



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 1915 OF 2016**

**(Consolidated with ELRC CAUSE Nos. 1916 of 2016 and 1917 of 2016)**

**PAUL MUTISYA MATHEKA.....CLAIMANT**

**VERSUS**

**KENMET LIMITED.....RESPONDENT**

**JUDGEMENT**

1. The claimants filed individual claims against the respondent through which they seek similar reliefs. When the matter came up for mention on 18<sup>th</sup> July, 2019, all parties consented to have the claims consolidated and heard together. ELRC Cause No. 1915 of 2016 was identified as the lead file. The claim in ELRC Cause No. 1917 of 2016 was dismissed on 25<sup>th</sup> November, 2021 for non-attendance. Therefore, the claims that now fall for determination are ELRC Nos 1915 and 1916 of 2016.

2. The claimant in ELRC Cause No. 1915 of 2016 is Paul Mutisya Matheka (hereinafter 1<sup>st</sup> claimant). He avers in his claim which was filed on 16<sup>th</sup> September, 2016, that he was employed by the respondent in the month of February, 2015, to undertake painting duties in consideration of a monthly salary of Kshs 12,600/=. According to the claimant, he reported to work on 2<sup>nd</sup> August, 2016 but was turned away and instructed to report the following day. That he reported on 3<sup>rd</sup> August, 2016 as instructed, but was turned away yet again and told to report back to work after one month. It is against this background that he lodged a complaint at the labour office and later, the instant claim, through which he now seeks several reliefs including a declaration that his termination was illegal, unlawful, inhumane and unfair as well as terminal dues totaling Kshs 213, 340/=.

3. The claim was opposed through a response filed on 12<sup>th</sup> October, 2016 and through which with the respondent stated that the 1<sup>st</sup> claimant was employed on a 6-month contract, which commenced on 2<sup>nd</sup> January, 2016 and lapsed on 30<sup>th</sup> June, 2016. That upon lapse of his contract, he never reported back to work. That he further lodged a complaint with the labour office but failed to collect his terminal dues as directed by the labour officer. The respondent termed the claim as fictitious, untrue and fabricated hence asked the Court to dismiss the same.

4. The claimant in ELRC Cause No. 1916 of 2016 is Harun Matata Kyalo (hereinafter, the 2<sup>nd</sup> claimant). Through his claim filed on 16<sup>th</sup> September, 2016, the 2<sup>nd</sup> claimant states that he was employed by the respondent as a machine operator with effect from 20<sup>th</sup> June, 2014, in consideration of a monthly salary of Kshs 13,000/=. The 2<sup>nd</sup> claimant avers that he reported to work on 2<sup>nd</sup> August, 2016 but was barred from accessing the respondent's premises, and instructed to report back the following day. That on 3<sup>rd</sup> August, 2016, he reported to work as instructed only to be told to go back home and report after one month. He termed the actions of the respondent as amounting to breach of his employment contract hence he lodged a complaint at the labour office and later, the instant suit through which he claims terminal dues in the sum of Kshs 256,200/= as well as a declaration that his termination was illegal, unlawful, unfair and inhumane.

5. The respondent opposed the claim and asked the Court to dismiss the same. It averred that the 2<sup>nd</sup> claimant was employed through a 6-month contract dated 2<sup>nd</sup> January, 2016 and which had an end date of 30<sup>th</sup> June, 2016. That the contract was extended for another one month to allow the claimant improve his performance. That as such, his contract of employment lapsed on 30<sup>th</sup> July, 2016 hence the claimant was not unfairly terminated or wrongfully dismissed as he has alleged.

6. The matter proceeded for trial on 9<sup>th</sup> August, 2021 when the claimants presented and closed their respective cases. The trial was concluded on 25<sup>th</sup> November, 2021, following the defense hearing.

**1<sup>st</sup> Claimant's case**

7. At the outset, the 1<sup>st</sup> claimant adopted his witness testament to constitute part of his evidence in chief. He testified that he was terminated by the respondent without just cause. He denied ever signing a contract with the respondent. He further told Court that the allegations raised by the respondent against him in its response are false as he was excellent in his work. He further denied being issued with a pay slip by the respondent.

8. He reiterated in cross examination that he was not an underperformer and neither did he leave the respondent's employment willingly. He further admitted lodging a complaint at the labour office and added that he did not collect his dues as tabulated by the labour officer.

## **2<sup>nd</sup> Claimant's case**

9. The 2<sup>nd</sup> claimant also sought to adopt his witness statement at the commencement of the hearing, to constitute part of his evidence in chief. He testified that he was terminated for no justifiable reason and was not issued with any warning prior to that.

10. He testified further in cross examination that he was not an underperformer. He admitted that there was an employee attendance list at the respondent company. He further admitted reporting the claim to the labour office and that the labour officer directed that he be paid his dues. That nonetheless, he had never gone back to collect the said dues.

11. In re-examination, he denied knowledge of the existence of his terminal dues.

## **Respondent's case**

12. The respondent called oral evidence through Mr. Albanus Kyalo who identified himself as an employee of the respondent. He told Court that he was a supervisor hence he knew the claimants. It was his testimony that the claimants were employed on contract. That the said contracts were not renewed on account that the claimants were underperformers.

