



Anjela Saru Wachenje v East Africa Fondary Works (K) Limited (Cause 1337 of 2016) [2022] KEELRC 3872 (KLR) (25 August 2022) (Judgment)

Neutral citation: [2022] KEELRC 3872 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1337 OF 2016
AN MWAURE, J
AUGUST 25, 2022**

BETWEEN

ANJELA SARU WACHENJE CLAIMANT

AND

EAST AFRICA FONDARY WORKS (K) LIMITED RESPONDENT

JUDGMENT

1. The claimant filed his claim *vide* her statement of claim dated July 5, 2016.

Claimants Case via Pleadings and Oral Evidence in Court

2. The claimants states that she was employed by the respondent as an administration secretary from September 2008 and rose to various ranks until March 8, 2016 when her service were terminated. She says her monthly salary was Kshs 75,000/70.
3. The claimant says she was not given any reason why she was terminated and so she avers her termination was unlawful. She prays for compensation as per her prayers in her claim.

The Respondent Case and vide Pleadings and Oral Evidence in Court

4. The respondent admits the claimant was his employee and states her termination was lawful as two years contract expired after claimant gave notice to discontinue employment. He also claims her salary was not Kshs 75,000/= and puts her to strict proof.
5. He also says he gave her a certificate of service reflecting her work for years worked. In his evidence in court the respondent says the claimant resigned from work claiming she had found greener pastures. He says he had paid her gross pay dues and he remitted her NSSF dues. He says he also gave the claimant certificate of service.



Claimant's Submissions

6. The claimant says she did not resign as no letter of resignation was produced in evidence. The claimant also says the respondent did not follow the required procedure provided in article 41 of the employment. She prays for her prayers in the memorandum of claim.

Decision

7. The claimant claims she was terminated *vide* her letter of March 8, 2016. The termination letter provided no reason for her termination. Section 45 of the [Employment Act](#) provides in mandatory terms that an employer who terminates the employment of an employee must give valid reason for termination of the same.
8. The exact provision of section 45 of the [Employment Act](#) is as herein below:-
 - (1) No employer shall terminate the employment of an employee unfairly.
 - (2) A termination of employment by an employer is unfair if the employer fails to prove——
 - (a) that the reason for the termination is valid;
 - (b) that the reason for the termination is a fair reason——
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.

Clearly the respondent did not give any reason for the termination of claimants termination. On that score the respondent is deemed to have terminated the claimant's employment unfairly. The case of [Walter Ogal Onuro v Teachers Service Commission](#) Cause No 955 of 2011 provides that for termination to pass the fairness test, it ought to be shown that there was not only substantive justification for termination but also procedural fairness.

9. At the same time the respondent failed the fairness test in that he did not follow the procedure as set out in section 41 of the [Employment Act](#). The claimant was not invited for a disciplinary meeting to be heard in the presence of his fellow workmate or a shop floor union representative. Section 41 of the [Employment Act](#). Provides that:-

“Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

- (2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- (3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.”



10. The respondent says that the claimant resigned from her employment for greener pastures. However no letter was produced to confirm the claimant resigned from her employment. What is on record is the termination letter by the respondent dated March 8, 2016 where she was informed her employment had terminated with effect from March 8, 2016. Her dues were also set down as follows:-
 - a. Salary for days worked in March 2016
 - b. One month salary in *lieu* of notice
 - c. Accrued leave days for the year 2016.
 - d. Service pay for seven and half years.
11. Numerous authorities including *Kenfreight E A Limited v Benson Nguti*[2016]eKLR now make it mandatory that for the employer to terminate the employment of an employee he must give valid reasons for termination of the same as provided in section 45 of the *Employment Act* and also follow the procedure as provided in section 41 of the same act.
12. The court finds the respondent did not follow the mandatory requirements as provided and is therefore inclined to find the claimant was unfairly and unprocedurally terminated from her employment. Judgment is therefore entered in her favour.
13. Remedies
 - a. The claimant having been unfairly terminated is awarded 6 months salary equivalent compensation @Kshs 75,000/=p m x 6 = 450,000/=
 - b. Severance pay for the years worked being 7 years x 75000 ÷ 2 = Kshs 262,500/=
 - c. Service pay is not awarded as the claimants payslip show NSSF dues were provided for and there is no proof to indicate otherwise. The same is declined.
 - d. So total awarded is Kshs 712,500/= and interest accrued at court rates from date of Judgment till payment in full.
 - e. Costs of the suit are awarded to the claimant.
14. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 25TH AUGUST, 2022

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.



ANNA NGIBUINI MWAURE

JUDGE

3|*JUDGMENT CAUSE NO. 1337 OF 2016*

