



REPUBLIC OF KENYA



KENYA LAW

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**Mudonyi & 68 others v Toner Holdings Limited (Cause 1153 of 2016)
[2022] KEELRC 1658 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1658 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1153 OF 2016**

L NDOLO, J

MAY 26, 2022

BETWEEN

EZEKIEL MUGERA MUDONYI 1ST CLAIMANT
GEOFFREY AMOI 2ND CLAIMANT
REUBEN MWANIKI 3RD CLAIMANT
DOUGLAS CHUMA 4TH CLAIMANT
CLEMENT SHIKOLI 5TH CLAIMANT
OLIVER AFANDA 6TH CLAIMANT
PETER RURAYA 7TH CLAIMANT
NZENGE MUTHUI 8TH CLAIMANT
SHADRACK SHIKOLI 9TH CLAIMANT
JOHN MULONZA 10TH CLAIMANT
CHARLES MALALA 11TH CLAIMANT
ZABLON MUKOSELO 12TH CLAIMANT
DANIEL OWICH 13TH CLAIMANT
PATRICK KARERE 14TH CLAIMANT
KATHULI MUTEMI 15TH CLAIMANT
PETER MUTEMI 16TH CLAIMANT
DUNSTONE LIKABO 17TH CLAIMANT
PETER KIMWELE 18TH CLAIMANT
JOSHUA MUEMA 19TH CLAIMANT



JUSTUS MUSEE	20 TH CLAIMANT
NICHOLAS MUSEMBI	21 ST CLAIMANT
KAMAU MUCHIRI	22 ND CLAIMANT
SIMON MUTURI	23 RD CLAIMANT
JARED JUMA	24 TH CLAIMANT
JOHN MUTINDA	25 TH CLAIMANT
ANTHONY MULANDI	26 TH CLAIMANT
JARED MOSE	27 TH CLAIMANT
SAMUEL OKOYO	28 TH CLAIMANT
EVANSON GITHOGE	29 TH CLAIMANT
DUNCAN KIMAILI	30 TH CLAIMANT
DOUGLAS LUNYASI	31 ST CLAIMANT
RICHARD OWIRE	32 ND CLAIMANT
ESAU MADEGWA	33 RD CLAIMANT
OTIENO SAMUEL	34 TH CLAIMANT
PATRICK ASENGI	35 TH CLAIMANT
EVANS OTENI	36 TH CLAIMANT
GODFREY MULAMA	37 TH CLAIMANT
JOSIAH MWATHI	38 TH CLAIMANT
SHADRACK MUSILI	39 TH CLAIMANT
NELSON ONCHIRI	40 TH CLAIMANT
EDISON ONYAMBU	41 ST CLAIMANT
AGGREY IROE	42 ND CLAIMANT
MUENDO KIILU	43 RD CLAIMANT
ABEDNEGO KYALO	44 TH CLAIMANT
JONATHAN MUTUA	45 TH CLAIMANT
VINCENT KADEMI	46 TH CLAIMANT
CHARLES KORIR	47 TH CLAIMANT
DANIEL MWANGANGI	48 TH CLAIMANT
DAVID MAINA	49 TH CLAIMANT
ERASTUS KIOKO	50 TH CLAIMANT
GEOFFREY WERE	51 ST CLAIMANT



SIMON MACHARIA	52 ND CLAIMANT
SAMUEL INGANGA	53 RD CLAIMANT
KELVIN MUITA	54 TH CLAIMANT
DOUGLAS BABU	55 TH CLAIMANT
HUDSON SHIZIBA	56 TH CLAIMANT
CHARLES ODANGA	57 TH CLAIMANT
JACKSON NZOMO	58 TH CLAIMANT
EVANS NYAMBANE	59 TH CLAIMANT
STEVEN WAWERU	60 TH CLAIMANT
DAVID KIMANI	61 ST CLAIMANT
DENIS NYABERA	62 ND CLAIMANT
RICHARD GITHAIGA	63 RD CLAIMANT
JOSEPH OGOLLA	64 TH CLAIMANT
STEPHEN WAMBUA	65 TH CLAIMANT
JOHN MAINA MWANGI	66 TH CLAIMANT
ALLAN KISALA	67 TH CLAIMANT
DENIS MAKAU	68 TH CLAIMANT
SAMUEL MOMANYI	69 TH CLAIMANT

AND

TONER HOLDINGS LIMITED RESPONDENT

JUDGMENT

1. By their memorandum of claim as amended on September 23, 2021, the claimants sued the respondent for unlawful termination of employment. The respondent's defence to the claimants' claim is by way of a statement of response dated July 22, 2016 and filed in court on July 25, 2016.
2. The respondent did not attend the trial, in spite of due service. The matter therefore proceeded *ex parte*, with the 1st claimant, Ezekiel Mugeru Mudonyi testifying on his own behalf and on behalf of his co-claimants. The claimants also filed written submissions. In reaching its decision, the court has taken into account the respondent's statement of response on record.

