



**Amolo v Ken Knit (K) Ltd (Cause 68 of 2017)
[2022] KEELRC 1156 (KLR) (9 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1156 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 68 OF 2017
NJ ABUODHA, J
MAY 9, 2022**

BETWEEN

MICHAEL OMBOKO AMOLO CLAIMANT

AND

KEN KNIT (K) LTD DEFENDANT

JUDGMENT

1. By amended memorandum of claim filed on 16th February, 2020 the claimant alleged that he was employed by the respondent on 28th January, 1994 as a machine operator and worked for the respondent for 18 years.
2. On 22nd March, 2012 he alleged the respondent terminated his service unlawfully without requisite notice. At the time of termination, his salary was Ksh.9,335/= . The claimant further alleged that upon termination the respondent refused and or ignored to pay his terminal dues which he sought an order of the Court that they be paid.
3. The respondent on its part pleaded that it was not true that the claimant was employed on term contract on 24th May, 1994 and that he worked diligently and faithfully.
4. According to the respondent, it never rushed to terminate the claimant's service but rather the claimant was involved in a series of misconduct which the respondent tolerated for a long time hoping the claimant would improve.
5. According to the respondent, the claimant received several warning letters and was given ample time to improve on his attendance but failed to honour his contractual obligation. In the warning letters it was clearly put to the claimant that unless he improved, the respondent contemplated taking serious disciplinary action against him and more particularly the termination of his service and more particularly between 18th and 22nd March, 2012 and the claimant and signed an agreement to that effect.



6. At the oral hearing the claimant stated that he was in 2012 told his service was no longer needed. He adopted his witness statement recorded on 3th April, 2014 as his evidence in chief.
7. It was his evidence that he worked as a machine operator and that his monthly salary was Ksh.8,000/= he stated that he was not paid his terminal dues upon termination.
8. Concerning absence from work he stated that whenever he was to be away, he sought permission and that he used to perform his work properly.
9. In cross-examination the claimant stated he was dismissed without reason. He denied missing work and insisted he used to be keen on his work. He however admitted receiving the warning letters produced by the respondent in their bundle of documents.
10. The claimant insisted he used to seek permission to be away from work. He further stated he had no sick sheet to show he was away from work due to sickness.
11. Upon termination he said he was only paid for the days worked. It was Ksh.6,006/=.
12. Under section 47(5) of the *employment Act* the burden of proof that an unfair termination or unlawful dismissal has taken place in on the employee while the burden of justifying reason for dismissal and or termination is on the employer.
13. The claimant in his statement of claim alleged the respondent in rush dismissed him without assigning any reason. The respondent on its part denied this accusation and stated that it was justified in dismissing the claimant in that the claimant on several occasions absented himself from work without permission and further that the claimant was not keen in the performance of his work. For both offences the claimant was warned more than once. The respondent produced the several warning letters the claimant was issued with culminating with the termination letter. The claimant admitted receiving these warning letters but still insisted that whenever he was to be away, he sought and obtained permission. He however did not produce any evidence of a single letter or memorandum authorizing him to be away.
14. As observed earlier, section 47(5) of the *Employment Act* places the burden of proof that an unfair termination or unlawful dismissal has occurred on the employee (the claimant herein). The claimant alleged that the respondent rushed and dismissed him without any reason however the evidence presented by the respondent showed the contrary.
15. The claimant therefore failed to discharge the burden cast upon him by law with the consequence that the claim is hereby dismissed with costs.
16. It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MAY, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

