2013 to 8<sup>th</sup> February, 2016.
11. The claimant produced as an exhibit a contract dated 1<sup>st</sup> May, 2014 which was to run from 1<sup>st</sup> May to 31<sup>st</sup> July, 2014. However, she also availed in court pay-slips indicating that she worked continuously for the respondent from November, 2013 through to February, 2016. It is apparent that notwithstanding the above fixed term contract the claimant worked continuously for the respondent from 2013 to February, 2016.
12. It is pleaded that on 8<sup>th</sup> February, 2016 the human resource manager of the respondent verbally dismissed the claimant allegedly on the basis of injuries that she had sustained while on duty on 6<sup>th</sup> August, 2015.
13. It is stated that the claimant reported the dismissal to the labour office but the respondent refused and or neglected to respond to correspondences from the labour office.
14. It is pleaded that the dismissal was wrongful, unfair, and unlawful both in substance and procedure.



15. In her testimony in court, the claimant relied on the foregoing pleadings and her filed statement. She stated that she was involved in an accident at work on 6<sup>th</sup> August, 2015 whereby she sustained some injuries. There is no medical evidence on what kind of injuries she had sustained.
16. The claimant stated that her last gross pay was Kshs.9,198/=. She testified that she was not paid her terminal dues which she is now pursuing through this cause.
17. In cross-examination the claimant admitted that she signed periodic contracts that were renewed from time to time.
18. She stated that the show-cause letter filed by the respondent in court was not served upon her. She said that she was neither issued with a notice nor paid in lieu of notice. She clarified that she was essentially a machine operator.
19. It is on the basis of the foregoing evidence and circumstances that the claimant is seeking that judgment be entered in her favour as prayed in the memorandum of claim. The submissions by her counsel shall be considered in the succeeding parts of this judgment.

### **III.The Respondent’s Case**

20. The respondent’s case is contained in the statement of defence to the claim, the oral and documentary evidence adduced through RW1, assistant human resource manager, and the written submissions by its Counsel, as summarized hereunder.
21. In the defence to the claim the respondent states that it is a limited liability company in the business of manufacturing Darling Hair Additions products and that the claimant was their employee on one-year renewable contract and that the last such contract was to expire on 30<sup>th</sup> January, 2016, and that the last monthly salary for the claimant was Kshs.11,624/=.
22. It is alleged that the claimant absconded duty from 31<sup>st</sup> January, 2016 and all efforts to trace or contact her were futile. The respondent then allegedly issued the claimant with a show-cause letter dated 1<sup>st</sup> February, 2016. It is alleged that the claimant did not respond to the show-cause letter and as such she was summarily dismissed as per the letter of summary dismissal dated 9<sup>th</sup> February, 2016.
23. It is pleaded that after the dismissal the claimant reported the dispute to the labour office and the same matter was resolved and the claimant paid a sum of Kshs.9,158/= in full and final settlement of her terminal dues.
24. It is pleaded that having absconded duty and failed to respond to the show-cause letter the respondent had sufficient and reasonable grounds to act as it did culminating in the summary dismissal of the claimant.
25. In his testimony in court RW1 relied on the foregoing pleading and his filed statement. He produced the documents filed by the respondent as exhibits 1 to 4.
26. He stated that after the claimant absconded duty attempts were made to contact her through phone but she could not be reached. It is only then that a show-cause letter was issued to her and later she was dismissed as allegedly no response was received. He stated that the claimant had absconded duty earlier on and issued with a warning as per the letter dated 16<sup>th</sup> January, 2014 produced as exhibit 3.
27. RW1 alleged that the claimant was a habitual absentee from work and that the decision to terminate her was right. He alleged that the claimant was paid all her dues in the sum of Kshs.9,158/= after the dismissal.



28. In cross-examination, RW1 admitted that the warning letter dated 16<sup>th</sup> January, 2014 allegedly signed by the claimant on 16<sup>th</sup> October, 2013 cannot be correct or accurate in view of the contrasting dates. He further admitted that the payment certificate that allegedly settled the claimant's dues is neither signed by the claimant nor by the labour officer. He admitted that the claimant was not paid the sum of Kshs.9,158/= as she did not collect the cheque. He admitted that he did not have the phone contact for the claimant through which the respondent attempted to contact her before the dismissal. He as well admitted that the show-cause letter was not served upon the claimant prior to the dismissal.
29. It is on the basis of the foregoing that the Respondent prays that the Claimant's cause be dismissed with costs. The submissions by counsel for the Respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the Claimant.

