



**Waweru v Soloplant Kenya Limited (Cause 2184 of 2016)
[2022] KEELRC 1285 (KLR) (7 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1285 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2184 OF 2016**

MN NDUMA, J

JULY 7, 2022

BETWEEN

DAVID KANG'ARA WAWERU CLAIMANT

AND

SOLOPLANT KENYA LIMITED RESPONDENT

JUDGMENT

1. The suit was filed by the claimant on 20th October, 2016 seeking the following reliefs: -
 - i. A declaration that the claimant's dismissal was wrongful.
 - ii. The Claimant be paid terminal benefits as set out in paragraph 10(a-j) herein above totaling
 - iii. The Respondent be ordered to compensate the Claimant for wrongful dismissal at the equivalent of twelve (12) months gross salary.
 - iv. General damages thereof.
 - v. Loss of future earnings.
 - vi. Reinstatement to employment thereof.
 - vii. Costs of this claim.
 - viii. Interest on the above at Court rates.
2. C.W.1, the claimant adopted his witness statement as evidence in that he testified that he was employed by the respondent in November, 2005 as a general worker. He was later promoted to a supervisor earning Kshs 30,150 per month. C.W.1 stated he served the respondent diligently for a period of 9 years without a single warning. That in January, 2014, the general manager, started mistreating the claimant.



- The claimant raised a complaint but was sent on annual leave. Upon reporting back, he was told to go home and await communication from management. That no communication was forthcoming.
3. The claimant then went and met the manager who forced him to write a resignation notice of one month. That while working for that month, the manager again told the claimant to serve another notice of three months which the claimant reluctantly did.
 4. The claimant was later dismissed from employment without payment of terminal benefits.
 5. That the dismissal was unlawful and was founded on malice.
 6. The claimant produced the letter of application as revised in May, 2008, a pay slip for the month of February, 2014; a resignation letter dated 1st February, 2014 and a letter accepting resignation by the respondent dated 27/2/2014.
 7. The claimant prays to be awarded as prayed.
 8. The respondent filed reply to the memorandum of claim on 19th April, 2017. R.W.1, Adda Okado testified for the respondent and relied on a witness statement dated 15th March, 2020 and produced exhibits '1' to '7' in support thereof.
 9. R.W.1 testified that he was the Human Resource Manager of the respondent. That he was versed with the facts of the matter. That the claimant was employed by the respondent with effect from May, 2008 vide the letter of appointment signed by the claimant and the General Manager. That his starting salary was Kshs 16,000 but at the time the claimant got employment, he was earning Kshs 30,150.
 10. That on 1st February, 2014, the claimant handed in a resignation letter giving one-month notice. However, the notice period contemplated under the letter of appointment was 3 months and thus the claimant was requested to give the requisite notice of 3 months.
 11. That the claimant rectified the notice to 3 months but sought the respondent to reduce the same to one month
 12. The respondent upon consultations with the claimant agreed to waive the notice period to 1 month and the claimant would be paid his terminal benefits amounting to Kshs 137,315.00 but would not be paid for the two months not served.
 13. That as agreed by the parties, the respondent served on the claimant the letter dated 27th February, 2014, with the intention of finalizing the oral agreement. The claimant declined to sign the letter of termination dated 27th February, 2014 and he was asked to resume duties and serve the remaining 2 months' notice as required under the contract of employment.
 14. The claimant resulted to threatening the respondent's manager via email communication in the guise of claiming for his terminal dues. The text by the claimant is reproduced by R.W.1 in which he used threatening words on the employer. R.W.1 states that the suit is malicious. That the respondent pays terminal dues to the claimant less deductions as set out in the Statement of Claim amounting to 137,3315, Less 2 months pay in lieu of unserved notice – Kshs 60,300.
 15. That the claimant is not entitled to payment in lieu of notice; service pay; any leave allowance; nor to any compensation since the separation was lawful and fair.
 16. Under cross-examination by Mr. Masese for the claimant, R.W.1 stated that he was employed by the respondent in August, 2001. That the claimant resigned on his own accord on 2nd February, 2014. That the claimant did not serve the full 3 months' notice as per his contract of employment and did not sign



the waiver agreement. R.W.1 stated that the 2 months' notice was not waived. That the claimant only received Kshs 2,416 upon deduction of lawful dues. That the respondent does not owe the claimant any terminal benefits. That the suit is malicious and it be dismissed with costs.

Determination

17. The parties filed written submissions which the Court has carefully considered. The issues for determination are as follows: -
 - (a) Whether the claimant resigned from work lawfully or his employment was unlawfully terminated.
 - (b) Whether the claimant is entitled to any reliefs sought in the claim.
18. The claimant has in this matter produced a handwritten letter of resignation dated 1st February, 2014 in which he gave the respondent three months' notice according to his contract of employment.
19. The claimant also produced the letter of appointment in which is provided that either party may terminate the employment contract upon giving the other three months' notice of termination.
20. R.W.1 testified that upon receipt of the letter of resignation, the respondent had discussed with the claimant upon his request of a waiver of the two (2) months' notice so that the claimant served only one-month notice.
21. It is common cause that the claimant served one-month notice. R.W.1 testified that the respondent had agreed to waive the two (2) months' notice but the claimant had refused to append his signature on the document dated 27th February, 2014 in terms of which the respondent had agreed to waive the two (2) months' notice so that the last working day for the claimant would be the 28th February, 2014.
22. The claimant on the other hand stated that he was being mistreated by the general manager and that he was forced to tender the resignation letter dated 1st February, 2014 as a result of the mistreatment.
23. The Court finds that the claimant has failed to adduce any tangible evidence that he was forced to resign from employment by the General Manager. The claim by the claimant does not disclose a case for constructive dismissal.
24. However, once the claimant had tendered his resignation and requested to serve one month notice instead of the three (3) months' notice provided in the letter of appointment, the Court is satisfied that the respondent had verbally waived the requirement for the claimant to serve three months' notice and there was no requirement that the claimant signs a written agreement to that effect once the waiver had been given by the respondent. The waiver was a unilateral step by the respondent following the request by the claimant according to the testimony by R.W.1.
25. The respondent was in the circumstances estopped from renegeing on that verbal acceptance of the request by the claimant to serve one month notice instead of three months.
26. It was therefore unlawful for the respondent to deduct two (2) months salary in the sum of Kshs 60,000 from the terminal benefits of the claimant. Accordingly, the Court finds that the claimant is entitled to payment of Kshs 60,000 deducted from his hard-earned dues and awards him accordingly.
27. The Court having found that the claimant has failed to prove case of constructive dismissal finds that the claimant is not entitled to any compensation because the termination of his employment was voluntary. The claimant is therefore, not entitled to payment in lieu of notice. The Court is satisfied



that the claimant was paid in lieu of leave days not taken and was not entitled to leave travelling allowance as claimed or at all.

28. The contract of employment between the claimant and the respondent did not provide for payment of gratuity upon separation. The pays lip produced by the claimant for the month of February, 2014, shows that National Social Security Fund (NSSF) and National Hospital Insurance Fund (NHIF) was paid by the respondent on behalf of the claimant and so the claim for payment of terminal gratuity has no merit and is equally dismissed.
29. In the final analysis, except for the award of Kshs 60,000 being the salary deducted from the claimant in respect of two (2) months' notice period, the rest of the claim has no merit and is dismissed.
30. The final orders are that the respondent pays the claimant Kshs 60,000 with interest from date of filing suit till payment in full.
31. The respondent to pay the costs of the suit.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 7TH DAY OF JULY, 2022.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Masese for claimant

Mr. Musili for Respondent

Ekale – Court Assistant