13. He further told Court that the claimants lodged complaints with the labour office, which directed that they be paid terminal dues. That in this case, each claimant was to be paid the sum of **Kshs 15,388.70**. That however, the claimants had never collected the said terminal dues and instead, had opted to move the Court as per the instant claims.

## **Submissions**

14. The claimants filed joint written submissions through which they urged that their contracts were not for 6 months and had not lapsed. They further submitted that the respondent did not act in accordance with justice and equity in terminating their respective employments contrary to section 45(1) and (2) of the Employment Act. They placed reliance on the case of **Walter Ogal Anuro vs Teachers Service Commission (2013) eKLR**,

15. On the other hand, the respondent submitted that the claims before Court were frivolous and an abuse of the Court process. The respondent submitted that the claimants' respective contracts of employment had expired and the same were not renewed. The respondent in further submission stated that the claims lacked legal basis. It buttressed its submissions on the cases of **Fatuma Abdi vs Kenya School of Monetary Studies (2017) eKLR** and **Rajab Barasa & 4 others vs Kenya meat Commission (2016) eKLR**.

## **Analysis and determination**

16. Having considered the pleadings on record as well as the evidence placed before me, the issues falling for the Court's determination can be distilled as follows;

**a. Were the claimants terminated from employment?**

**b. If the answer to (a) is in the affirmative, was the claimants' termination unfair and unlawful?**

**c. Are the claimants entitled to the reliefs sought?**

## **Were the claimants terminated from employment?**

17. The claimants have alleged that they were unlawfully terminated from employment when they were turned away and denied access to the respondent's premises on 3<sup>rd</sup> August, 2016. The respondent has denied this assertion and maintained that the claimant's contracts expired and were not renewed.

18. In support of its case, the respondent produced copies of the claimants' contracts of employment. According to the 1<sup>st</sup> claimant's contract, the same was to run with effect from 2<sup>nd</sup> January, 2016 up until 30<sup>th</sup> June, 2016. It also states his gross salary as being Kshs 12,600/=. The contract contains his signature and national identity card no which he confirmed before Court as being accurate. There is also an attendance register in respect of the 1<sup>st</sup> claimant's attendance to duty. It shows that he did not attend duty beyond June, 2016.

19. As regards the 2<sup>nd</sup> claimant's contract of employment, the same was to run with effect from 2<sup>nd</sup> January, 2016 up until 30<sup>th</sup> June, 2016. It states his gross salary as being Kshs 13,000/=. It further contains his national identity card number and signature. There is also an attendance register on record which documents his attendance to duty. It shows that he attended duty up until 31<sup>st</sup> July, 2016.

20. The foregoing evidence tallies on all fours with the respondent's case. Further it is notable that in as much the claimants denied signing the contracts of employment, they did not dispute the signatures appearing thereon, which notably, resembles the signatures in their witness statements.

21. It also bears to note that they never made any claim or suggestion to the effect that the said signatures were an act of forgery and that the contracts of employment were a fabrication. Indeed, the claimants did not at any one time either through further pleading or in oral evidence, attack the legitimacy of the said contracts. This only goes to prove that the contracts on record are factual and are in respect of the claimants' employment.

22. It therefore follows that the claimants' respective contracts of employment terminated by effluxion of time and were not renewed. This discounts the claimant's assertion that they were terminated from employment.

23. The said contracts of employment contain the following clause;

“After expiry of the contract, with your written request, if your performance is satisfactory, it will be the decision of KENMET LIMITED whether to renew your contract”

24. The claimants were therefore aware that the contracts were not to be renewed automatically and that it was upto them to apply for renewal of the same. Upon expiry, there was no and there should have been no legitimate expectation of continued employment from their end. On this score, I will adapt and reiterate the holding in the case of *Margaret A. Ochieng vs National Water Conservation and Pipeline Corporation [2014] eKLR* where Rika J held as follows: -

“Courts have upheld the principle that fixed-term contracts carry no expectation of renewal, in a catena of judicial authorities”.

25. The upshot of the foregoing is that the claimants' contracts expired and were not renewed hence effectively terminating their respective employments with the respondent.

26. In the circumstances, I find and hold that the claimants were not unfairly or unlawfully terminated.

27. Having found as such, the next issue for determination falls by the wayside as it cannot be logically determined.

28. The reliefs in regards to house allowance lack merit as the respondent proved by way of evidence in the form of salary vouchers, that the claimants earned house allowance in addition to basic salary.

29. The prayers as regards untaken leave days and for the one day worked in August, 2016, are similarly denied for lack of evidence.

30. Be that as it may, the claimants are at liberty to collect their terminal dues as tabulated by the Labour Officer.

**Orders**

31. In the end, both claims, that is, **ELRC Cause Nos 1915 of 2016** and **1916 of 2016** are dismissed in their entirety with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF MARCH, 2022**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

For the Claimants Ms. Mungoni

For the Respondent Mr. Mutitu

Court Assistant Barille Sora

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**,

which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**