



**Tonui v Tinderet Tea Estate (Cause 231 of 2018)  
[2022] KEELRC 1748 (KLR) (20 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1748 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 231 OF 2018  
NJ ABUODHA, J  
MAY 20, 2022**

**BETWEEN**

**SAMSON TONUJ ..... CLAIMANT**

**AND**

**TINDERET TEA ESTATE ..... DEFENDANT**

**JUDGMENT**

1. The claimant averred that he was employed by the respondent on a permanent basis in 1994. On 18<sup>th</sup> February, 2014 while he was in the course of his employment he was involved in an industrial accident when the power saw he was operating exploded and burnt him severely.
2. As a result of the said accident, the claimant alleged he was admitted in hospital and discharged on 10<sup>th</sup> April, 2014 and went back to his place of work with his sick off letter requiring him to be off duty for two months however, the general manager Mr. Charles Agui confiscated the said letter. Being aggrieved by the action of the general manager he issued through his advocate demand notice and sued the respondent for the injuries sustained. The claimant further alleged that he later went to the respondent to ask for his dues and was told by the general manager never to be seen within the company premises until he withdraws the suit he filed against the respondent.
3. On 24<sup>th</sup> April, 2014 the respondent stopped paying the claimant's salary and threatened to retain his benefits of 20 years he worked prompting his advocate to issue a demand letter. Through its advocate, the respondent responded stating that the claimant had never been dismissed without payment of his dues.
4. At the time of termination, the claimant was earning Ksh.10,379/= monthly and it was a term of his contract that he would serve on permanent and pensionable basis alongside other allowances, before termination the claimant was not issued with notice or payment in lieu and any notice if issued was



- skewed and delayed and calculated to avoid recourse to the claimant. The respondent further refused to issue the claimant with a certificate of service.
5. The claimant further alleged that upon being considered a persona non grata he was left with no choice but to resign without notice.
  6. The claimant therefore sought to be paid two months salary in lieu notice, service pay for twenty years, house allowance and 12 months salary as compensation for unfair termination of service.
  7. The respondent on its part pleaded that the claimant was not employed on permanent basis by the respondent. The respondent further denied the claimant was injured and all the allegations put forward were false and without merit.
  8. According to the respondent the claimant absconded duty without permission since 21<sup>st</sup> May, 2014 and was issued with a notice to show cause letter. The respondent further averred that it was due to the claimant's absenteeism and failure to respond to the notice to show cause letter that he was summarily dismissed and was paid his salary and dues and the company never retained any benefits accrued.
  9. In his oral evidence the claimant reiterated that he was employed in 1994 and that he had a staff card and a contract to prove. On 18<sup>th</sup> February, 2014 at around 10.00am while at work operating a power saw machine it exploded and burnt him. He was taken to the staff clinic for first aid and later to Meteitei Sub County Hospital where he was admitted. The respondent never got involved thereafter. He was later referred to Moi Teaching and Referral Hospital where his family took care of his treatment and a medical report was prepared by the doctor. He later filed a personal injury claim against the respondent and was paid. He was later on asked by the respondent to stay away from work because he took the respondent to court. He instructed his advocate to issue the demand letter and the respondent replied to its advocate denying the claimant was terminated. He was however not receiving his salary. The claimant denied deserting duties and that the general manager told him to wait until he gets called to work but was never called. He was in hospital and the respondent knew about it. He denied receiving the show cause letter and further that he received no correspondence from the respondent. He used to go to the respondent's premises to inquire about his job but got no response.
  10. In cross examination he stated that he was injured on 18<sup>th</sup> February, 2014 and that he had worked for the respondent for a long time. If one was sick, they were required to report to the company's clinic. He however stated that he did not report daily to the clinic because he was admitted and that he was discharged on 10<sup>th</sup> April, 2014 and used to report to the clinic daily until 21<sup>st</sup> May, 2014 when he was told not to report until he was called. He was not issued with a letter telling him not to report.
  11. It was his evidence that he never worked after his injuries and that he never received the show cause letter and further that he was not given any notice of termination but was terminated in 2016 and that he last worked in 2016. The demand letter of 18<sup>th</sup> June, 2016 sought to know the reasons for termination. Concerning his terms of appointment he stated he was appointed on permanent terms but did not have the letter of appointment and further that he never used to stay in the respondent's estate.
  12. The respondent's witness Mr. Koech Kipsang Robert stated that he worked for the respondent as the Head of Security and Human Resource. He recorded a statement on 19<sup>th</sup> November, 2020 which he adopted as his evidence in chief.
  13. According to him, if a worker was injured, he was taken to the staff clinic for first aid where one was assessed and required to report daily. The claimant reported until 21<sup>st</sup> May, 2014. He had payslips showing the claimant was on sick off. He also stated he had labour records showing how times the claimant reported to the clinic. When the claimant stopped reporting he was issued with a show cause



