



REPUBLIC OF KENYA



KENYA LAW
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**Ouma v ISL Kenya Limited (Cause 1051 of 2017)
[2022] KEELRC 4040 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4040 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1051 OF 2017
J RIKA, J
SEPTEMBER 29, 2022**

BETWEEN

HERBERT BARASA OUMA CLAIMANT

AND

ISL KENYA LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim on 7th June 2017. He states that he was employed by the Respondent as a Loader, on 1st February 2015, earning a daily wage of Kshs. 484.
2. He, alongside his colleague Mutinda, were on routine duty on 23rd August 2016, when they were instructed by their Supervisor Mwangangi, not to report to work the following day.
3. When the Claimant enquired why he was told not to report to work, he was directed to the Human Resource Office, where he was issued with a terminal dues form, and paid Kshs. 18,997. He was instructed to leave the premises.
4. He was not told why his contract was terminated. There was no notice. He was not charged with any employment offence, and was not given a hearing. He was not given housing accommodation, or paid house allowance. Service was underpaid, and he was not issued his Certificate of Service.
5. He prays for: -
 - a. Leave pay at Kshs. 8,893.
 - b. House allowance at Kshs. 39,204.
 - c. Underpayment of service pay.
 - d. 12 months' salary in compensation for unfair termination at Kshs. 174,240.



- e. Damages for unfair labour practice.
 - f. Certificate of Service.
 - g. Costs.
6. The Respondent filed its Statement of Response on 4th September 2017. Its position is that it engaged the Claimant as a Casual Worker. He was paid wages on a daily rate. Wages were paid every end of the week.
 7. His employment was terminated after the Kenya Bureau of Standards, banned manufacture of twisted steel bars, in favour of ribbed steel bars for reinforcement of concrete. The Claimant's role became redundant. The Respondent notified the Labour Office and the Claimant's Trade Union. He was paid Kshs. 18,997 comprising leave pay and service pay. He acknowledged receipt and discharged the Respondent from further liability. His daily rate included housing element. The Respondent prays the Court to dismiss the Claim with costs.
 8. The Claimant, and Assistant Human Resource Manager of the Respondent, Samuel Gicheru, gave evidence for the respective Parties on 17th February 2022, closing the hearing. The Claim was last mentioned on 26th July 2022, when the Parties confirmed filing and exchange of their Submissions.
 9. The Claimant adopted his Witness Statement and Documents in his evidence. He restated his Pleadings. Cross-examined, he told the Court that he was paid Kshs. 484 daily rate. When he did not work, it was not paid. He was paid Kshs. 18,997 on termination, but was not advised on details of payment. He worked for 1 ½ years. He was not paid leave. He was not told that house allowance would be paid. He was underpaid, but did not know by how much. He was not told why his contract was terminated.
 10. Gicheru similarly adopted his Witness Statement and Documents filed by his Employer. He explained that Kenya Bureau of Standards directed change in form of metal for use in concrete reinforcement. The Respondent was compelled to reduce staff following the directive. Employees were informed through their Supervisors. The Labour Office was notified. The Claimant was paid his terminal dues. Cross-examined, Gicheru told the Court that termination was on 24th August 2016. Reason was diminished work. Metal ban was gazetted on 22nd November 2016. The Respondent consulted. There was no document attesting to such consultation. Notice to the Labour Office issued in March 2017.

The Court Finds: -

11. The Claimant worked for the Respondent as a Loader from 1st February 2015 to 23rd August 2016.
12. The Respondent terminated his contract on the ground that work had diminished, following the directive of the Kenya Bureau of Standards, banning the manufacture of twisted steel bars, in favour of ribbed steel bars.
13. In effect, the Respondent explains that a redundancy situation occurred, and its Staff as well and the Labour Office were notified.
14. There is considerable doubt on the procedure adopted by the Respondent, in declaring the Claimant's position redundant. There is no evidence that the Respondent followed the procedure laid down in Section 40 of the *Employment Act*. Notice to the Labour Office for instance, post-dates termination. Considerable doubt also exists, on the validity of termination reason. The ban on twisted bars was gazetted on 22nd November 2016, while termination was on 24th August 2016, before the ban.



15. The Claimant nonetheless was paid a sum of Kshs. 18,997 on the date of termination. Although he alleges that he was not given details, the Terminal Dues Form, which he exhibits, and which he signed on receiving the amount, clearly gives details of payment.
16. The Form comprises acknowledgement of receipt of terminal dues, and discharge of the Respondent, from further claims. The Claimant undertook that “ I have agreed to the above calculations of my terminal dues and have nothing to claim from ISL[K] Ltd. And have no claim against any body [sic] in the company.”
17. The Claimant has not told the Court why he presented this Claim, after he voluntarily discharged the Respondent, from further claims. He was not forced to discharge the Respondent. Much as the evidence points to a flawed termination process, the Claimant discharged the Respondent from further claims after he was paid Kshs. 18,997, and he must be held to his word.

It is Ordered: -

- a. The Claim is dismissed.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29TH DAY OF SEPTEMBER 2022.

JAMES RIKA
JUDGE

