



**Mariera v Pramukh Cash & Carry Ltd (Cause 65 of 2018)  
[2022] KEELRC 3974 (KLR) (25 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3974 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 65 OF 2018**

**S RADIDO, J**

**MAY 25, 2022**

**BETWEEN**

**DICKSON OMWANSA MARIERA ..... CLAIMANT**

**AND**

**PRAMUKH CASH & CARRY LTD ..... RESPONDENT**

**JUDGMENT**

1. Dickson Omwansa Mariera (the Claimant) sued Pramukh Cash & Carry Ltd (the Respondent) on 21 May 2018, and he sought the following remedies:
  - (1) Respondent to pay the Claimant's terminal dues as per the Memorandum of Claim.
  - (2) A certificate of service.
  - (3) Any other legal claim deem fit.
  - (4) Cost of the suit.
2. The Respondent filed a Response on 25 April 2018, and the Claimant filed a Reply to the Response on 10 May 2018.
3. The parties filed Agreed Issues on 16 August 2021, and the Cause was heard on 14 March 2022.
4. Both the Claimant and Respondent filed their submissions on 11 April 2022.
5. The Court has considered the pleadings, evidence, and submissions.

**Unfair termination of employment**

6. Although the Claimant did not outrightly seek any remedy in relation to the head of the claim, the parties led evidence on the issue and submitted on it.



7. Therefore, the Court will deem the Issue as having been left to its determination.
8. By dint of section 47(5) of the *Employment Act*, 2007, the employee should prove at the first instance that an unfair termination of employment occurred before the employer is called upon to justify the decision.
9. The Claimant testified that after making a delivery of sugar on 2 February 2017, he left for home while the offloading was going on because he was not feeling well and that while at home, he got a call from his loader informing him that some of the delivered bags were underweight.
10. According to the Claimant, when he reported to work the next day, a Manager informed him that his services were no longer required, and that the Manager requested his brother to tell him not to report back to work until he was called, but since the call did not come, he followed up on 25 May 2017 and was informed his services were no longer required.
11. The Respondent called 3 witnesses, including the loader who worked with the Claimant.
12. The Respondent's case was that the Claimant abandoned work after it was realised that he had delivered underweight bags of sugar (left lorry keys in the ignition).
13. The loader informed the Court that on the material day, the Claimant called him and instructed him to wait for him after collecting the sugar from Kibos Sugar Factory and that upon delivery at the Respondent's premises, a shortage was detected, and the police were called.
14. A Manager with the Respondent testified that he sent the Claimant to collect sugar from Kibos Sugar Factory and during offloading, a shortage was found, and police were involved. Attempts to reach the Claimant were futile as he had switched off his phone. It was established that he had moved house.
15. The Respondent also produced a report from the County Labour Officer, which established that the Claimant had absented himself from work without lawful cause or permission.
16. The Claimant did not reveal in the filed witness statement the name of the Manager who allegedly informed him that his services were no longer required.
17. Even during oral testimony, the Claimant did not disclose the name of the Manager who terminated his employment.
18. The Court finds the Claimant's behaviour during the collection and delivery of the sugar was bizarre. He instructed his loader to wait for him on the way after he had collected the sugar. He gave no explanation for giving such instructions to the loader.
19. Considering the above and the failure by the Claimant to disclose the particulars of the Manager who informed him of the termination of his employment, and report from the County Labour Officer, the Court is inclined to agree with the Respondent that the Claimant's employment was not terminated. He went underground upon the realisation that the Police were on his case.
20. Compensation and pay in lieu of notice are therefore not available to the Claimant.

### **Breach of contract**

### **Underpayment**

21. The Claimant did not lead any evidence to prove this head of the claim (such as applicable Regulation of Wages Orders).



### **Unpaid leave allowance**

22. The Claimant did not prove that his contract provided for a leave allowance.

### **Service pay**

23. The Claimant produced records from the National Social Security Fund showing he contributed to the Fund.

24. By virtue of section 35(5) & (6) of the *Employment Act*, 2007, he is not eligible for service pay.

### **Certificate of Service**

25. certificate of service is a statutory entitlement, and the Respondent should issue one to the Claimant.

### **Conclusion and Orders**

26. Save for a Certificate of Service, the Court finds no merit in the Cause, and it is dismissed with costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 25<sup>TH</sup> DAY OF MAY 2022.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Nyanga & Co. Advocates

For Respondent Amos O. Oyuko & Co. Advocates

Court Assistant Chrispo Aura