#### **IV.Submissions By Counsel**

30. The claimant's counsel submitted that the initial contract of employment between the claimant and the respondent is dated 1<sup>st</sup> May, 2014 and that her services were unfairly and unlawfully terminated on 8<sup>th</sup> February, 2016.
31. It is submitted that the dismissal of the claimant was unilateral, abrupt, without notice, wrongful, unfair, and unlawful. It is submitted that the dismissal was un-procedural and lacking in substance and in contravention of Sections 41, 43, 45, and 47(5) of the [Employment Act](#) (the Act).
32. Counsel has cited [Mary Chemweno Kiptui v Kenya Pipeline Company Limited](#) (2014) eKLR in laying emphasis on what constitutes substantive and procedural fairness in termination of employment contracts. Further, counsel has cited [George Onyango Akuti V G4S Security Services Kenya Ltd](#) (2013) eKLR in demonstrating that the respondent did not comply with the law in dismissing the claimant.
33. In her submissions, counsel for the respondent restated the pleadings by the respondent and the evidence of RW1 insisting that the claimant deserted duty and as such the respondent had good grounds for terminating her services.
34. Further, counsel for the respondent submitted that the claimant had failed to demonstrate that the dismissal was wrongful, unfair, and unlawful to the required standard under Section 47(5) of the [Act](#) and that for her desertion the respondent was amenable to dismissal under Section 44(4) of the [Act](#).
35. It is submitted that by failing or ignoring to respond to the show-cause letter the claimant squandered the opportunity to defend herself against the allegations in the show-cause letter thus paving way for the respondent to proceed as it did. Counsel has cited [Esha Chizi Lugogo V Pact Kenya](#) (2013) eKLR and [Daniel Mueke V Bbogals Auto World](#) (2014) eKLR in firming up that position.
36. However, against the clear admission by RW1 that the claimant did not receive any benefits or dues upon dismissal, counsel has submitted that the respondent was discharged upon an alleged settlement. It is submitted that the claimant was the author of her own misfortune through her absconding duty and as such she is not entitled to any of the reliefs sought.



## **VI. Issues for Determination**

37. This court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The court identifies the following issues for determination –
- a. What was the nature of the employment relationship between the claimant and the respondent?
  - b. Was the summary dismissal of the claimant by the respondent wrongful, unfair, and unlawful?
  - c. If (b) above is in the affirmative is the Claimant entitled to the reliefs prayed for?
  - d. What orders are appropriate on costs?

## **VI. Nature of the Employment**

38. The parties availed in court two contracts. The one produced by the claimant is dated 1<sup>st</sup> May, 2014 providing that the same was to run from that date to 31<sup>st</sup> July, 2014, a period of two months. The respondent produced another contract dated 1<sup>st</sup> May, 2015 which was allegedly to run from that date to 31<sup>st</sup> July, 2015, a period of two months.
39. However, the evidence from both sides is that the claimant worked continuously and without breaking from about August, 2013 to February, 2016. She was paid from month to month as evidenced by the pay-slips and supported with the evidence of the claimant and RW1.
40. It is the finding and conclusion of this court that the claimant was a month to month employee as the evidence availed from both sides points to that direction. It is so held and declared.

## **VII. Dismissal**

41. The parties have given contradicting evidence on the circumstances and reasons for the dismissal. On the one hand, the claimant's case is that she was wrongfully dismissed after she sustained injuries at work. Impliedly, she was either not as productive after the injury or the respondent did not wish to meet the medical expenses and or compensate her for the said injuries. Notably, no medical evidence was availed to prove or confirm the said injuries and as such this allegation is neither here nor there and, in any event, it is not the gist of this cause.
42. The claimant denies that she was served with a show-cause letter and or invited for a disciplinary hearing. On the other hand, the respondent takes the position that the claimant absconded duty and that after attempts were made to contact her without success, she was allegedly issued and served with a show-cause letter to which she allegedly failed and or neglected to respond.
43. It is not difficult to unlock the above stalemate. The respondent as the custodian of the employment records did not avail the same in confirmation that indeed the claimant absconded duty during the alleged period from 31<sup>st</sup> January, 2016 to the date of the show-cause letter which, amazingly, happens to be 1<sup>st</sup> February, 2016.
44. The court feels intellectually violated by this kind of blatant and insulting dishonesty in this allegation by the respondent. The show cause states as follows –



REF:HR/MG/194/16 1<sup>st</sup> February, 2016

Ms. Mary Njambi

ST 9934

CO Style Industries Ltd

Nairobi

Dear Ms. Njambi

RE: Show Cause Letter

You have not reported on duty from Monday, 31<sup>st</sup> January, 2016 upto date without any permission and/or information as to whereabouts. Efforts to reach you through your known file contact were futile.

