



REPUBLIC OF KENYA



KENYA LAW
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**Musungu v Human Capital Proactive Consultants Limited (Cause
1604 of 2016) [2022] KEELRC 1169 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1169 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1604 OF 2016
MN NDUMA, J
MAY 26, 2022**

BETWEEN

MOSES SALANO MUSUNGU CLAIMANT

AND

HUMAN CAPITAL PROACTIVE CONSULTANTS LIMITED RESPONDENT

JUDGMENT

1. The suit was commenced vide a Statement of Claim on 12th August, 2016 by the Claimant, seeking the following reliefs:-
 - (a) One month salary in lieu of notice – Kshs 18,500
 - (b) Unexpired term of contract being 7 months – Kshs 129,500.
 - (c) Unpaid 10 leave days – Kshs 7,400 and
 - (d) Unpaid 6 off days – Kshs 8,880.
2. The claim is supported by a witness statement, verifying affidavit and list of documents.
3. The respondent despite service of summons to enter appearance and Statement of Claim did not enter appearance nor file a Statement of defence. The suit is wholly undefended therefore.
4. The claimant (C.W.1) testified in support of the claim and stated that he was employed as a shop attendant and was paid Kshs 18,500 per month. The claimant adopted the witness statement filed on August 16, 2017 as his evidence in Chief and produced the list of documents dated August 18, 2016 as exhibits '1' to '4'.
5. C.W.1 testified that he discharged his duties diligently and produced his payslip for September and December, 2015.



6. The claimant produced Employment contract dated 11th August, 2014, which took effect on August 3, 2014 and was to expire on 12th August, 2015.
7. The claimant was entitled to 21 working days, annual leave and to one month termination notice.
8. That in February, 2016, the respondent verbally terminated the employment of the claimant for no reason and without notice. That the termination was wrongful and unfair. That the claimant was not paid in lieu of notice nor was he paid any severance allowance.
9. The claimant prays to be awarded as set out in the statement of claim.
10. The claimant has proved on a balance of probability that he was employed by the respondent on a one year contract and that his employment was unlawfully and unfairly terminated in February, 2016 after serving a period of sixteen (16) months. The written contract had already expired on August 12, 2015 but claimant continued working on same terms and conditions without any written renewal of contract.
11. The Court finds that the claimant had converted to an employee on permanent protected terms under the Employment Act, 2007. The employment of the claimant could only be terminated for a valid reason following a fair procedure as provided under Sections 36, 41, 43 and 45 of the Employment Act.
12. The respondent did not adhere to the law in terminating the employment of the claimant. The termination was therefore unlawful and unfair and the claimant is entitled to compensation in terms of Section 49(1) (c) and (4) of the Act.
13. The Court finds that the claimant is entitled to payment of the claimed terminal benefits as follows:-
 - (a) Kshs 18,500 in lieu of one month notice.
 - (b) Kshs 7,400 in lieu of 10 days untaken leave.
 - (c) Kshs 8,880 in lieu of 6 days off days.
14. With respect to compensation, the claimant had served the respondent diligently for a period of 16 months. He did not contribute to the termination. He suffered loss and damage as a result of sudden loss of employment without notice. He was not paid any terminal benefits or compensation upon termination. The Court refers to Employment and Labour Relations Court Cause No. 863 of 2015 - Teresa Carlo Omondi –vs- Transparency International Kenya in which Rika, J. awarded the claimant the equivalent of 12 months' salary in compensation for unlawful termination.
15. Given The circumstances of this case, the Court awards the Claimant the equivalent of four (4) months' salary in compensation for the unlawful and unfair termination of employment in the sum of Kshs (18,500 x 4) = 74,000.
16. In the final analysis, Judgment is entered in favour of the claimant as against the respondent as follows:-
 - (a) Kshs 74,000 in compensation.
 - (b) Kshs 34,740 terminal benefits.
Total amount:Kshs 108,740.
 - (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. Waiganjo for Claimant

Ekale – Court Assistant

