



**Luketelo v JRS Systems Ltd (Cause 79 of 2018)
[2022] KEELRC 1436 (KLR) (22 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1436 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 79 OF 2018**

**S RADIDO, J
JUNE 22, 2022**

BETWEEN

OSCAR WEKESA LUKETELO CLAIMANT

AND

JRS SYSTEMS LTD RESPONDENT

JUDGMENT

1. The court is confronted with the questions:
 - i. Whether the termination of the claimant's employment was unfair?
 - ii. Whether the claimant was underpaid?
 - iii. Appropriate remedies.
2. The Cause was heard on 21 February 2022 and 31 March 2022. Oscar Wekesa Luketelo (the claimant) and a General Manager with JRS Group Ltd (the respondent) testified.
3. The claimant filed his submissions on 30 May 2022, and the respondent on 10 June 2022.
4. The court has considered the pleadings, evidence, and submissions.

Respondent's correct name

5. The claimant named the respondent as JRS Systems Ltd. The documents filed by the claimant originated from an entity called JRS Group Ltd.
6. In the Memorandum of Appearance, the respondent named itself as JRS Group Ltd. In the Response, the respondent referred to itself as JRS System Ltd.
7. The documents produced by the respondent were on the logo of JRS Group Ltd.



8. Since the parties did not take any issue with the correct name of the respondent, the court will assume that the proper parties were before it.

Unfair termination of employment

9. On or around 24 December 2017, the claimant's in-charge found some persons who were not employees inside a work vehicle under the control of the claimant (the claimant was a Crew Commander). It was past midnight.
10. The respondent carried out investigations, and on 3 January 2018, the claimant was issued a warning and demoted. The claimant was also suspended for 4 days as part of the sanctions.
11. The narration of the events that followed the suspension was inconsistent.
12. The claimant testified that he reported back to work after suspension and returned his uniform on 2 January 2018, was told to resume work, but was called to the office on 8 January 2018, but could not and that when he eventually reported on 9 January 2018, he was informed that his services were no longer required.
13. On the other hand, the respondent's witness testified that upon conclusion of suspension, the claimant refused to go for refresher training and did not report back to work.
14. The claimant did not reveal the name of the person who called him on 8 January 2018. He did not equally disclose the name and designation of the person who told him that his services were no longer required on 9 January 2018.
15. Considering the respondent's testimony that the claimant did not report back to work after the suspension and the failure by the claimant to provide details of the person who instructed him not to resume work on 9 January 2018, the court finds that the claimant did not discharge the burden placed on him by section 47(5) of the *Employment Act, 2007*, to prove that an unfair termination of employment occurred.
16. The remedies for compensation for unfair termination of employment and pay in lieu of notice are thus not available to the claimant.

Underpayment of wages

17. Underpayment of wages can occur when the employer pays wages below the contractually agreed rates or below the prescribed minimum wages under the *Labour Institutions Act*.
18. The claimant did not plead the Regulation of Wages Order which applied to the sector the Respondent operated in at the material time.
19. He did not disclose the Order in the filed witness statement or during oral testimony (in the submissions, reference was made to Legal Notice No. 112 of 2015).
20. In the court's view, the Legal Notice was a matter of evidence which should have been introduced into evidence during the hearing.
21. Without such evidential or legal foundation, the court finds that this head of the claim was not proved.

Accrued leave

22. The claimant sought Kshs 22,660/- on account of accrued leave from 2015 to 2017.



23. The respondent did not produce the claimant's leave records, and in light of sections 10(3) and (7) and 28 of the Employment Act, 2007, the court will allow this head of the claim.

Service pay

24. The Claimant was a contributor to the National Social Security Fund and, by virtue of section 35(5) and (6) of the Employment Act, 2007, is not entitled to service pay.

Certificate of Service

25. A Certificate of Service is a statutory entitlement, and the respondent should issue one to the claimant within 21-days.

Conclusion and orders

26. The court finds and declares that the claimant's employment was not unfairly terminated.

27. However, the court finds a breach of contract and awards the claimant:

(i) Accrued leave Kshs 22,660/-

28. The respondent to issue a Certificate of Service within 21-days.

29. The claimant has succeeded only partially. He did not file submissions within the agreed timelines.

30. Each party to bear own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 22ND DAY OF JUNE 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Ben Aduol Nyanga & Co. Advocates

For Respondent Juliet Dima & Co. advocates

Court Assistant Chrispo Aura

