



**Mbogo v Multiple Haulers (E.A) Limited (Cause 372 of 2015)  
[2022] KEELRC 1667 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1667 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 372 OF 2015  
MN NDUMA, J  
JULY 28, 2022**

**BETWEEN**

**ROBERT NDERITU MBOGO ..... CLAIMANT**

**AND**

**MULTIPLE HAULERS (E.A) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The suit was filed on 12<sup>th</sup> March, 2015 by the claimant seeking the following reliefs: -
  - (i) Compensation for unfair termination equivalent to 12 months' salary.....Kshs 401,532
  - (ii) Payment in lieu of notice.....Kshs 33,461.00
  - (iii) Severance pay at the rate of one Month For each year worked) (Kshs 33,461x3) .....  
.....Kshs 100,383
  - (iv) Annual leave (one month for each year worked) .....Kshs 10383
  - (v) Proof of remittance to NSSF deductions For June to September, 2014.
  - (vi) General damages/Compensation pain and Suffering for the injuries (particularized in Paragraph 7 above) suffered under the Work Injury Benefits Act, 2007.
  - (vii) Special damages for medical payments.
  - (viii) Certificate of Service.
  - (ix) Cost of suit and interest on items (i-iv) above



2. C.W.1, the claimant testified that he was employed by the respondent in the year 2012 as a supervisor who was entrusted with maintenance of cleanliness of the premises. That he worked diligently and with dedication for a period of three (3) years. That on 2<sup>nd</sup> September, 2014, the claimant fell within the company premises and sustained injuries in the course of employment. The claimant was given First Aid and the following day the Human Resource Manager referred the claimant to Donholm Medical Clinic for further treatment. The claimant was treated and given a sick off for four (4) days to rest as he was on strong medication and was still in pain.
3. That on the third day the claimant went back to see the doctor as he was in much pain. The Doctor examined him and referred him to Nairobi West Equator Hospital where he was scanned and found to have suffered a fracture and needed rest.
4. That after four (4) days the claimant went back to work with a bandage on his leg and in the premises, the claimant met the Human Resource manager who gave the claimant permission to go home and referred the claimant to the company Director.
5. That the Director was hostile and told the claimant that he did not like people who were crippled. The Director gave the claimant half hour to hand over and go back home. The claimant pleaded to be allowed to work but the Director refused even after being shown the drugs and sick off sheet.
6. that the claimant explained to him about the accident but the Director arrogantly dismissed the claimant and said he was a wealthy person and could pay anything instead of keeping sick people in the company.
7. The security then forced the claimant out of the company premises and was summarily dismissed.
8. That at the time the claimant earned Kshs 24,259 inclusive of house allowance. That the claimant did not go on leave and was not paid in lieu of leave days not taken. The claimant prays to be awarded in lieu of notice; leave, service pay and special damages for medical payments; General damages for unfair dismissal and provision of Certificate of Service; costs and interest. C.W.2, Dr. Washington Wokabi, a Consultant Surgeon produced, a medical report dated 19<sup>th</sup> December, 2019 in respect of the claimant. He testified that he examined the claimant on 16<sup>th</sup> February, 2019 and assessed the injuries suffered by the claimant. That he charged Kshs 3,000 in respect of the medical report and he charged Kshs 10,000 in respect of the Court attendance on 26<sup>th</sup> January, 2022.
9. The Counsel for the respondent did not cross examine the Director, but had questioned the claimant who remained consistent and candid in respect of his testimony regarding the facts of this case.
10. The respondent closed its case without producing any witness to contradict the testimony by C.W.1 and C.W.2. The evidence in support of the claim is not traversed and the Court finds that the claimant has proved his case on a balance of probabilities on all the facts adduced by C.W.1 and C.W.2. The Court finds that the claimant was summarily dismissed unlawfully and unfairly by the respondent upon sustaining an injury in the course of duty. The Director of the respondent arrogantly dismissed the claimant and promised to pay any money in respect of the dismissal rather than keep a cripple at work. The plea by the claimant to be allowed to work fell on deaf ears.
11. The respondent violated Sections 36, 41, 43, 45 and 46 of the *Employment Act*, 2007 and the Court finds that the claimant is entitled to special and general damages in respect of the unlawful dismissal. In this regard, the claimant had served the respondent diligently for a period of three years. He was dismissed arrogantly upon sustaining injury in the course of his duties. He lost his means of livelihood, unfairly and unlawfully and has suffered loss and damage.



12. The claimant did not contribute to the unlawful dismissal. The case is visited with aggravating circumstances in that the claimant was not paid any terminal benefits upon dismissal. The conduct by the Director of the respondent violates Article 41 of the Constitution of Kenya and amounts to unfair labour practice which the Court frowns upon.
13. The respondent deliberately failed to call any witness to explain its despicable conduct against the claimant.
14. In the final analysis; the Court upon considering all the facts of the case and the case of Kenya Union Of Commercial, Food and Allied Workers -Vs- North Farmers Sacco Limited – Cause No. 74 Of 2013; Bernard Ngugi -Vs- -G4s Security Services Kenya Limited [2013] ECLR; Kennedy Nyaguncha Omanga -Vs- Bob Morgan Limited [Cause No. 1983 Of 2011] where the Court stated;

while employers are entitled to terminate employment on the ground that an employee is too ill to work, they must exercise sensitivity. First, the employer must show support to the employee to recover and resume duty. Second, once the employer begins to consider termination, they must subject the employee to a specific medical examination aimed at establishing the employee’s ability to resume work in the foreseeable future.... Third, the employer must give specific notice of the impending termination.”

and Kenfreight (E.A.) Limited v Benson Nguti [2016] eCLR where the Supreme Court stated;

Apart from issuing proper notice as provided, an employer is duty-bound to explain to an employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service is taken”

and the case of Linet Kadzo Kenga -vs- Indiana Beach Apartment Hotel Limited [2015] eCLR and the Court awards the claimant

- (i) The equivalent of 10 months salary in compensation for the unlawful and unfair dismissal in the sum of Kshs (24,259 x10) 242,590.
- (ii) Kshs 24,259 in lieu of notice.
- (iii) Kshs (24,259x3) 72,777 in lieu of three years untaken leave.
- (iv) Kshs 13,000 being special damages for medical report and Doctor’s attendance.  
Total award Kshs 352,626.
- (v) Interest at Court rates from date of judgment till payment in full.
- (vi) Provision of Certificate of Service within 30 days of this judgment.
- (vii) Costs of the suit.

**DATED AND DELIVERED AT NAIROBI VIRTUALLY) THIS 28TH DAY OF JULY, 2022.**

**MATHEWS N. NDUMA**

**JUDGE**

**Appearances**

M/s Gitau for the claimant



Mr. Kopere for respondent

Ekale – Court Assistant

