



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Onyirwoth v Tusker Football Club (Cause 1450 of 2016)  
[2022] KEELRC 4029 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4029 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1450 OF 2016**

**M MBARŪ, J**

**JUNE 30, 2022**

**BETWEEN**

**DENIEL ONYIRWOTH ..... CLAIMANT**

**AND**

**CHAIRMAN, TREASURER, SECRETARY TUSKER FOOTBALL  
CLUB ..... RESPONDENT**

**JUDGMENT**

1. From January 1, 2015 the claimant was employed by the respondent as a professional football player. He worked for 3 years until December 31, 2017 at a wage of ksh 65,000 per month.
2. On May 1, 2016 the respondents terminated the employment contract without regard to the employment terms and after the claimant had been injured while in the course of his employment. at the time the claimant had a year and a half of his contract incomplete a total of 19 months and despite the termination, the respondent failed to pay the term contract which denied the claimant income and was unable to join any other club or be able to sustain his livelihood.
3. The claimant is seeking payment of the following dues;
  - a) 2 months' notice pay ksh 130,000;
  - b) 19 month salary for incomplete contract Ksh 1,235,000;
  - c) Severance pay of Ksh 117,000;
  - d) Service pay Ksh 97,000;
  - e) Certificate of service; and
  - f) Costs of the suit.



4. The claimant testified in support of his case that he was employed by the respondent on a 3 years contract term ending December 31, 2017 but on November 1, 2015 the respondent sent him a letter terminating his employment and which letter was not served on him since he remained in the service of the respondent until June 30, 2016. He had fallen ill while on duty and the respondent failed to address and instead ended his contract 19 months before end date. such was unlawful and the claims made should issue.

### **Response**

5. The response contain mere denials and that the claimant was issued with a release letter dated November 1, 2015 and certificate of service are not issued by football clubs as per FIFA regulations on the status and transfer of players.
6. Employment terminated through the due process followed by clubs and the claimant is not owed any obligations and the suit should be dismissed with costs.
7. No evidence was called as the respondent opted to remain absent at the hearing.
8. No employment records were filed by the respondent as the employer.
9. The claimant filed written submissions.

### **Determination**

10. In an agreement dated January 1, 2015 the respondents employed the claimant as a football player and under clause 2 it was agreed that;
  2. employment
11. The club shall employ the player and the player shall serve the club in the capacity of a football player in football matches, competitions and tournaments in which the club is a participant upon the terms and subject to the conditions herein contained.
12. Clause 6(a)of the agreement provided for a monthly salary of Ksh 55,000, Ksh 10,000 house allowances, and game bonuses for local matches and the applicable rates as fixed by CAF and FIFA for international matches.
13. The claimant is defined as an employee of the respondent and paid a monthly wage. his place of domicile for the agreement undertaking was with the respondent, a Kenyan organisation.
14. In employment and labour relations, the claims with regard to the claimant's rights thereof are to be addressed by the court and not FIFA or any other body.
15. The response is that on November 1, 2015 the respondent issued the claimant a letter of release and a certificate of service is not due. in employment and labour relations and the *Employment Act, 2007* (the Act) governing the employment of the claimant, the due process of section 35, 41, 43 and 47(5) of the Act applied with regard to issuance of notice before employment terminated, a hearing of the claimant before employment terminated for the stated reasons and the respondent ought to have had a valid and justified reasons leading to termination of employment.
16. The rationale is that under to section 47(5) of the Act the law requires the employer to justify the grounds of termination while under section 43 of the Act the employer has the burden prove the reasons for termination, section 45(2)(a) and (b) of the Act requires an employer to prove that the reasons for termination were valid and fair reasons, and ultimately section 41(2) of the Act



- obligates the employer to hear and consider any representations an employee may wish to make where termination of summary dismissal is envisaged for fundamental breach of contractual obligation or gross misconduct.
17. The respondent has failed in its legal duty and the termination of the claimant's employment lacked any justification and the due process of the law was not followed. No effort is taken to demonstrate fair procedure or the reason(s) leading to termination of employment.
  18. Where the respondent have relied on the incapacity provisions of the agreement, which is not the case here, the due process of the law required such matter be addressed procedurally and within the applicable law. sections 30 and 34 of the Act applied with regard to the claimant where he got sick while on duty.
  19. There was unfair termination of employment contrary to section 41 and 45 of the Act.
  20. The claimant is entitled to notice pay and compensation.
  21. The claimant is seeking two months' notice pay and clause 24 of the agreement allowed for two months' notice and pay *in lieu* thereof. The claimant is entitled to two months' notice pay all at ksh 130,000.
  22. The claimant is seeking payment of 19 months of his unnerved term contract.
  23. The claimant's case was that he was issued with letter dated November 1, 2015 but he continued in service with the respondent until June 30, 2016. There was no proper account of what the claimant was doing from November 1, 2015 to June 30, 2016 so as to claim that his contract was not served for a term of 19 months while such contract was due to end on December 31, 2017.
  24. Under the provisions of section 45 and 49 of the Act, the court finds a compensation of 2 months salary as appropriate compensation for the claimant all at Ksh 130,000.
  25. The claimant is seeking severance pay. Such remedy is not due in a case where employment terminated for other cause other than through redundancy.
  26. The claimant is seeking service pay and which pay is due under the provisions of section 35(5) and (6) of the Act where statutory dues are not remitted to NSSF and NHIF. The claimant has defined himself as a resident of Uganda and there is nothing to demonstrate that he was registered with the respective statutory bodies so as to enjoy in service pay.
  27. Under clause 7 of the agreement, the claimant was entitled to benefit under the medical and life insurance schemes of the respondent and hence the respondent is covered pursuant to the provisions of section 35(6)(c) of the Act.
  28. With regard to issuance of a certificate of service, such is due at the end of employment and a letter of release is not what is contemplated under section 51 of the Act. the respondent shall issue the claimant with a certificate of service for the duration of his service.
  29. Accordingly, judgement is hereby entered for the claimant against the respondent in the following terms;
    - a. Compensation ksh 130,000;
    - b. Notice pay ksh 130,000;
    - c. Certificate of service shall issue pursuant to the provisions of section 51 of the Act;
    - d. Costs of the suit.



**DELIVERED IN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant:

..... and .....