You are hereby reminded that failure to report to work without leave or other lawful cause is a serious offence under Section 44.4(a) of the [Employment Act, 2007](#) Laws of Kenya.

Consequently, you are required to show cause within 24 hours why a disciplinary action should not be taken against you for the offense without any further reference to you.

Yours sincerely,

Signed

Margaret Geno

CC Production Manager

45. What the respondent is alleging is that the claimant failed to show up for work on 31<sup>st</sup> January, 2016 and on the following day, 1<sup>st</sup> February, 2016, she was issued with the show-cause letter. Further, there is no evidence of service of the show-cause upon the claimant, and RW1 admitted as much in his testimony in court. There can be only one reasonable and logical conclusion in as far as the show-cause letter is concerned. It is a document that was prepared after the dismissal of the claimant with the sole purpose of defending this cause and or other action taken by the claimant. It is a lie that is lacking in intelligence.
46. Even if the court, for a moment, assumed that the claimant absconded duty on 31<sup>st</sup> January, 2016, which is however not supported with any evidence by the respondent, where is the evidence of the efforts made to contact her? RW1 admitted that there was no such evidence and, in fact, he did not even provide the phone contact for the claimant. No evidence of attempts to contact the claimant was availed.
47. On the other hand, the claimant's case is that she was summoned by the human resources manager on 8<sup>th</sup> February, 2016 and informed that her services were no longer required on account of the injuries that she had sustained at work on 6<sup>th</sup> August, 2015. The claimant testified that she was dismissed verbally on 8<sup>th</sup> February, 2016 and that the alleged letter of summary dismissal was not served upon her.
48. The jurisprudence on what constitutes substantive and procedural fairness in employment and labour matters has fairly crystallized. An employer has to have a lawful reason on which to found disciplinary action or process and the procedure adopted has to be fair, just, and lawful – [Mary Chemweno v Kenya Pipeline Company Limited](#) (Supra), [Loice Otieno V Kenya Commercial Bank Limited](#) (2013) eKLR, and [Walter Ogal Anuro V Teachers Service Commission](#) (2012) eKLR.



49. . The foregoing position is fortified by the provisions in Sections 35, 36, 41, 43, 44, 45, 46, 47, & 48 of the Employment Act (the Act).
50. In terms of the reason for dismissal, the court has gone through the evidence, both oral and documentary, and noted that in the show-cause letter dated 1<sup>st</sup> February, 2016, and the letter of summary dismissal dated 9<sup>th</sup> February, 2016 the respondent alleged that the claimant had failed to report to work on 31<sup>st</sup> January, 2016 which according to the respondent amounted to gross-misconduct under Section 44(4)(a) of the Act.
51. In the considered view of this court, and it is so held, if the claimant only absented herself from duty on 31<sup>st</sup> January, 2016, as alleged by the respondent, which is however denied by the claimant, the said absenteeism for one day did not amount to absconding and or desertion of duty as envisaged under Section 44(2)(a) of the Act. In the circumstances, the action by the respondent was unreasonable, whimsical, capricious, and draconian. Whether the claimant had been warned of absenteeism in 2014, as alleged, or at any other time, the action by the respondent is outrightly untenable and unreasonable.
52. The claimant is not alleged to have expressed an intention not to return to work and, in any event, there is no evidence that the respondent made any efforts to trace her.
53. Further, the court actually believes and upholds the evidence by the claimant that she was verbally dismissed by the human resources manager of the respondent and that the show-cause letter and the letter of summary dismissal were prepared at a later date either to sanitize the wrongful and unlawful dismissal or with the aim of defending this cause.
54. In the circumstances, the court finds and holds that the claimant was denied both substantive and procedural fairness and it is so declared. The dismissal was wrongful, unfair, and unlawful.

