



**Muli v Eurocraft Agencies Limited (Cause 315 of 2016)
[2022] KEELRC 1642 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1642 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 315 OF 2016**

J RIKA, J

MAY 27, 2022

BETWEEN

ERIC WAMBUA MULI CLAIMANT

AND

EUROCRAFT AGENCIES LIMITED RESPONDENT

JUDGMENT

1. In his Statement of claim filed on March 1, 2016, the claimant avers that he was employed by the respondent on March 1, 2013, as a cabin groomer.
2. His last gross monthly salary was Kshs 14,887.
3. He was summarily dismissed by the respondent, after 7 months, through a letter dated October 24, 2013.
4. He avers, he was physically assaulted repeatedly, by station manager Evans Dicii, while on duty. He was dispossessed of his pass and reflector, limiting his movement at his workplace- the airport.
5. He reported assault at Jomo Kenyatta International Airport Police. He avers, he sought reconciliation with the station manager, and continued working until November 22, 2013 when he received the letter of summary dismissal dated October 24, 2013.
6. He reported the dispute to the labour office, Nairobi. His dues were calculated by the labour office at Kshs 18,700. It was paid by the respondent through the labour office, on April 7, 2015.
7. The claimant maintains that termination was unfair and unlawful. He was not issued a letter to show cause. He was not heard. He was not given a valid reason to justify termination. The respondent did not comply with the requirements of section 41 and 45 of the *Employment Act*.
8. The claimant prays for: -



- a. Declaration that termination was unfair and unlawful.
 - b. 12 months' salary in compensation for unfair termination at Kshs 178,644.
 - c. Salary for days worked in October 2013 at Kshs 12,902.
 - d. Notice at Kshs 14,887.
 - e. Accrued leave at Kshs 2,997.
 - f. Money deducted for reflector and union dues at Kshs 7,600.
Total...Kshs 217,030.
 - g. Certificate of service to issue.
 - h. Costs.
 - i. Any other relief.
9. The respondent filed its statement of response on June 8, 2016. It is admitted that the claimant was employed by the respondent. He was arrogant, defiant and disrespectful to his seniors. He was asked to hand over his pass. He held onto it so tightly that it broke around him, and he then claimed that he had been assaulted. He did not work until November 22, 2013. He was dismissed on October 24, 2013. He could not have worked until November, if as he says, he did not have the pass and the reflector. He was paid final dues at Kshs 18,700 as calculated by the labour office. He was dismissed in accordance with section 44[4][e] of the Employment Act.
10. The claimant was heard in virtual court, on November 24, 2021 when he closed his case. He adopted his documents on record, and his witness statement which is a replica of the statement of claim. He was not cross-examined. The respondent did not give sworn evidence. Its Advocate adopted respondent's witness statement and closed respondent's case on November 24, 2021. The claim was last mentioned in court on January 28, 2022, when parties confirmed filing and exchange of their final submissions.

The Court Finds: -

11. The claimant worked for 7 months for the respondent, in the position of cabin groomer. His last salary was Kshs 14,887. His letter of dismissal is dated October 24, 2013.
12. He appears to have been involved in an altercation with his station manager Evans Dicii. Although the respondent denies that the station manager physically assaulted the claimant, the claimant has exhibited p3 form, establishing that indeed the claimant was assaulted. It is conceded by the respondent that there was a tussle involving the claimant and the manager, where the claimant was dispossessed of his pass.
13. The letter of summary dismissal states however that the reason for dismissal was that the claimant declined the instructions of his team leader, to perform a specific task. He was accused of insubordination.
14. There was no specific charge preceding the letter of dismissal. There was no letter to show cause, detailing insubordination and requiring the claimant to explain his behaviour. There was no disciplinary hearing, to establish the veracity of the accusation.
15. The claimant reported the dispute to the labour office, which resulted in payment of Kshs 18,700 to him, by the respondent. The payment is indicated in the correspondence from the labour office to the respondent, to comprise notice of 2 weeks at Kshs 9,800, *pro-rata* leave, of Kshs 4,002, and refund of



deduction made for the reflector, at Kshs 4,900. The claimant acknowledges payment. The respondent submits that this was full and final payment due to the claimant.

16. Section 47 [4] of the *Employment Act* states that the right of an employee to make a complaint to the labour office, is in addition to his right to file a claim before the court. What the labour office awards on conciliation, does not limit the employee, in pursuing other statutory rights before the court. Payment by the respondent of Kshs 18,700, does not therefore preclude the claim before the court.
17. Termination was infirm, on both procedure and substance. It did not meet the minimum statutory standards of fairness, under sections 41, 43 and 45 of the *Employment Act*.
18. The claimant worked for 7 months. His contract was term-indefinite. He expected to go on cabin grooming. Although it is suggested by the respondent, that he was a problematic employee, given to confronting his bosses, and getting involved in physical altercations, there was no disciplinary hearing to establish the suggestion. It cannot be blamed on the claimant, that his contract was terminated 7 months after he was offered the position. He is granted compensation, equivalent of his 3 ½ months' gross salary, in compensation for unfair termination at Kshs 52,104.
19. The other items claimed were paid on conciliation, except salary for days worked. There is no evidence that the claimant worked until November 22, 2013. He had already forfeited his pass and reflector, and to use his own word, was immobilized. Immobilization was effective October 24, 2013. He merits salary for 24 days worked in October 2013, which the court awards, at Kshs 13,741.
20. Certificate of service to issue.
21. Costs to the claimant.

In sum it is ordered: -

- a. It is declared that termination was unfair.
- b. The respondent shall pay to the claimant compensation for unfair termination at Kshs 52,104 and salary for 24 days worked in October 2013 at Kshs 13,741 – total Kshs 65,845.
- c. Certificate of service to issue.
- d. Costs to the claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

