



Mokoro v County Assembly of Nyamira & 2 others (Employment and Labour Relations Cause 98 of 2018) [2022] KEELRC 14683 (KLR) (23 March 2022) (Judgment)

Neutral citation: [2022] KEELRC 14683 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
EMPLOYMENT AND LABOUR RELATIONS CAUSE 98 OF 2018**

S RADIDO, J

MARCH 23, 2022

BETWEEN

EDWIN SANI MOKORO CLAIMANT

AND

COUNTY ASSEMBLY OF NYAMIRA 1ST RESPONDENT

CLERK, COUNTY ASSEMBLY OF NYAMIRA 2ND RESPONDENT

SPEAKER, COUNTY ASSEMBLY OF NYAMIRA 3RD RESPONDENT

JUDGMENT

1. Edwin Sani Mokoro (the Claimant) was offered employment as Personal Assistant to the Speaker of the County Assembly of Nyamira (the Speaker) on September 26, 2017 for a term of 5-years.
2. On or around January 8, 2018, the Speaker requested the Clerk of the County Assembly to redeploy the Claimant as the Speaker's personal secretary and the deployment was effected on January 9, 2018.
3. However, on January 15, 2018, the Clerk suspended the Claimant upon receiving complaints from the Speaker.
4. The Claimant was instructed to return to work on January 31, 2018.
5. When the Claimant reported back, he was given a letter on the same date informing him of the termination of his contract.
6. The Claimant sued the Respondents on April 13, 2018, alleging unfair termination of employment and breach of contract.
7. The Respondents filed a Response on April 27, 2018, and the Claimant filed a Reply on May 16, 2018.



8. The Cause was heard on April 30, 2019, when the Claimant testified, and the Respondents' case was scheduled for December 4, 2019.
9. On December 4, 2019, the Respondents secured an adjournment, and the hearing was postponed to July 16, 2020.
10. None of the parties appeared in Court on July 16, 2020.
11. When the Respondents' case next came up on December 17, 2020, they sought an adjournment on the ground of unstable network connection.
12. The Court rescheduled the hearing to March 18, 2021 and directed that the witness physically attends Court.
13. The witness did not attend Court on March 18, 2021, and the Respondents' advocate attributed the failure to miscommunication on his part.
14. The Court granted the last adjournment to the Respondents and directed that hearing proceeds on April 13, 2021.
15. The Claimant did not attend Court on this date, and the hearing was adjourned to May 20, 2021.
16. On May 20, 2021, the Respondents sought another adjournment because their witness had been purportedly admitted at Mater hospital, Nairobi.
17. The Court directed the Respondents to produce copies of medical records to confirm the admission.
18. It turned out the Court was misled as records were produced from a different hospital indicating the witness was an outpatient.
19. On December 16, 2021, the Respondents sought another adjournment. The Court declined to grant an adjournment, and the Respondents closed their case without calling or leading any evidence.
20. The Claimant filed his submissions on January 14, 2022, while the Respondents filed their submissions on February 4, 2022.
21. The Court has considered the pleadings, evidence, and submissions.

Unfair termination of employment

Procedural fairness

22. The Claimant was not issued with a written notice of termination of employment as required by section 35(1)(c) of the *Employment Act*, 2007.
23. Further, section 41 of the Act obligates the employer to allow the employee to be heard before termination of employment. The Claimant was not afforded such an opportunity.
24. The Court finds that the termination of the Claimant's employment was procedurally unfair.

Substantive fairness

25. In terms of sections 43 and 45 of the *Employment Act*, 2007, the Respondents were expected to prove and prove as valid and fair the reasons for terminating the Claimant's employment.
26. The Respondents did not lead any evidence to discharge the burden, and the Court has no other option but to conclude that there were no valid or fair reasons to terminate the Claimant's contract.



Compensation

27. The Claimant had a 5-year contract which had a balance of about 4-years. He was not issued with a written notice, nor did the Respondents prove the validity and fairness of the termination of employment.
28. Considering the above, the Court is of the view that the equivalent of 10-months' gross wages as compensation would be appropriate (the Claimant's gross monthly pay was Kshs 73,110/-).

Salary in lieu of notice

29. The Claimant was paid by the month, and in consideration of section 35(1)(c) of the Act, the Court will allow the equivalent of 1-month salary in lieu of notice (the Claimant's basic monthly salary was Kshs 39,110/-).

Breach of contract

Severance pay

30. The Claimant did not separate with the Respondents on account of redundancy, and therefore he is not eligible for payment of severance pay.

Lost income*

31. The Claimant prayed to the Court to award him Kshs 4,128,300/- being the income he would have earned had he served his entire contract.
32. The Claimant did not lay any contractual or legal foundation to this head of the claim.
33. The Supreme Court of Uganda in *Bank of Uganda v Tinkamanyire (2008) UGSC 21* held in respect of loss of income in relation to unfair termination of employment:
- The contention that an employee whose employment contract is terminated prematurely or illegally should be compensated for the remainder of the years or period when they would have retired is unattainable in law.
34. This Court endorses the holding and declines to allow this relief.

Gratuity

35. The Claimant sought gratuity at the rate of 30-days for each completed year of service.
36. No evidential or legal basis for the award of gratuity was placed before the Court, and relief is declined.

Conclusion and Orders

37. The Court finds and declares that the termination of the Claimant's employment was unfair and awards him:
- (i) Compensation Kshs 731,100/-
 - (ii) Pay in lieu of notice Kshs 39,110/-
- TOTAL Kshs 770,210/-
38. The Claimant to have costs.



**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
23RD DAY OF MARCH 2022.**

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Claimant Mainga & Co. Advocates

For Respondent Mose Nyambenga & Co. Advocates

Court Assistant Chrispo Aura

