



REPUBLIC OF KENYA



KENYA LAW
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Bundeh v Network for Adolescent and Youth of Africa (Naya) (Cause 443 of 2017) [2022] KEELRC 1097 (KLR) (15 June 2022) (Judgment)

Neutral citation: [2022] KEELRC 1097 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 443 OF 2017
S RADIDO, J
JUNE 15, 2022

BETWEEN

CLAUDIUS CHADWICK OYARE BUNDEH CLAIMANT

AND

**NETWORK FOR ADOLESCENT AND YOUTH OF AFRICA
(NAYA) RESPONDENT**

JUDGMENT

1. Claudius Chadwick Oyare Bundeh (the Claimant) sued the Network for Adolescent and Youth of Africa (the Respondent), alleging unfair termination of employment and breach of contract.
2. The Respondent filed a Response on 28 February 2018, which prompted the Claimant to file a Reply on 13 March 2018.
3. The Cause was heard on 19 May 2022. Despite the service of hearing notice, the Respondent did not appear for the hearing.

Unfair termination of employment

4. The Claimant was employed under an oral contract by the Respondent in 2012.
5. On or around 24 March 2017, the Respondent sent the Claimant a written contract and requested him to sign it. The Claimant declined to sign the contract.
6. The Claimant and Respondent's Managers met on 8 July 2017 and resolved to re-issue the contract. The Respondent re-issued the contract on 14 July 2017, and the Claimant again declined to sign the contract. On 16 August 2017, the Claimant wrote to the Respondent explaining why he could not sign the contract.



7. The Respondent then notified the Claimant through a letter dated 17 August 2017 of the termination of the services. The Claimant moved to Court.
8. By the date the Respondent was informing the Claimant of the termination of the contract, he was an at-will employee, month to month from January 2016, because he was paid by the month.
9. The at-will employment was still subject to the protections assured employees by sections 35(1)(c), 41, 43 and 45 of the Employment Act, 2007 (in cases of redundancy, section 40 of the Act has outlined other protections).
10. The Respondent did not give the written notice envisaged by section 35(1)(c) of the Employment Act, 2007 but offered the Claimant the equivalent of a 1-month salary in lieu of notice.
11. Section 41 of the Act contemplates unfair termination of employment as being based on the grounds of misconduct, poor performance or physical incapacity.
12. The separation herein was not founded on any of the grounds. It was also not a case of redundancy.
13. The Court, therefore, finds that this was not a case of unfair termination of employment.
14. The separation was on account of failure to agree on the terms of a written contract.
15. The Respondent offered the Claimant terminal dues, including pay in lieu of notice. If the Claimant did not collect the same, he should.

Breach of contract

16. The Claimant asserted that he had accrued leave days from 2013 to 2017.
17. Section 28(4) of the Employment Act, 2007 circumscribes how many leave days can be carried forward. The Claimant did not place before the Court any evidence that he carried forward the leave days with the approval of the Respondent.
18. Save for the accrued leave days for the last 18 months to separation, the Court finds the other leave days forfeited.
19. Section 28 of the Employment Act, 2007 provides for at least 21-days annual leave on full pay. Therefore, the Court will award the equivalent of one and a half months' pay for the 18-months.

Certificate of Service

20. A Certificate of Service is a statutory entitlement. The Respondent should issue one to the Claimant.

Conclusion and Orders

21. The Court finds and declares that the Respondent did not unfairly terminate the Claimant's contract.
22. Nevertheless, the Claimant is awarded:
 - i. 1 month pay in lieu of notice (if not paid already).
 - ii. Accrued leave equivalent to one and a half month's salary.
23. The Respondent to compute and pay the awards within 30-days.
24. The Respondent to issue a Certificate of Service within 21-days.



25. Failure to comply with the 23 above, the award to attract interest at court rates from the date of judgement till payment in full.
26. Each party to bear its own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED, AND SIGNED IN KISUMU ON THIS 15TH DAY OF JUNE 2022.

RADIDO STEPHEN

JUDGE

Appearances

Claimant in person

For Respondent Simiyu Opondo Kiranga & Co. Advocates

Court Assistant Chrispo Aura