- letter. The letter was served at the respondent's estate where the claimant resided but he refused to sign for it. The respondent therefore issued the claimant with a summary dismissal letter. The dismissal letter was also served on the claimant at the respondent's estate where the claimant resided. He also refused to sign for the same.
14. According to Mr. Kipsang it was the respondent's policy to house all its workers. It is also requirement in the CBA. The claimant was paid salary until 21<sup>st</sup> May, 2014.
  15. In cross – examination he admitted he was aware the claimant was injured and that he received severe burns. The claimant was discharged on 10<sup>th</sup> April, 2014 and used to go for dressing at the clinic to be reviewed every two months. According to him, a person was supposed to report to the staff clinic for management upon discharge. The claimant was further supposed to report to the clinic to be issued with paid sick-leave.
  16. It was his evidence that he was the one who took the letters to the claimant but he refused to sign for them.
  17. It was common ground that the claimant was injured in the course of his duties and hospitalized for his injuries. He was discharged on 10<sup>th</sup> April and thereafter required to report to the respondent's staff clinic where he continued to receive dressing and also recorded for paid sick-off as per the respondents policy.
  18. According to the respondent the claimant continued to report until 21<sup>st</sup> May, 2014 when stopped without any reason or notice to the respondent.
  19. From the record, the respondent subsequently issued the claimant with a show cause letter dated 29<sup>th</sup> May, 2014 requiring the claimant to respond by 3<sup>rd</sup> June, 2014. According to the respondent, the claimant failed to respond to the show cause letters and on 4<sup>th</sup> June, 2014 the respondents summarily dismissed the claimant for unauthorized absenteeism from work.
  20. The claimant denied receiving these letters. That is to say the show cause letter and the summary dismissal letter. According to the respondent however, these letters were served on the claimant at his residence within the Tea Estate where the respondent's staff were all housed. The claimant, according to the respondent, however refused to sign for or acknowledge receipt of these letters.
  21. It was not clear either from the claimant or respondent what transpired that caused the claimant to stop reporting to work yet he was as alleged to be staying at the housing provided by the respondent. Further, whereas the respondent claimed that the claimant refused to sign for the show cause letter and summary dismissal letter, the respondent did not offer any evidence on what steps it took to ensure the claimant received the letters. As an employer, the respondent keeps employee records hence it could have alternatively forwarded the letter to the claimant's last known address. Further the claimant was a unionisable member but no evidence was produced informing the union of the fact of refusal by the claimant to receive and respond to the show cause letter and receive the summary dismissal letter.
  22. Regarding the demand letters issued by either counsel. It is not clear when the parties herein separated. Whereas the claimant's counsel claimed in his demand letter that his client was dismissed without a letter, one wonders how his client knew he was dismissed if there was no letter. What the Court surmises is that the claimant knew he was dismissed when the respondent stopped paying his salary on 21<sup>st</sup> May, 2014.
  23. From the respondent Counsel, it is also not clear how the claimant was made aware of the termination of his employment.



24. Whereas the respondent claimed that the claimant was issued with notice to show and termination letter but refused to sign for them, no such allegation was made by counsel in his response to the demand letter issued by the claimant's counsel. What he did was to deny the allegations and express their shock over them.
25. The claimant had already instructed Counsel by the time he claimed to have been dismissed without a termination letter. One therefore wonders why Counsel did not take up the issue of dismissal without a letter immediately it took place on 21<sup>st</sup> May, 2014 only to raise the same almost a month later.
26. The burden of proof that an unfair termination has occurred is on the claimant while the burden of proof of reasons or justification for termination is on the employer. Further, the employer must also show that in terminating the employee, a fair procedure was followed.
27. In this particular case, the claimant has not made a good account of his whereabouts from 21<sup>st</sup> May, 2014 when he stopped reporting to the clinic and any attempt made to resume work which was refused by the respondent.
28. The respondent on the other hand did not sufficiently show that it followed a fair procedure while terminating the claimant's service.
29. The claim for house allowance will be rejected because the respondent provided housing for all its employees including the claimant. Nothing was produced to show he was housed away from the respondent's staff quarters and that he was paying rent himself. The claim for service with also be disallowed because the claimant from his payslips produced by the respondent, was registered with NSSF.
30. In conclusion the Court will award the claimant three month's salary as compensation for unprocedural termination. That is to say the sum of Ksh.31,137/=. The claimant shall further have costs of the suit.
31. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 20TH DAY OF MAY, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

