



**Akoyo v Automatic Transmission Services Limited (Cause
242 of 2016) [2022] KEELRC 1583 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1583 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 242 OF 2016
MN NDUMA, J
MAY 26, 2022**

BETWEEN

JACOB MAPILO AKOYO CLAIMANT

AND

AUTOMATIC TRANSMISSION SERVICES LIMITED RESPONDENT

JUDGMENT

1. The Memorandum of claim dated 18th February, 2016, was filed on 22nd February, 2016 by the claimant seeking the following reliefs:-
 - (A) Terminal benefits set out under paragraph (i) to (vii) in the Statement of Claim including:-
 - (i) Arrear salary for November and December, 2015 - Kshs 15,000.
 - (ii) One month salary in lieu of notice – Kshs. 10,000
 - (iii) Unpaid leave for one year Kshs 11,474,40.
 - (iv) Service pay for one year Kshs 51,769.15.
 - (v) Underpayment for 1st January, 2015 to 31st December, 2015, - Kshs 36,726.78.
 - (vi) Unpaid public holidays – Kshs 11,728 and
 - (vii) Unpaid house allowance in the sum of - Kshs 18,000.
 - (viii) Refund of unremitted National Social Security Fund for 12 months – Kshs 2,400.
 - (ix) Refund of unremitted National Hospital Insurance Fund for 12 months –Kshs 1,920.and
 - (B). Maximum compensation for unlawful termination of employment.



2. The respondent filed a memorandum of reply to the Statement of Claim on 6th April, 2016 in which the respondent made General denial of the claims by the claimant and put the claimant to strict proof thereof.
3. The matter proceeded to formal proof in default of attendance by the respondent. The claimant filed Affidavit Evidence sworn to on 5th May, 2021 and the respondent failed to cross-examine the claimant nor tender any evidence in defence of the claim despite notice to attend.
4. The claimant adduced evidence that he was employed by the respondent in January, 2015 as a night Security Guard working from 6.00 am to 6.00 p.m. That he was not given a written contract of employment. That he earned a monthly salary of Kshs 10,000. That he worked diligently and was paid via Mpesa and he produced payment statement accordingly.
5. That on 30th December, 2015, the respondent terminated his employment at around 8.00 p.m. for the reason that the claimant had demanded payment of salary arrears for the months of November and December, 2015.
6. That the claimant reported a dispute to the Ministry of Labour and the respondent was summoned to appear by a letter dated 8th February, 2016 but did not show up.
7. That the suit was referred to Court Annexed Mediation in which both parties participated but no agreement was reached.
8. That the claims set out in the Statement of Claim are undefended and the Court finds in favour of the claimant accordingly.
9. The Court finds that the claimant has proved on a balance of probabilities that he was owed by the respondent and not paid the terminal benefits set out in the Statement of Claim and in this judgment. The Court enters judgment in favour of the claimant accordingly.

Compensation

10. With respect to the claim for compensation for unlawful dismissal, the Court finds that dismissing the claimant for demanding payment of arrear salary did not constitute a valid reason to terminate the employment of the claimant.
11. The respondent violated Sections 36, 41, 43 and 45 of the *Employment Act*, 2007. The Court finds that the termination was unlawful and unfair and the Claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Act.
12. In this regard, the claimant worked for a period of one year without payment. He was underpaid during the period and was not paid overtime for extra daily hours worked. He was not paid arrear salary; notice pay and gratuity upon termination. The Court finds that the claimant did not contribute to the termination and he suffered loss and damage. The Court awards the claimant the equivalent of three (3) months' salary as compensation for the unfair and unlawful termination in the sum of Kshs 30,000.
13. In the final analysis, Judgment is entered in favour of the claimant as against the respondent as follows:-
 - (a) Kshs 30,000 compensation.
 - (b) 113,017.33 being proved unpaid terminal benefits.
Total amount Kshs 143,017.33.
 - (c) Interest at Court rates from date of judgment till payment in full.



(d) Costs of the suit.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2022.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this Judgment has been delivered to the parties online with their consent. 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 has 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 18 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.

MATHEWS N. NDUMA

JUDGE

Appearances:-

Mr. Kariuki for Claimant

Respondent in person

Ekale – Court Assistant

