



**Pascal Otieno v JRS Group Limited (Cause 199 of 2018)
[2022] KEELRC 1737 (KLR) (18 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1737 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 199 OF 2018**

**S RADIDO, J
MAY 18, 2022**

BETWEEN

PASCAL OTIENO CLAIMANT

AND

JRS GROUP LIMITED RESPONDENT

JUDGMENT

1. This cause was heard on 22 February 2022. Pascal Otieno (the claimant) testified while JRS Group Ltd (the respondent) did not call any witness.
2. The claimant filed his submissions on 11 March 2022, and the respondent's submissions were filed on 11 May 2022 (should have been filed and served by 22 April 2022).
3. The court has considered the pleadings, evidence, and submissions.

Whether The Cause Of Action Was Compromised/discharge Voucher?

4. The claimant signed a discharge voucher on 22 March 2017 in consideration of being paid Kshs 7,200/- releasing the respondent from any further claims arising from his contract of employment.
5. During cross-examination, the claimant asserted that he was coerced to sign the voucher.
6. The respondent did not formally introduce the discharge voucher into evidence, and the court finds that no weight should be given to it in respect to the head of claims for unfair termination of employment.
7. The court will however deem the discharge as applying to the claims for breach of contract (underpayments, house allowance, overtime and accrued leave), being claims which are alleged to have recurred on a regular basis.



8. In declining these heads of the claim, the court also notes that some of the claims stretch over 3-years, and that the claimant did not place evidence before the court on the prescribed minimum wages for 2013 to 2015.

Unfair Termination of Employment

9. The claimant testified that he was employed by the respondent as a security guard in September 2013, and that on 12 February 2016, an Assistant Manager terminated his employment when he declined to pay a bribe as demanded by the manager to be allowed back to work after sick-off.
10. The claimant testified that he was not allowed an opportunity to be heard before the termination of employment.
11. The respondent's pleaded case was that the claimant deserted duties while being investigated for gross misconduct.
12. The respondent did not place any evidence before the court to support the contention that the claimant deserted work or repudiated the contract by failing to appear at work.
13. In consideration of the claimant's uncontroverted testimony and sections 35(1)(c) and 41 of the Employment Act, 2007, the court concludes that the respondent's Assistant Manager unfairly terminated the contract.

Compensation

14. The claimant served the respondent for about 3-years and in light of the length of service, the court is of the view that the equivalent of 3-months gross wages as compensation would be appropriate (prescribed minimum wage for a security guard inclusive of house allowance in 2016 was Kshs 12,597/-).

Pay In Lieu of Notice

15. Since no evidence was placed before the court that a written notice of termination of employment was given to the claimant, the court will allow 1-month salary *in lieu* of notice (prescribed basic wage in 2016 was Kshs 10,954/-).

Certificate of Service

16. A certificate of service is a statutory entitlement and the respondent should issue one to the claimant within 21-days.

Conclusion and Orders

17. The court finds and declares that the respondent unfairly terminated the claimant's employment.
18. The claimant is awarded:
- i. Compensation Kshs 37,791/-
 - ii. Pay *in lieu* of notice Kshs 10,954/-
- Total Kshs 48,745/-
19. The award to attract interest at court rates from date of judgment until full payment.
20. The respondent to issue a certificate of service within 21-days.



21. claimant to have costs.

**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS
18TH DAY OF MAY 2022.**

RADIDO STEPHEN, MCIArb

JUDGE

Appearances

For Claimant Owiti Mwalo Odhiambo & Associate Advocates

For respondent Juliet Dima & Co. Advocates

Court Assistant Chrispo Aura

