



**Opiyo v Kristensen & another (Cause 84 of 2016)
[2022] KEELRC 4003 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4003 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 84 OF 2016
S RADIDO, J
SEPTEMBER 28, 2022**

BETWEEN

GILLIESH OTIENO OPIYO CLAIMANT

AND

ANNE OKECH KRISTENSEN 1ST RESPONDENT

INTERNATIONAL FELLOWSHIP KENYA 2ND RESPONDENT

JUDGMENT

1. Gilliesh Otieno Opiyo (the claimant) sued Anne Okech Kristensen and International Fellowship Kenya (the respondents) on April 4, 2016, alleging unfair termination of employment and breach of contract.
2. The respondents filed a response on August 25, 2020, and on January 24, 2022, the respondents filed a motion seeking an order striking out the cause for not disclosing any cause of action.
3. In lieu of determining the motion, the court scheduled the cause for hearing, and the hearing proceeded on April 26, 2022 and May 24, 2022.
4. The claimant and the 1st respondent, a director of the 2nd respondent, testified.
5. The claimant filed his submissions on July 15, 2022, and the respondents on submissions were not on record by the agreed timeline.
6. The court has considered the pleadings, evidence, and submissions.



Nature of employment relationship

7. The claimant contended that the respondents employed him as an accountant from October 2010 and that the separation occurred on July 2, 2015. He testified that he earned a monthly salary of kshs 15,000/-.
8. The respondent, however, countered that the claimant was engaged as a volunteer accountant on a part-time basis, and there was no employment contract. According to the respondents, the monthly payment of kshs 15,000/- was reimbursement for basic needs such as food and transport.
9. The parties also produced records.
10. The *Employment Act* 2007 recognises and contemplates various contracts, including oral and written contracts. The act requires a contract to be reduced into writing when certain conditions are implicated.
11. Among the records placed before the court were a letter dated 2 July 2015 informing the claimant of the termination of his employment, warning letters including on performance and a bank statement indicating that the respondents were paying the claimant a salary.
12. The records suggest that the claimant and respondent were in an employment relationship despite the failure to issue a written contract, and the court so finds.

Unfair termination of employment

13. Section 35(1)(c) of the *Employment Act*, 2007 envisages written notice of termination of employment at least 28 days in advance. The respondents did not issue such a notice to the claimant.
14. In the same vein, section 41 of the *act* contemplates the employer affording the employee an opportunity to make representations before making the decision to terminate. The respondents did not demonstrate to the court that the claimant was allowed such an opportunity.
15. The court finds that the termination of the claimant's employment on July 2, 2015 was unfair.

Compensation and Pay in lieu of notice

16. The claimant served the respondents for about 5 years, but he only worked a few days of the week.
17. In consideration of these factors, the court is of the view that the equivalent of a 3-months salary as compensation would be fair.
18. The court will also allow the equivalent of 1 month's salary in *lieu* of notice.

Breach of contract

June 2015 salary

19. The claimant prayed for kshs 17,000/- as salary from June to July 2, 2015.
20. The respondents did not provide any pay records to show the same was paid, and the court will allow this head of the claim.



Security deposit

21. The claimant produced records showing that he was deducted a total of kshs 15,000/- as a security deposit.
22. Since the deposit was refundable upon the claimant returning work items issued to him, such as a laptop, which he returned, the court finds that he is entitled to the deposit.

Gratuity/Service pay

23. The claimant did not place before the court any evidential foundation to the claim for kshs 427,000/- as service pay or gratuity and relief is declined.

Certificate of Service

24. A certificate of service is a statutory entitlement, and the respondents should issue one to the claimant within 21-days.

Conclusion and Orders

25. The court finds and declares that the claimant was an employee of the respondents and that his employment was terminated unfairly.
26. The claimant is awarded:
 - i. Compensation kshs 45,000/-
 - ii. Pay in lieu of notice kshs 15,000/-
 - iii. Unpaid salary kshs 17,000/-
 - iv. Security deposit refund kshs 15,000/-
 - v. Total kshs 92,000/-
27. The respondents to issue a certificate of service within 21 days.
28. The claimant acted in person. Each party to bear own costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 28 DAY OF SEPTEMBER 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For claimant in person

For respondents Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura

