



REPUBLIC OF KENYA



KENYA LAW
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**Chituyi v West Kenya Sugar Ltd (Cause 368 of 2017)
[2022] KEELRC 1530 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1530 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 368 OF 2017
NJ ABUODHA, J
JUNE 8, 2022**

BETWEEN

PETER A CHITUYI CLAIMANT

AND

WEST KENYA SUGAR LTD DEFENDANT

JUDGMENT

1. The claimant pleaded that he was at all material times employed by the respondent as a general labourer. He worked for the respondent from 2001 to 2015 when according to him, the respondent unlawfully and without any justifiable cause terminated his service and refused to pay him his dues.
2. The claimant further alleged that during his employment he worked overtime without pay and further that he worked during public holidays.
3. The respondent filed a response to the claim and pleaded inter alia that the claimant breached and or neglected his obligations under the employment and that the claimant was fairly terminated and issued with a proper notice of termination.
4. The respondent further averred that upon termination, the claimant was paid fully his final dues.
5. In his oral evidence the claimant stated that he used to work for Nzoia Sugar Company and that he relied on his statement recorded on December 8, 2018 as his evidence in chief. According to him, he was employed as a loader and that his supervisor was one Albert Okaro. It was Okaro who terminated his service.
6. It was further his evidence that his monthly salary was Ksh.5,000/= and that the respondent used to remit his NSSF contributions. He was issued with a staff identity card which indicated he was a driver.
7. In cross-examination he stated that he sued West Kenya Sugar and that he was paid by Albert. He further stated that he had not produced a payslip to show he was being paid Ksh.5000/= per month.



- According to him, they were paid cash. He further stated that he had produced his NHIF and NSSF cards to show the respondent was the one who was paying them. He was terminated in 2015 but could not remember the date. He further did not have anything to show his last day of work was in 2015.
8. The respondent's witness Mr. Duncan Abwao stated that he was the Human Resource Manager for the respondent and had worked for the respondent for three years. He adopted his statement dated April 30, 2021 as his evidence in chief. According to him, piece-rate workers were paid fortnightly through Mpesa. The payment was based on haulage and it was not possible to have a fixed monthly pay because the haulage varied.
 9. Mr. Abwao further stated that Supervisors had no power to terminate employees and that termination was a function of Human Resource. It was further his evidence that the digital extract attached to the respondent's bundle documents related to the claimant and that the last day the claimant worked was August 31, 2014. According to him, the period the claimant worked did not qualify him as long-term employee.
 10. In cross-examination he stated that he joined the respondent in May, 2019 and that the summary of the records before the court were from 2001 to 2014 and further that whenever an employee was hired, he was given an identity card for access purposes. It was his evidence that the claimant was a casual labourer and the respondent did not give them any documents. Their records were digital and that the identity card was an access document to enable the claimant collect cane from farmers.
 11. The claimant alleged that he was verbally sacked by one Albert Okero who he alleged was his supervisor. According to him, Albert told him to go home because there was no work. This statement by the claimant, seem to agree with the respondent's contention that general labourers or piece-rate workers engaged for cane haulage cannot work throughout because at times cane becomes unavailable. The court takes judicial notice of this fact however, the claimant having worked for the respondent for more than ten years was no longer a casual employee within the meaning of section 2 of the [Employment Act](#). Section 37 of the Act provides that where a casual employee works for a period or number of continuous working days which amount in the aggregate to the equivalent of not less than one month, the contract shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of Service. Section 35(1)(c) provides that where the contract is to pay wages or salary periodically at intervals of exceeding one month, a contract is terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.
 12. The respondent could have had a valid and justifiable reason to end the service of the claimant, however from the evidence on record, it did not come out clear how and for what reason the respondent ended the claimant's service. This is a burden cast upon an employer by Section 43(1) read together with section 47(5) of the [Employment Act](#). It was erroneous for the respondent to take the view that simply because the claimant was a casual labourer, he was not entitled to the protections contained in the Act considering the length of time the claimant had worked for the respondent.
 13. The claimant is therefore entitled to compensation for unfair termination of service and payment in lieu of notice for termination.
 14. The claimant sought to be paid overtime and also claimed he was underpaid. However, his statement which he adopted and the oral evidence in court did not come out clear on the two issues. For instance, the claimant never stated the time he reported to work and when he left and the nature of work he performed that required him to work overtime. the claimant further did not exhibit the relevant Wage Order showing what he was entitled to be paid. These heads of claim would therefore be rejected.



15. The claimant was general worker with no special skills and his prospects of getting better employment were very little considering the number of years he worked as a general labourer. An award of five months salary in compensation for unfair termination would therefore be reasonable.
16. In conclusion the court awards the claimant as follows:
Ksh.
- (a) One month's salary in lieu of notice 5,000.
 - (b) Five month's salary as compensation for unfair termination 25,000. 30,000.
17. The claimant shall further have costs of the suit.
18. It is so ordered.

DATED AT ELDORET THIS 8TH DAY OF JUNE, 2022

DELIVERED THIS 8TH DAY OF JUNE, 2022

ABUODHA J.N

JUDGE