#### **VIII. Reliefs**

55. Having found and held as above, the court shall now consider each of the reliefs sought by the Claimant as hereunder. The reliefs sought are also set out in the introductory part of this judgment.
56. Prayer (a) is for a declaration that the dismissal of the claimant by the respondent was wrongful and unlawful. The court has found as such in the foregoing part of this judgment and it so declared.
57. Prayer (b) is for the payment of one month's salary in lieu of notice. Of course, the summary dismissal was without notice and the same has been found to have been wrongful and unlawful for lack of both substantive and procedural fairness.
58. The last available document defining the terms and conditions of employment between the respondent and the claimant is the contract dated 1<sup>st</sup> May, 2015 which was initially to run for two months from 1<sup>st</sup> May, 2015 to 31<sup>st</sup> July, 2015. It is imperative that upon the expiry of the two months the claimant remained in employment of the respondent on the same terms and conditions set out in that contract. Neither of the parties produced any other contract by and between the parties after that contract. Clause 8 of the said contract stipulates that either party may terminate the contract by way of one month's notice or one month's salary in lieu thereof. It has been held elsewhere in this judgment that by the conduct of the parties the claimant was a month to month employee as she continued working even after expiry of the contract. The claimant is therefore awarded Kshs.11,624/= being the agreed last gross monthly salary.
59. Prayer (c) is for salary arrears for the period from March to August, 2016 in the sum of Kshs.69,323.40. There is no evidence or submission in support of this claim and the court cannot establish the legal



- basis for the same. The claimant was terminated on 9<sup>th</sup> February, 2016 and there is no evidence that she worked for the respondent beyond that date. In the circumstances, this prayer is denied and is hereby dismissed.
60. Prayer (d) is for annual leave allowance in the sum of Kshs.24,263.20. Under Section 10 and 74 of the Act it is the duty and indeed a legal obligation of the employer to keep employment records and to avail the same for scrutiny and or examination by the labour officers or the court in proceedings. The moment the claimant pleaded unpaid leave allowance the respondent ought to have filed such records to displace and dislodge that claim. The burden of proof shifted to the respondent to prove that indeed the claimant had taken all her leave days and or had been paid for the same in full. In the circumstances of this cause and for lack of any evidence to the contrary the claimant is awarded the sum of Kshs.24,263.20. This same reasoning applies to item (e) and the claimant is thus also awarded the further claimed sum of Kshs.674/=.
  61. Prayers (d) and (e) are for underpayments of salary and house allowance, respectfully. There is no evidence or basis upon which these claims are premised. There is no legal notice or wage regulation cited providing for what the claimant was supposed to be paid and for what position. How then is the court supposed and or expected to establish what this underpayment of salary is all about?
  62. The contract between the parties dated 1<sup>st</sup> May, 2015 clearly indicates that the gross salary of Kshs.11,624/= included house allowance. That the salary was consolidated or global. The claimant has no basis upon which to found a claim for unpaid house allowance which was clearly in-build in the gross pay.
  63. The last item (f) is for compensation for the wrongful and unlawful dismissal. The claimant is seeking compensation equivalent to 12 months gross pay in the sum of Kshs.138,646.80. The court has critically and dutifully examined the evidence and the circumstances of this cause in the foregoing paragraphs. I have also considered the factors under Section 49(4) of the Act and applied the same to this cause.
  64. The parties have not expressed willingness to re-engage; the claimant did not contribute to her dismissal based on the evidence on record as analyzed in another part of this judgment; the employee worked for the respondent for over three years; the employee was ready and willing to continue working for the respondent bar the dismissal; no terminal benefits were paid to the claimant upon dismissal; and the respondent was whimsical and capricious in the dismissal and thereafter tried to generate evidence to cover for the wrongful and unlawful dismissal.
  65. It is unfortunate that the respondent treated the claimant with such indignity and contempt for reasons not availed in court other than the allegation by the claimant that she had been injured at work. The treatment meted out on the claimant by the respondent was unfair and uncalled for. In the bare minimum the respondent ought to have given the claimant a fair hearing both in substance and the procedure adopted.
  66. In the considered view of the court, this is one case that calls for the maximum award of compensation equivalent to 12 months gross pay. The claimant is therefore awarded Kshs.11,624/ \* 12= Kshs.139,488/=.

#### **VIII. Costs**

67. Costs should ordinarily follow the event and the claimant is thus awarded costs of this cause with interest thereon.



## **IX. Disposal**

68. In disposal of this cause, this court issues the following orders: -

- a. A declaration be and is hereby issued that the dismissal of the claimant was wrongful, unfair, and unlawful.
- b. Consequently, the claimant is awarded a sum of Kshs.176,049.20 made up as follows –
  - i. Notice pay .....Kshs.11,624.00
  - ii. Leave pay .....Kshs.24,937.20
  - iii. Compensation .....Kshs.139,488.00
  - Total .....Kshs.176,049.20
- c. Costs of the cause to the claimant.

69. This amount is subject to statutory deductions and shall attract interest from the date of this judgment till payment in full.

**DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2023.**

**DAVID NDERITU**

**JUDGE**

