



**Mandere v Doinyo Lessos Creameries Ltd (Cause 23 of 2017)  
[2022] KEELRC 12683 (KLR) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12683 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 23 OF 2017  
NJ ABUODHA, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**JANE MANDERE ..... CLAIMANT**

**AND**

**DOINYO LESSOS CREAMERIES LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant alleged that she was employed by the respondent from 2003 and worked until December 31, 2016 when the respondent unlawfully terminated her service and without justifiable reason. And further refused to pay her terminal dues. According to the claimant the termination was carried out contrary to section 40 of the *Employment Act* and was done while she was on maternity leave.
2. The claimant further averred that during the period she worked. She worked overtime without pay and also worked during rest days and was not paid.
3. The respondent filed a response to the claim in which they averred that they did not unlawfully terminate the claimant's service instead that the claimant's contract expired.
4. According to the respondent, the claimant's contract was for a period of one year commencing from September 1, 2015 and expiring on September 1, 2016. The respondent further averred that the claimant was paid all her dues upon termination.
5. At the hearing the claimant testified among others that she recorded a statement on April 13, 2017 which she relied on as her evidence in chief. She stated that she was employed in 2003 and left in 2016 and that her termination took place while she was on maternity leave.
6. The claimant stated that her monthly salary was Ksh 10,600/= per month. She used to report at work at 8.00am and would work until work for the day was finished. They could at times work upto around



- 9.00pm. according to her, they were never paid overtime and worked throughout the week. There were no rest days.
7. The claimant further stated that her work was to pack milk and that she was not employed on a fixed term contract. According to her, she was given some forms which she signed. They were told that if they did not sign the forms, their service would be terminated. The claimant further stated that she was called from maternity leave and issued with a termination letter.
  8. In cross-examination she stated that they used to be given some papers to sign and that she did not understand English well. It was her evidence that she was forced to sign the document and that the fixed term contracting started in 2012. She stated that she was not a member of union and that she never reported anywhere that she was forced to sign anything. She reported her dismissal to the Labour Officer. It was her evidence that she never used to work in shifts and that women never used to work at night. At times when they finished working early, one would stay until 6.30pm.
  9. The respondent's witness Ms Emily Lukaka informed the court that she was the respondent's Human Resource Manager and had worked as such for twenty years. She recorded a statement on October 6, 2017 which she adopted as her evidence in chief. According to her, the respondent issued short term contracts to employees and that they were never for one year. The claimant's last contracts was issued from September 1, 2013 to run until August, 2014. Before the respondent issued a new contract an employee had to express interest for renewal. It was Ms Lukaka's evidence that around the time the claimant was terminated the respondent company was not doing well. So the claimant's contract was not renewed and that she was not the only one. According to her the claimant was paid her terminal dues upon termination and that workers were paid for working on public holidays and further that overtime was accumulated and employees given day off.
  10. In cross- examination she stated that the claimant was issued with a contract which ended in September, 2016. In 2003, there were no written contracts. This continued until 2012. It was her evidence that prior to 2013, the claimant never worked continuously. She could work for three months. According to her, the contracts were explained to employees and that the respondent never terminated the claimant due to maternity. The company was going down; hence no contracts were renewed. She further stated that the respondent closed by 7.00pm and no one worked up to 8.00pm.
  11. It was not in dispute that the claimant was an employee of the respondent. It was however not clear when the claimant joined the respondent. Whereas the claimant stated that she joined the respondent in 2003, the respondent reckoned the time she joined from 2012 when she signed the first fixed term contract running from September, 2012 to August, 2013.
  12. The respondent however stated that prior to 2012, there were no contracts. The respondent further, did not produce any records to show that the claimant was not among its employees prior to 2012.
  13. The claimant attached with her documents a letter of termination of employment dated December 19, 2016. The letter informed the claimant of the decision not to renew her contract period for the reason that the respondent was effecting redundancies in all departments it was therefore not correct for the claimant to allege that her termination was on account of maternity.
  14. What emerges therefore from above is that the claimant's contract was never renewed upon expiry. An employee serving on a fixed term contract has no guarantee that the same shall be renewed upon expiry. The respondent herein however expressed the possibility of renewal save from the fact that the respondent was undertaking redundancies in all departments.
  15. An employer undertaking redundancy ought to comply with the provisions of section 40 of the [Employment Act](#). The employer ought to among others notify the employees union and labour officer



in charge of the area of the intended redundancy and the reason for and extent of such redundancy at least one month before the declaration, where the employee has any pending leave such leave ought to be paid off in cash, and such employee out to be paid severance pay at the rate of not less than fifteen days' pay for each completed year of service.

16. The respondent, though alleged the claimant was paid all her dues, did not produce any evidence, as is its responsibility, to show that the claimant was paid her terminal dues upon being declared redundant. To this extent the court is not persuaded that the respondent complied with the provisions of section 40 of the Employment Act.
17. The claimant made a claim for overtime but did not satisfactorily persuade the court about the nature of her work which required her to work overtime daily for period she worked for the respondent. Concerning leave. The claimant stated that she was on maternity leave by time she was declared redundant hence the claim for leave would not be sustainable. In any event if such leave was prior to the maternity leave, the claimant did not state for which period it was.
18. In conclusion the court awards the claimant as follows under section 40 of the Employment Act.  
Ksh.
  - a. One month's salary in lieu of notice or redundancy 10,000
  - b. Severance pay at 15 days' pay for each complete year of service (15x13years x 10,698 – 30) 69,537 80,235
  - c. costs of the suit.
  - d. Items, (a) and b) shall be subject to taxes and statutory deductions.
19. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

