



**Muchira v African Leather Industries Limited (Cause 1728 of 2017)  
[2022] KEELRC 3844 (KLR) (28 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3844 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1728 OF 2017**

**L NDOLO, J  
JULY 28, 2022**

**BETWEEN**

**JANE KAGUU MUCHIRA ..... CLAIMANT**

**AND**

**AFRICAN LEATHER INDUSTRIES LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The issue in dispute as stated by the claimant in her memorandum of claim dated August 30, 2017 is ‘unlawful and unfair summary dismissal with failure to pay terminal benefits and dues accrued’. The respondent filed a memorandum of reply on December 22, 2017 to which the claimant responded on July 3, 2018.
2. The dispute was referred to court annexed mediation but the parties did not reach a settlement. The matter was therefore returned unresolved. At the trial, the claimant testified on her own behalf and the respondent called Renard Sikisa. Thereafter, the parties filed written submissions.

**The Claimant’s Case**

3. The claimant states that she was employed by the respondent as a stitcher on September 1, 2011. She earned a monthly salary of Kshs 14,086.
4. The claimant further states that in the month of May 2017, she was issued with a copy of a contract, which she was required to sign. The claimant claims to have sought an explanation as to the contents of the contract but the respondent’s representatives declined to offer any explanation and instead terminated the claimant’s employment, on allegations of insubordination.
5. On June 2, 2017, the claimant was issued with a termination letter. She terms the termination as unjustifiable and unfair and therefore claims the following:



- a) 1 month's salary *in lieu* of notice.....Kshs 14,086.00
- b) Leave pay for 6 years.....68,262.92
- c) 12 months' salary in compensation.....169,032.00
- d) Gratuity for 6 years.....48,759.23
- e) Costs plus interest

**The Respondent's Case**

- 6. In its memorandum of reply dated December 13, 2017 and filed in court on December 22, 2017, the respondent states that the claimant was its employee, who was at all times employed on fixed term contract basis.
- 7. The respondent admits having issued the claimant with a new contract but denies that it refused to explain its contents to the claimant.
- 8. The respondent further admits having terminated the claimant's employment after the claimant's refusal to sign the new contract.
- 9. The respondent States that the new contract was issued pursuant to a meeting held with the claimant and her colleagues, in March 2017, where it was mutually agreed that the respondent would offer contracts under improved terms. The respondent adds that the claimant's nine colleagues signed their contracts.
- 10. The respondent denies the claimant's claim which it terms as baseless. The respondent however admits that at the time of termination, the claimant had 42 outstanding leave days to her credit.

**Findings and Determination**

- 11. There are two (2) issues for determination in this case:
  - a) Whether the termination of the claimant's employment was lawful and fair;
  - b) Whether the claimant is entitled to the remedies sought.

**The Termination**

- 12. On June 2, 2017, the respondent wrote to the claimant as follows:

“Dear Jane,

RE: Gross Insubordination And Insolence

We refer to the following acts of Insubordination against your supervisor which were committed by you:

- 1. That on May 30, 2017, the company provided you with a contract renewing the expired term. Among other factors, you were informed that your salary had been reviewed upwards according to your performance.
- 2. That on May 31, 2017, you returned an unsigned copy of the contract stating that you are unhappy with the terms in the contract particularly the salary which you stated is below your expectation. You were requested to put your grievances in writing which you adamantly refused.



3. Your act amounts to gross insubordination and insolence, which are serious acts of misconduct as per the provisions of the *Employment Act*, 2007.

Your conduct is totally unbecoming as an employee of the company and the company has decided to terminate your contract with effect from June 2, 2017. To ensure a smooth transition, you are required to clear and hand over all company property that may be in your possession. Your full and final dues will be paid as follows:

1. Encashment of your pending leave days.
2. Less any advances, loans or shortages in your issues.
3. Less any statutory deductions that may be lawfully effected.

Yours faithfully,

(signed)

Allan Nginya,

General Manager”

4. This letter indicts the claimant for failing to sign an employment contract issued to her by the respondent. The claimant concedes having declined to sign the contract issued to her by the respondent but justifies her action by stating that she had not received adequate explanation on the contents of the contract.
5. Although the termination letter accuses the claimant of gross insubordination and insolence, the real issue before the court is the effect of the claimant’s failure to sign her contract of employment.
6. Section 2 of the *Employment Act* defines a contract of service as:  
  
“an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which part XI of this Act applies.”
7. Where an employment relationship is documented, section 9(2) of the *Employment Act* places the responsibility of drawing up the employment contract on the employer. Section 10 of the *Act* sets out the employment particulars to be contained in a contract of employment, including the terms and conditions of service.
8. It would follow therefore that an employee who, without reasonable cause, declines to sign a contract of employment issued by their employer, effectively opts out of the employment relationship. Such an employee cannot seek to enforce a contract which they have rejected.
9. In this case, the claimant simply states that she declined to sign the contract issued to her because the respondent failed to offer her explanation thereon. There was however no evidence adduced before the court regarding the exact issues the claimant had with the contract. In fact, there was no evidence of the claimant having raised any issue at all.
10. In the final submissions filed on behalf of the claimant, the issue of the contract having been backdated was raised. There was however no evidence of this issue having been raised at the



shop floor. Moreover, as held by this court in its decision in [George Muteti v Express DDB Kenya](#) [2015] eKLR the act of backdating a contract does not by itself invalidate the agreement between the parties.

11. On the whole, the claimant was unable to demonstrate before the court any justification for her failure to execute the contract of employment issued to her by the respondent.
12. The only conclusion to make in the circumstances is that the claimant intended to walk out of the employment relationship between herself and the respondent and she cannot now turn around and plead unlawful or unfair termination of employment. Neither the requirement of substantive justification under section 43 of the [Employment Act](#) nor the procedural fairness dictates set by section 41 of the [Act](#) are available to the claimant.
13. That said, I find and hold that the claims for compensation and notice pay are without basis and are dismissed.

#### **Other Claims**

14. The claimant claims leave pay for her entire period of service. However, according to leave records availed by her, she proceeded on leave in August 2015. I will therefore only allow the claim for leave pay on account of 42 days as admitted by the respondent.
15. No basis was laid for the claim for gratuity which is disallowed.
16. In the end, I enter judgment in favour of the claimant in the sum of Kshs 19,720 being pay *in lieu* of 42 leave days.
17. This amount will attract interest at court rates from the date of judgment until payment in full.
18. Each party will bear their own costs.
19. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Mideva for the Claimant

Mr. Isinta for the respondent

