



Kenya Chemical Workers Union v Vee Plastics Limited (Cause E813 of 2022) [2023] KEELRC 3178 (KLR) (5 December 2023) (Judgment)

Neutral citation: [2023] KEELRC 3178 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E813 OF 2022
NJ ABUODHA, J
DECEMBER 5, 2023**

BETWEEN
KENYA CHEMICAL WORKERS UNION CLAIMANT
AND
VEE PLASTICS LIMITED RESPONDENT

JUDGMENT

1. The Claimant a labour organization filed its statement of claim on behalf of Mr Jonathan Mwema Kalima the grievant herein dated 3rd November, 2022 pleaded inter alia as follows: -
 - a. The dispute arose on 1st August,2020 when the grievant who was employed by the Respondent Company on 20th September,2012 was told verbally to go out of the company when the machine he was operating broke down. The Respondent accused the grievant that he knew how the machine he was operating got burnt.
 - b. The Claimant averred that on 2nd August,2020 the director of the Respondent Mr. Ashok Shah called the grievant and told him to pay for the new motor of the machine which got burnt or else he should not work in his company anymore and ordered him to pay Kshs 60,000/- being the cost of new motor.
 - c. The Claimant averred that the grievant tried to explain to the director that the motor in question was old and that of late it had often got burnt. The director could not listen to him and ordered him to leave his company immediately which was wrong as per sections 41,43 and 45 of the *Employment Act*.
 - d. The Claimant further averred that the grievant was not called by the Respondent to be told of his mistake before being dismissed from employment. No warning letter was given to him, show cause letter was issued to him and the Respondent did not initiate the disciplinary process which could find out where the problem was.



- e. The Claimant averred that it tried by all means to have this matter sorted out at parties level but all were in vain. That this compelled the Claimant to report this matter as a trade dispute to the Cabinet Secretary Ministry of Labour on 1st Decemeber,2020. That the Ministry did the appointment and madam Grace Mweresa of Labour Headquarters was appointed to act a conciliator on 15th February,2021.
 - f. The Claimant averred that the Conciliator convened several meetings to have this matter sorted out, unfortunately the Respondent refused, ignored and failed to attend those meetings. This forced the Conciliator to issue a report dated 10th March 2022 which was received at their offices on 11th May,2022.
 - g. The Claimant averred that the Respondent failed to comply with the conciliator report which compelled the Claimant to place this dispute before the court for justice to prevail.
 - h. The Claimant submitted that the Respondent decided to terminate the services of grievant without any justifiable reason and in so doing contravened *Employment Act* sections 41,43 and 45 which require the employer to give reason or reasons before terminating employment and give such employee a chance to be heard.
 - i. The Claimant further submitted that the grievant is almost two years out of employment and asked this court to award the grievant his terminal benefits, allowances for the period he has been out of employment because he was subjected to intimidation and injustices by terminating his services instantly without any reason at all.
 - j. That the Respondent just wanted to do away with the grievant without any tangible reason or reasons which means the grievant should be awarded reasonably plus maximum compensation or as calculated hereunder: _
 - a. One-month Notice Kshs 19,838/-
 - b. Days worked was one-month Kshs19,838/-
 - c. Annual unpaid leave for three years Kshs 48,831/=
 - d. Gratuity/Service Benefits for three years Kshs 34,445/=
 - e. Maximum compensation for loss of employment Kshs 238,056/=
2. The Claimant in the upshot prayed for the following against the Respondent in addition to the above prayers;
- a. The court to find the Respondent to have contravened *Employment Act* Sections 41,43 and 45 to have acted wrongfully and unfairly in terminating the employment of the grievant.
 - b. The court to award the grievant allowances for the period he had been out of employment plus his maximum compensation for being subjected to intimidation and injustices which also under Labour Institution Act section 15(C)
 - c. Costs of the suit and interests on present court rates.
3. The Respondent did not file any response despite service and the matter proceeded undefended. The Matter proceeded by way of written submissions.



