



**Malenya v Unga Limited (Cause 257 of 2017)
[2022] KEELRC 1532 (KLR) (8 June 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1532 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 257 OF 2017
NJ ABUODHA, J
JUNE 8, 2022**

BETWEEN

BERNAR MACHISU MALENYA CLAIMANT

AND

UNGA LIMITED DEFENDANT

JUDGMENT

1. The claimant herein pleaded that he was in June, 2006 employed by the respondent as a folklift driver at a gross monthly salary of Ksh.39,971/=
2. According to him he served the respondent with full dedication and commitment until June, 2017 when the respondent wrongfully, orally and unlawfully terminated his service and refused to pay his terminal dues. The claimant further alleged that his service was terminated without following the right procedure laid down in the *Employment Act*.
3. The claimant therefore sought from the court a declaration that the termination was unlawful, unprocedural and unfair and payment of the sum of Ksh.2,138,746.04 as compensation for unfair termination and terminal dues.
4. The respondent filed a response to the claim in which it averred among others that the claimant was employed in 2006 on temporary basis as a Folklift Driver and the contract accrued to continuous service. It was during the tenure of the contract aforesaid that the claimant became employed as a Folklift Driver under a fixed term contract for one year with effect from July 1, 2016 and the contracts to terminate on June 30, 2017.
5. The respondent therefore denied that it orally, and unlawfully terminated the claimant's service and refused to pay his terminal dues. It further denied not following the right procedure laid down in the *Employment Act*. The respondent further averred that the contract being a fixed term in nature automatically lapsed by effluxion of time and to renew or not was at the discretion of the respondent.



The claimant could therefore not presume to have legitimate expectation and presumption of continuity of employment in absence of non-renewal of his contract.

6. At the oral hearing the claimant stated he recorded a witness statement on September 27, 2017 which he adopted as his evidence in chief. He also adopted his documents filed with claim. According to him, he was employed in June, 2006 and his monthly salary was Ksh.39,971. He left employment in June 2017. According to him, he was told to wait he would be called to work. He was however not issued with a notice of termination. The claimant further stated that he was never issued with a letter of appointment and that during the period he worked he never went on leave.
7. Regarding the contracts, he denied he was ever issued with any and he never knew about their existence. The claimant further denied he knew Dorcas Kariuki who purportedly witnessed the contract. He denied being paid any dues by the respondent.
8. In cross-examination, he stated that his supervisor was Denzu Kuria and that he left employment on June 30, 2017. He further stated that he did not sign any contract and did not know about any. The signature on the document was not his.
9. It was his evidence that he left employment in June, 2006 and that he was told to wait until further notice. It is Kura who told him so. It was further his evidence that he was paid his salary for June, 2017 and that he had his payslip for June, 2017. His monthly salary was Ksh.39,971 and that each year he received a pay raise.
10. The claimant further stated that his contract was to end on June 30, 2017 and that he was paid all his salary at the end of his contract. The claimant further admitted he signed the contract in July, 2016. He stated that he heard that there were deliberations about renewal of his contract and that he never resumed duties because he was not issued with any contract.
11. The respondent's witness Mr. Denzu Kuria informed the Court that he worked for the respondent as a Distribution Supervisor. He recorded a statement on May 24, 2018 which he adopted as his evidence in chief. He further stated that he had a copy of the claimant's contract. It was dated June 24, 2016. The contract was between the claimant and the respondent. Its commencement date was 1st July, 2016 and was to expire on June 30, 2017.
12. According to Mr. Kuria, the claimant worked until June 30, 2016 and was paid salary during the period. Paragraph 11 of the contract talked about termination without need for notice and that no employee was to work without a valid contract. The claimant signed the contract.
13. In cross-examination he stated that the claimant was employed on July 1, 2016 and that He (Kuria) was initially employed in 2011 and was based in Nakuru and got transferred to Eldoret in September 2016. He was the claimant's supervisor.
14. Mr. Kuria further stated that the salary in the claimant's payslip was higher than stated in the contract. The claimant left employment in 2017 when his contract lapsed.
15. The respondent's second witness Mr. Fabian Odoyo informed the Court that he worked for the respondent as Human Resource Manager and that his responsibility included working with employees, from recruitment, their life cycle with the respondent and so on. He recorded a statement on May 24, 2018 which he sought to adopt as his evidence in chief except paragraph 5 which was erroneously included.
16. The claimant had a contract with the respondent and it was for one year to run from June 1, 2016 to June 30, 2017. It was his evidence that the claimant worked for the entire period of the contract and



- that the contract had provision for termination. At paragraph 11 the contract it stated that termination is upon expiry without notice. The claimant was paid his terminal dues upon expiry of his contract. The payslip was before the court.
17. In cross-examination he stated that he was employed in 2018 hence was not there when the claimant was employed but the records were there.
 18. Concerning certificate of service, he stated that the claimant was not issued with one because he instituted the claim before the court.
 19. The claimant herein alleged that the respondent unprocedurally and orally terminated his contract of employment in June, 2017. The respondent on the other hand denied unlawfully terminating the claimant's contract maintaining the same was a fixed term contract which expired and was not renewed by the respondent. The respondent produced the contracts in question before the court.
 20. Although the claimant initially denied knowledge of the contract, in cross-examination he admitted signing the same and that when his contract was about to expire, he heard about discussions for renewal.
 21. Under section 47(5) in a claim for unfair termination of employment the onus of proof that an unfair termination has taken place is on the employee while the onus of proving or justifying the reason for termination is on the employer.
 22. The material contradictions in the claimant's evidence regarding whether he had knowledge and signed the contract dated June 24, 2016 created impression in the mind of the court that the claimant was not a witness for truth. The court further noted the curious coincidence between the date of expiry of the contract and the allegation of oral termination of contract by the claimant.
 23. The sum total of the above is that the claimant was employed on a fixed term contract which was not renewed by the respondent upon expiry. There is no obligation on the employer to renew a fixed term contract upon expiry.
 24. In conclusion the claimant has failed to discharge the evidential burden cast upon him by section 47(5) of the [Employment Act](#) with consequence that the claim is found without merit and is hereby dismissed with costs.
 25. It is so ordered

DATED AT ELDORET THIS 8TH DAY OF JUNE, 2022

DELIVERED THIS 8TH DAY OF JUNE, 2022

Abuodha J.N

JUDGE

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