



**Webuye v Ahinda t/a Network Multi-Enterprise (Cause 203 of 2016)
[2022] KEELRC 1736 (KLR) (11 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1736 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 203 OF 2016**

**S RADIDO, J
MAY 11, 2022**

BETWEEN

ROBERT MUKUNGA WEBUYE CLAIMANT

AND

**BENJAMIN O. AHINDA T/A NETWORK MULTI-
ENTERPRISE RESPONDENT**

JUDGMENT

1. Robert Mukunga Webuye (the claimant), acting in person, sued Benjamin Ahinda (the respondent), alleging unfair termination of employment and breach of contract.
2. The respondent filed a response on 31 August 2016, and the cause was heard on February 25, 2020 and February 7, 2022. The claimant and respondent testified.
3. The claimant filed his submissions on March 16, 2022 (the respondent's submissions were not on record by the agreed timeline of April 17, 2022).
4. The court has considered the pleadings, evidence, and submissions.

Nature of Employment

5. The claimant asserted that he served the respondent from March 15, 2007 to October 1, 2014 as a bookbinder.
6. The respondent, however, contended that the claimant was a casual employee.
7. Considering that the claimant served the respondent for over 7-years and the definition of casual employee in section 2 and section 37 of the *Employment Act, 2007*, the court finds that the claimant was not a casual employee but an employee on contract.



Unfair Termination of Employment

8. The claimant testified that the respondent terminated his employment on October 1, 2014 after asking for outstanding 3-months' salary arrears (July, August, and September 2014). He reported to the labour officer, Kakamega, on October 14, 2014.
9. The respondent maintained that the claimant absconded from work.
10. The court has inconsistent oral testimonies as to how the separation occurred.
11. The failure to report to work is misconduct that merits summary dismissal. The respondent did not disclose what disciplinary action he took if indeed the claimant failed to report to work.
12. The claimant reported to the labour office within weeks of the alleged termination, and he produced a copy of a demand written by the labour officer to the respondent.
13. In the court's view, the demand from the labour officer is corroborative of the claimant's oral testimony as to the circumstances of separation.
14. Section 35(1) of the *Employment Act* requires the employer to issue a written notice of termination of employment. In contrast, section 41 of the *Act* places a burden on the employer to grant the employee an opportunity to make representations.
15. The respondent did not demonstrate that he gave the written notice or allowed the claimant to make representations.
16. The court finds that the respondent unfairly terminated the claimant's employment when he demanded his outstanding salary arrears.

Compensation

17. The claimant served the respondent for 7-years, and he was earning a monthly wage of Kshs 5,000/-.
18. In consideration of the length of service, the court is of the view that the equivalent of 7-months wages as compensation would be appropriate.

Pay In Lieu Of Notice

19. Since the respondent did not give the claimant written notice of termination, the court will allow the equivalent of 1-month pay *in lieu* of notice.

Breach of contract

Salary arrears

20. Section 20 of the *Employment Act*, 2007 requires an employer to maintain and issue the employee with pay records. The respondent did not present the records to show that the claimant was paid his wages for July, August, and September 2014, and the court will allow this head of the claim in the sum of Kshs 15,000/-.

Contributions to the National Social Security Fund

21. The claimant demanded Kshs 35,200/- on account of contributions towards the National Social Security Fund.



22. The claimant did not prove that he was registered with the fund. The Act establishing the fund has provisions for dealing with non-registration or unremitted contributions, and the claimant should utilise the said provisions.

Gratuity

23. The claimant did not place a contractual, evidential, or other legal foundation for this head of the claim before the court and relief is declined.

Accrued Leave

24. The claimant did not provide an evidential basis for this claim. Section 28(4) of the [Employment Act, 2007](#) also circumscribes how many leave days can be carried forward.

25. The court deems the claimant as having forfeited the leave days, since he did not lead any evidence regarding the leave.

Conclusion and Orders

26. The court finds that the respondent unfairly terminated the claimant's employment and further that the respondent was in breach of contract.

27. The claimant is awarded:

- (i) Compensation Kshs 35,000/-
 - (ii) Pay *in lieu* of notice Kshs 5,000/-
 - (iii) Salary arrears Kshs 15,000/-
- Total Kshs 55,000/-

28. Each party to bear own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 11TH DAY OF MAY 2022.

Radido Stephen, MCI Arb

Judge

Appearances

claimant in person

For respondent Osango & Co. Advocates

Court Assistant Chrispo Aura

