



**Miiru v Thamani Savings & Credit Co-op Ltd (Cause E006 of 2021)
[2022] KEELRC 12682 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12682 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E006 OF 2021
DKN MARETE, J
SEPTEMBER 28, 2022**

BETWEEN

MUNENE GABRIEL MIIRU CLAIMANT

AND

THAMANI SAVINGS & CREDIT CO-OP LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated January 27, 2021. It does not disclose any issue in dispute on its face.
2. The respondent in an Amended Respondents Response to Memorandum of claim dated March 25, 2021 denies the claim and prays that it be dismissed with costs.
3. The claimant's case is that at all material times to the claim, he was an employee of the respondent in full time service of the respondent in Tharaka Nithi County.
4. The claimant's other case is that he was employed in August, 2003 at a basic salary of Kshs.58,542.00.
5. The claimant's further case is that he performed his duties dedicatedly but was on March 30, 2020 issued with suspension letter. On 30th April instant, he was issued with a dismissal letter without due reasons or even pay of his terminal benefits.
6. It is his case that the termination was unfair on the following grounds.
7. Particulars of unfair termination on the part of 1st and the 2nd respondents
 - a) Terminating the employment contract of the claimant unfairly.
 - b) Failing to give reasons for termination and to prove that the reason for the termination is valid.



- c) Failing to give reasons for termination and to prove that the reason for the termination is a fair reason.
 - d) Failing to give reason for termination and to prove that the reason for termination is related to the employees conduct, capacity or compatibility.
 - e) Failing to give reason for termination and to prove that the reason for termination is based on the operational requirements of the employer; and that the employment was terminated in accordance with fair procedure.
 - f) Failing to act in accordance with justice and equity in terminating the employment of the claimant.
 - g) Failing to follow the statutory requirements connected with the termination, including the issuing of a certificate under section and the procedural requirements set out in law.
 - h) Failing to give lieu notice before termination
 - i) Failing to pay the claimants his money.
8. The claimant further submits that his termination was unfair and unlawful and contrary to the provisions of article 41 of *Constitution of Kenya* 2010 and also section 35(4)(b), 37, 43(1), 45, 46 and 47 of *Employment Act* and is entitled to relief under section 49 of the said Act.
9. He also brings in a reply to the Amended Response to Memorandum of Claim where he counters these by mere denial of the same.
10. He in toto avers a case of unlawful termination of employment and prays as follows;
- a0 Declaration that the termination was unlawful and illegal
 - b) 4 months pro-rata leave.....Kshs.58,542/-
 - c) One month lieu notice salary.....Kshs.58,542/-
 - d) Unlawful termination58,542 x 12.....Kshs.702,504/-
 - e) Unpaid salary for the month of April 2020 and 15 days in May 2020.....Kshs.87,813/-
- TOTAL Kshs.907,401/-
- f) Underpayment of wages
 - g) General damages
 - h) Costs of the suits
 - i) Interests on prayers i, ii, iii, iv, v above
11. The respondents case is a denial of the claim. It is her case that claimant was a most irresponsible worker and more often than not he reported to work drunk. He was issued with several warnings and even counselling but remained a poor performer. Ultimately, he absconded work for 11 days and was therefore summarily dismissed on 24th of April, 2020.
12. The respondent's further case is that the claimant was dismissed for being irresponsible, truant and failing to do his work and therefore a case of unlawful termination of employment does not suffice in the circumstances.



13. This is demonstrated and exemplified as follows;
 10. The claimant absconded duty for 11 days and it is unreasonable to suppose that he (claimant) would not be met with severe disciplinary action. The claimant would not have been allowed to get away with severe non-attendance of duty for eleven (11) days. The law is no work no pay. It is submitted that it is the duty of this court to ensure a worker performs his work and gets his just pay, and for that worker who does not perform his duty, commensurate disciplinary action is taken against him. In the instants suit the claimant failed to attend duty for eleven (11) days without leave, and without anyone knowing where he was. I submit he was fairly dismissed. I pray that the claimant's suit be dismissed.
12. The issues for determination therefor are;
 1. Whether the termination of the employment of the claimant by the respondents was wrongful, unfair and unlawful.
 2. Whether the claimant is entitled to the relief sought.
 3. Who bears the cost of this cause.
13. The 1st issue for determination is whether the termination of the employment of the claimant by the respondent was wrongful, unfair and unlawful. The claimant did not institute written submissions in furtherance of his case.
14. The respondent in her written submissions dated August 26, 2021 brings out a case of lawful termination of employment. This is on grounds of the claimant's continuous misconduct and misbehaviour at his place of work.
15. It is her case that the claimant was always drunk at work. He was disorganized and disorderly and an outright non-performer. He was also a persistent truant who absconded work at will. At the time of his termination of employment he had missed work for 11 consecutive days and therefore his dismissal.
16. His absence from duty without leave or permission is not explained or denied or controverted. In entirety, the Respondent's case has not been controverted or denied in any way or manner. This amounts to an admission of facts and evidence and therefore the claim should be dismissed for lack of proof and or admission.
17. This matter tilts in favour of the respondent. This is both on a preponderance of evidence and a balance of probability. The Respondent's case overwhelms that of the claimant, which is mostly based on denial and no evidence in support of his case or contravention of the defence.
18. Like is ably submitted by the respondent, section 44(1)(a) of the *Employment Act*, summary dismissal ensues in a case of absence from duty from work without notice, leave or other lawful cause. This is the scenario we find ourselves in and I therefore find a case of lawful termination of employment and hold as such.
19. The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is not. Having lost on a case of unfair termination of employment, he becomes disentitled to the relief sought.
20. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 28TH DAY OF SEPTEMBER 2022.

D.K.NJAGI MARETE

JUDGE



Appearances

- 1. Miss. Aketch instructed by Vivian Aketch & Company Advocates for the claimant.**
- 2. Mr. Mutani instructed by P.M. Mutani & Company Advocates for the Respondent.**

