



**Nyabwari v Label Converters Ltd (Cause 139 of 2017)
[2022] KEELRC 3993 (KLR) (10 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3993 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 139 OF 2017**

**J RIKA, J
JUNE 10, 2022**

BETWEEN

REUBEN NYABWARI CLAIMANT

AND

LABEL CONVERTERS LTD RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 27th January 2017.
2. He avers that he was employed by the Respondent in the year 2014 as a Machine Operator. He joined the printing Union [KUPRIPUPA] in May 2016. He was issued a notice by the Respondent, indicating that the Respondent would be outsourcing services for its non-core business. In October 2016, the Claimant's contract was terminated without notice.
3. He holds that termination was on account of joining KUPRIPUPA. He was not heard. He did not have a warning. He was not paid terminal dues. He was earning a gross monthly salary of Kshs. 13,440. He had a clean employment record. He worked for over 2 years. He prays the Court to grant Judgment against the Respondent for: -
 - a. 12 months' salary in compensation for unfair termination.
 - b. 1 month pay in lieu of notice.
 - c. Service pay from 2014 to 2016.
 - d. Annual leave at Kshs. 28,310.
 - e. Underpayment of salary at Kshs. 43,680.
 - f. Damages for dismissal on account of joining KUPRIPUPA.



- g. Costs.
 - h. Any other relief.
4. The Respondent filed its Statement of Response on 28th February 2019. Its position is that the Claimant was employed by the Respondent on 1-year renewable contracts, the last which commenced on 1st January 2016. It was terminated on or before 1st October 2016. His services were terminated in accordance with his contract. He was paid all his dues. A decision was made to outsource services. The Claimant's contract was not terminated on account of his association with KUPRIPUPA. He was issued notice of 1 month on 1st September 2016. He was subscribed to the N.S.S.F and not entitled to severance pay. He was paid all his dues on 15th October 2016. He discharged the Respondent. The Respondent prays for dismissal of the Claim.
 5. The hearing date was scheduled consensually for 20th January 2022, by the Parties, on 16th November 2021. The Respondent and its Advocates gave the Court a wide berth, on the appointed day, 20th January 2022. The Claimant gave evidence and rested his case.
 6. The Claimant restated that he was employed by the Respondent as a Machine Operator. He was dismissed alongside other Employees, for joining the Union. He adopted his Statement of Claim, Witness Statement and Documents.
 7. The issues are whether the Claimant's contract was terminated unfairly by the Respondent; and whether he merits the remedies sought.

The Court Finds: -

8. The Respondent did not participate in the hearing, despite having scheduled the hearing with the Claimant, by consent.
9. There is no material therefore, to validate the reason cited by the Respondent in its Pleadings, in justifying termination.
10. There is no evidence that the Claimant's contract was terminated in accordance with the terms of the contract. There is no evidence that fair procedure was followed, or that the Claimant was paid terminal dues, and discharged the Respondent. The Respondent has failed to justify termination, in accordance with Sections 43, 45 and 47[5] of the Employment Act. It has failed to demonstrate that fair procedure was observed, under Sections 41 and 45 of the Employment Act.
11. The Claimant earned a gross monthly salary of Kshs. 13,440. He was actively subscribed to the N.S.S.F, and not eligible for service pay, under Section 35 [6] of the Employment Act. He has not established the prayer for underpayment of salary, through exhibition of the relevant Regulation of Wages [Amendment] Orders. He similarly has not explained why he should be paid damages for dismissal for his association with KUPRIPUPA, separate from statutory compensation for unfair termination.
12. The prayer for annual leave has not been discounted by the Respondent, through exhibition of the Claimant's annual leave records. The Respondent had an obligation to maintain such records, under Section 74 of the Employment Act, and to avail them to the Court, in event of a dispute on leave entitlement. Annual leave is allowed for 42 days – [2014 to 2016, 21 days annually] at Kshs. 21,710.
13. The Claimant worked for barely 2 years. He does not merit equivalent of 12 months' salary for unfair termination. He is granted equivalent of 4 months' salary in compensation for unfair termination at Kshs. 53,760.



14. He is awarded 1-month salary in lieu of notice at Kshs. 13,440.

15. Costs to the Claimant.

In sum, it is ordered: -

- a. The Respondent shall pay to the Claimant: annual leave at Kshs. 21,710; compensation at Kshs. 53,760; and notice at Kshs. 13,440 – total Kshs. 88,910.
- b. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 10TH DAY OF JUNE 2022.

JAMES RIKA

JUDGE

