



**Kenya Union of Commercial, Food and Allied Workers v Kadesea Agency Limited
(Cause E029 of 2021) [2023] KEELRC 3300 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3300 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E029 OF 2021
MA ONYANGO, J
DECEMBER 7, 2023**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**
AND
KADESEA AGENCY LIMITED RESPONDENT

JUDGMENT

1. The Claimant is a Trade union registered under the [Labour Relations Act](#) to represent employees in the commercial and food sector.
2. The Respondent is a limited liability company carrying on the business of providing labour services to different companies. Its activities therefore fall within the jurisdiction of the Claimant to represent its employees in labour matters.
3. The Claim herein was instituted by the Claimant on behalf of the Grievant, Juma Mutukhulu Muyeko, who is a member of the union, vide a Statement of Claim dated 29th July 2021 seeking the following remedies:
 - a. An order that the Grievant be reinstated without loss of benefits. If reinstatement is untenable, the following prayers be granted:
 - i. One month Pay in lieu of notice..... ksh 14,400
 - ii. Leave pay one year 12,530x21/30..... ksh 8,771
 - iii. Pro-rate leave of 6 months
14,400x1.75x6/30..... ksh 3,360
 - iv. 1-year severance pay 12,530x 15x 1/30.....ksh 6,265



- v. Public holidays 1 year 4 months 12 x 600..ksh 7,200
 - vi. Underpayment 14,400-7,000x 18..... ksh 112,000
 - vii. 12 months compensation 12 x 12,530.....ksh 150,360
- b. Certificate of service
 - c. Costs of the suit to the Claimant
 - d. Any other order the honorable court deem fit to address the cause of justice
4. The Claimant alleges in the Statement of Claim that the Grievant, Juma Mutukhulu Muyekho was employed by the Respondent on 4th February 2019 as a general worker and deployed to work at Dhaval Emporium Wholesalers Limited earning a salary of ksh 7,000 per month.
 5. It is averred that on 1st August 2020, the Respondent terminated the services of the Grievant over the phone with immediate effect without giving any reasons whatsoever.
 6. It is further stated that on 1st September 2020, the Claimant wrote to Dhaval Emporium Wholesalers proposing a meeting on 4th September 2020 to find an amicable settlement but the Respondent did not attend the said meeting.
 7. It is the Claimant's case that it reported the dispute to the Cabinet Secretary for Labour and Social protection on 2nd September 2020 and that on 23rd November 2020, the Cabinet Secretary through the Chief Industrial Relations Officer accepted the dispute and appointed one Ms. Chemursoi of Eldoret Labour office as Conciliator. The Claimant avers that the Conciliator invited the parties for joint conciliation meetings on 8th December 2020 and on 4th February 2021 but the Respondent never attended the said meetings and as a result, on 31st March 2021, the Conciliator issued a certificate of unresolved dispute paving the way for the filing of this suit.
 8. The Statement of Claim and Summons to Enter Appearance were served upon the Respondent on 12th July 2023 and an affidavit of service sworn by the process server Diffinah Moithaga Nyamwange was duly filed on 25th September 2023.
 9. The Respondent did not enter appearance and nor did it file a defence to the Statement of Claim.
 10. The suit is therefore undefended and the court on 7th November 2023 certified the same ready for hearing as an undefended suit.
 11. The Grievant testified as CW1 on the hearing date on 16th November, 2023 and adopted his witness statement recorded on 29th July 2021 as his evidence in chief. CW1 reiterated the averments in the Statement of Claim. He urged the court to award the reliefs he sought in the Statement of Claim.

Determination

12. Upon considering the pleadings herein and the evidence of the Grievant, the only issues that fall for determination are whether the employment of the Grievant was unlawfully and unprocedurally terminated and if the prayers sought in the claim are merited.
13. For termination of employment to be fair the employer must comply with both section 41 of the *Employment Act* on due process and section 43 on proof of reasons for termination. Refer to *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.



14. From the witness statement of the Grievant herein that was recorded on 29th July 2021 and adopted as evidence in chief at the hearing, the Grievant alleges that he was called on the 31st July 2020 at around 8pm by the Manager of the Respondent, who informed him that he should not report for duty as from 1st August, 2020.
15. The Grievant averred that he was not given reasons for the termination, was not issued with a show cause letter or taken through a disciplinary hearing.
16. This evidence was not controverted by the Respondent who did not participate in these proceedings.
17. Flowing from above, it is evident that the Grievant was never taken through the procedure in section 41 of the *Employment Act* nor did the Respondent furnish him with reasons for termination as provided in section 43 of the Act. I therefore find that the termination having been without a hearing and without valid reason, was unfair under section 45(2) of the *Employment Act*. I hold and declare accordingly.
18. The Claimant is therefore entitled to the reliefs it is seeking on behalf of the Grievant.
19. I consequently enter judgment in favor of the Claimant on behalf of the Grievant in the following terms:
 - i. One month salary in lieu.....ksh 14,400
 - ii. Leave pay one yearksh 8,771
 - iii. Pro rata leave of 6 months.....ksh 3,360
 - iv. Public holidays.....ksh 7,200
 - v. Underpayments.....ksh 112,000
 - vi. 3 months compensation.....ksh 43,200Total.....ksh 188,931
20. The prayer for severance pay is declined as no evidence was tendered to prove that the Grievant was declared redundant and therefore entitled to severance pay as provided in section 40 of the *Employment Act*. Indeed the issue in dispute as reported by the Claimant to the Cabinet Secretary for Labour is “Unlawful/unfair termination of Mr. Juma Kutukhulu Muyekho”.
21. The Respondent shall issue a certificate of service to the Grievant within 30 days
22. I further award costs to the Claimant assessed at ksh 50,000 as the Claimant was not represented by an advocate but an official of the Union and costs cannot therefore be taxed under the Advocates Remuneration Order.
23. Interests shall accrue on the decretal sum from the date of judgment until payment in full.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 7TH DAY OF DECEMBER, 2023.

M. ONYANGO

JUDGE