The Claimants' Case

3. The claimants state that they were employed by the respondent as unskilled labourers, on various dates between 2010 and 2013.
4. They claim that on August 26, 2015, they went to collect their salaries but noticed that an amount Kshs 1,000 had been deducted from each of them.



5. The claimants add that on August 27, 2015, they found a notice at the respondent's premises indicating that all workers' wages had been deducted to cater for National Hospital Insurance Fund (NHIF) and National Social Security Fund (NSSF) contributions. The claimants state that they had no accounts with the two statutory bodies.
6. The claimants went to complain to the site manager, Ramesh Halai who informed them that the company had made a decision to effect the deductions and anyone who was dissatisfied was free to leave the respondent's employment.
7. The claimants aver that they were dissatisfied with Halai's explanation, and therefore went back for another meeting on August 28, 2015. They claim that Halai refused to negotiate with them and instead called the police to lock them out of the premises.
8. The claimants further aver that on August 29, 2015, they went to work only to find the premises locked by security guards.
9. The claimants state that on August 31, 2015, three (3) notices signed by the site manager, were placed on the site gate, stating that all workers who did not agree with the deductions would be summarily dismissed.
10. The claimants reported the matter to the labour office on September 2, 2015 and a labour officer by the name Robert Ngugi wrote to the respondent asking for computation of the claimants' dues.
11. The labour officer convened a meeting between the respondent's site manager & project manager and five (5) representatives of the claimants.
12. On September 10, 2015, the claimants were paid for leave days for the term served only.
13. The claimants now seek compensation for unlawful and unfair termination of employment as well as terminal dues being notice pay, leave pay and severance pay.

The Respondent's Case

14. In its statement of response dated July 22, 2016 and filed in court on July 25, 2016, the respondent states that the claimants' employment was lawfully terminated.
15. The respondent adds that the claimants were paid all their terminal dues.
16. the respondent therefore denies the claimants' entire claim.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the termination of the claimants' employment was lawful and fair;
 - b. Whether the claimants are entitled to the remedies sought.

The Termination

18. From the parties' pleadings, the fact that the claimants' employment was terminated is not a contested issue. What is in dispute is the legality of the termination. On their part, the claimants claim that they were locked out of the work place after registering their grievance regarding deduction of their salaries on account of NHIF and NSSF.
19. Section 45 of the *Employment Act* provides as follows:



45. (1)
No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove-
- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason -
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - iii. that the employment was terminated in accordance with fair procedure.
20. In the final submissions filed on behalf of the claimants, reference was made to the decision in Walter Ogal Anuro v Teachers Service Commission [2013] eKLR where this court stated the following:
- “For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”
21. The respondent did not bother to explain to the court the circumstances under which the claimants' employment was terminated. Indeed, all the respondent states in its statement of response, is that the claimants' employment was lawfully terminated.
22. I therefore find and hold that the respondent has failed to establish a valid reason for terminating the claimants' employment as required under section 43 of the Employment Act. Further, there was no evidence that the respondent complied with the procedural fairness dictates set by section 41 of the Act.
23. For the foregoing reason, the inescapable conclusion is that the termination of the claimants' employment was substantively and procedurally unfair and the claimants are entitled to compensation.

Remedies

24. In light of these findings, I award each claimant three (3) months' salary in compensation. In arriving at this award, I have taken into account, the claimants' length of service as well as the respondent's unlawful conduct in executing the termination.
25. I further award each claimant one (1) month's salary *in lieu* of notice.
26. No basis was laid for the claim for severance pay which therefore fails and is dismissed.
27. The 1st claimant, Ezekiel Mugeru Mudonyi testified that the claimants were paid for days worked and leave days. These claims are therefore also without basis and are disallowed.
28. In the end, I enter judgment in favour of each claimant in the equivalent of three (3) months' pay plus one (1) month's pay *in lieu* of notice, both based on the applicable pay at the time of termination. The Nairobi County Labour Officer is directed to tabulate the specific sums payable to each claimant and file a report in this court within the next sixty (60) days from the date of this judgment.
29. I award the costs of this case to the claimants.
30. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 26TH DAY OF MAY 2022



LINNET NDOLO

JUDGE

Appearance:

Mr. Onyango h/b for Miss Ng'etich for the claimants

No appearance for the Respondent