Claimants' Submissions

4. The Claimant filed written submissions dated 2nd August, 2023. The Claimant submitted that the grievant was not issued with notice or afforded an opportunity to be heard as envisaged under section 41(1) and (2) of the *Employment Act* and thereby blatantly disregarding his rights. The Claimant relied on the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* (2014) eKLR on employer following provisions of Section 41 of the Employment on due process as a mandatory requirement.
5. The Claimant submitted that the Respondent's action contravened sections 41, 43 and 45(1) and (2) of *Employment Act* on reason for termination which should be fair. The Claimant relied on cases of Janet Nyandiko versus Kenya Commercial Bank Limited (2017) eKLR and Walter Anuro vs Teachers service Commission (2013) eKLR to submit that the termination to be fair it must pass both substantive and the procedural test.
6. The Claimant submitted that the termination must be with notice, reasons and the employee must be given a hearing. That the grievant was not issued with any show cause letter, warning letter and neither did the Respondent initiate disciplinary process hence the termination was unfair under section 45 of the *Employment Act*.
7. The Claimant submitted that the grievant was entitled to one-month payment in lieu of notice since no notice was given to him. That he worked for the month of July 2020 hence entitled to Kshs 19,838/= as his salary. That the grievant for the period he worked with the Respondent for a period of 3 years, never went for his annual leave or paid in lieu hence entitled to Kshs 48,831/= as his annual leave.
8. That the grievant worked with the Respondent for 8 years and he had legitimate expectation to work with the Respondent up to his retirement age of 55 years. The expectation was cut short by the Respondent through the wrongful dismissal. This was in breach of section 49 of the *Employment Act*. The grievant is entitled to the maximum compensation of Kshs 238,056/= as stipulated in his claim.
9. The Claimant also submitted that the grievant was entitled to his service benefits of Kshs 34,445/= as per section 35(5) of the *Employment Act*. He is also entitled to certificate of service under section 51 of the *Employment Act*.
10. In conclusion the Claimant prayed that the claim be allowed as prayed for Kshs 360,898/=.

Determination

11. The Court has reviewed and considered the pleadings, testimonies and submissions by the Claimant in support of the case and noted that noted further that the claim proceeded as undefended cause after the Court was satisfied that the respondent was served and neither entered appearance nor filed a defence.
12. I have In this case, Mr. Ashok Shah called the grievant on 1st August, 2020 and verbally told the grievant to go out of the company's premises. This was because the machine he was operating got mechanical breakdown which the Respondent attributed to him. The Respondent tried to force the grievant to buy a new motor to replace the burnt motor worth Kshs 60,000/= and when he tried explaining that the one burnt was an old one which had severally burnt, the Director did not listen to him but instead ordered him to leave the company immediately. The Respondent therefore was not given any notice, warning for the termination or reasons for the same.
13. The Claimant has illustrated that they reported the matter to labour offices where the Respondent did not turn up before the conciliator necessitating the conciliator to write a letter for the Claimant to take



legal action on the Respondent. The Respondent has also refused or ignored to take part in these court proceedings despite being served.

14. In conclusion I find that the dismissal of grievant Employment was not substantially justified for there being no valid and fair reason for termination.
15. The prayer for one-month salary in lieu of Notice would be allowed since the reason for the termination of the grievant employment has been found to be substantially unjustified and procedurally flawed.
16. The Prayer for July,2020 worked is allowed for the period worked. On the Annual leave not taken there being no rebuttal by the Respondent the same is hereby allowed. The prayer for gratuity/service benefits for three years is also allowed.
17. On the prayer for compensation for unfair termination the Court takes in to account the number of years the grievant worked for the Respondent which was 8 years and further the conduct of the Respondent who refused to take part in conciliation stage and this court proceedings and award the compensation for 10 months' salary.
18. The grievant is entitled to certificate of service as envisaged by Section 51 of the *Employment Act*.
19. In conclusion the Claimants' claim should be allowed as illustrated below with costs to the Claimant.
 - a. One Month notice Kshs 19,838/=
 - b. July 2020, salary Kshs 19,838/=
 - c. 3 years Annual Leave Kshs 48,831/=
 - d. Service pay for three years Kshs 34,445/=
 - e. 10 months Compensation for unfair and unlawful termination Kshs 198,380/=

Total Kshs 321,222/=

DATED AT NAIROBI THIS 5TH DAY DECEMBER, 2023 DELIVERED VIRTUALLY THIS 5TH DAY OF DECEMBER, 2023

ABUODHA NELSON JORUM

JUDGE

