



**Saidi v Sats Commodity Traders Ltd (Cause E006 of 2021)
[2022] KEELRC 1559 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1559 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E006 OF 2021
NJ ABUODHA, J
JULY 29, 2022**

BETWEEN

JAMES MUSA SAIDI CLAIMANT

AND

SATS COMMODITY TRADERS LTD RESPONDENT

JUDGMENT

1. The claimant pleaded that he was employed by the respondent on 16th March, 2020 as a sales Manager and worked until 29th December, 2020 when he averred the respondent unlawfully and summarily dismissed him.
2. According to the claimants at the time of dismissal he was not issued with any notice.
3. The claimant further averred that during the period he worked, the respondent never paid him house allowance and he never went on annual leave. He therefore sought from Court an order that the respondent pays him his terminal dues and compensates him for unfair termination of service.
4. The respondent on its part pleaded that the claimant was engaged as a sales Manager on a 9 month probationary contract. Upon conclusion of the probability period, an employment contract was sent to the claimant to sign but he neither signed nor communicated about it.
5. According to the respondent, that claimant therefore absconded work hence terminating employer employee relationship.
6. The respondent further denied the allegations of hostile and inhumane conditions the claimant worked in and denied receiving any report about it.
7. The respondent further denied the claimant was entitled to the prayers sought and further stated that the certificate of service was always available for claimant to collect.



8. At the hearing the claimant stated that he recorded a statement on 10th February, 2021 which he adopted as his evidence in chief. He also relied on his supporting documents filed with the claim.
9. It was his evidence that he was employed as a sales manager on 15th March, 2020 at a monthly salary of Ksh.100,000/= and worked until 29th December, 2020. He was issued with a letter of appointment.
10. On 29th December, 2020 he was told there was no more work but was required to sign a new agreement but he refused. According to him the agreement was not in accordance with Labour Laws. It offered a lower salary. His salary was to reduce to Ksh50,000/=. He was subsequently issued with a termination letter.
11. The claimant further stated that he was a qualified salesman with 15 years' experience and that he held a diploma in Sales Management.
12. In cross – examination he stated that he was employed in March, 2020 and that the contract had targets set for him. His team too had targets. They were four of them. The four were not meeting targets. He further stated that he was paid a consolidated salary of Ksh.134,995/=. He conceded that his contract could be reviewed in line with policies and principles of the respondent. He did not sign the contract because it reduced his salary.
13. Concerning performance, he stated that the respondent never complained about his performance but was told if he did not sign the new contract his employment would be terminated.
14. The respondents witness Fatma Idi stated that she worked for the respondent as administrative assistant and that she knew the claimant. The claimant was working as a sales manager and that he worked for about 9 months.
15. According to her, the claimant was issued with a written contract and that the contract had three months' probation. The probation was extended for another three months. It was her evidence that the claimant did not meet his own targets he had set. The claimant joined at a senior level and asked for incentive to perform yet the sales did not improve as he promised.
16. The claimant's salary during probation was Ksh.100,000/= but on confirmation was to be Ksh.50,000/=.
17. In cross-examination the respondent stated that the claimant was being paid Ksh.134,000/= when he was first employed. The salary was not stated as dependent on targets. There was however complaint that the claimant was not meeting targets.
18. The claimant has laid a claim for unfair termination and sought an order of Court compelling the respondent to compensate him for unfair termination among other claims. According to the claimant he served the respondent for 9 months and when his nine-month contract was to expire he was issued with a new contract which he refused to sign because it reduced his salary from Ksh.100,000/= to Ksh.50,000/=.
19. According to the respondent the claimant was not meeting targets he had himself set. The respondent stated that the claimant represented he was experienced in selling tea but could not meet targets.
20. In a claim for unfair termination of service, the burden is on the employee to prove unfair termination took place while the burden of proving the reason for termination is on the employer.
21. The claimant stated in his evidence that he refused to sign the new contract because it reduced his salary by half. It was further his evidence that the respondent never communicated to him about his performance.



22. The respondent on the other hand stated that the claimant was not meeting targets yet as employer it never produced any record of complaints or warning to the claimant about not meeting targets. The respondent further did not produce any documents or schedule about the expected targets and what the claimant actually sold, for the Court to be able to appreciate that the claimant never met targets.
23. The respondent has therefore failed to discharge the burden cast upon it by law to prove reason for terminating the claimant's service. The Court therefore finds and holds that the claimants service was unfairly terminated.
24. On claim for house allowance this will be rejected because the claimant was paid a consolidated salary. On the issue of annual leave, the claimant had only worked for 9 months hence the claim would not be sustainable. The same goes for claim for service pay.
25. In conclusion the Court awards the claimant as follows.
 - a. One month salary in lieu of notice 134,995
 - b. Two months' salary in lieu of notice 269,990
404,985
 - c. Cost of the suit.
 - d. Items (a) and (b) shall be subject to taxes and statutory deductions.
26. It is so ordered

DATED AT ELDORET THIS 29TH DAY OF JULY, 2022

DELIVERED THIS 29TH DAY OF JULY, 2022

ABUODHA JORUM NELSON

JUDGE

