



**Rono v Doinyo Lessoss Creameries Ltd (Cause 179 of 2017)  
[2022] KEELRC 4033 (KLR) (23 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 4033 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 179 OF 2017  
NJ ABUODHA, J  
SEPTEMBER 23, 2022**

**BETWEEN**

**DIANA JEBET RONO ..... CLAIMANT**

**AND**

**DOINYO LESSOSS CREAMERIES LTD ..... RESPONDENT**

**JUDGMENT**

1. The claimant herein pleaded among others that she was on May 29, 2013 employed by the respondent and worked until March 14, 2017 when the respondent unlawfully terminated her service and refused to pay her dues.
2. According to the claimant the termination was unlawful in that her union was not informed prior to her dismissal, no leave pay was given, no one month's pay in lieu of notice, and no severance pay.
3. The claimant further alleged that during her employment the respondent grossly underpaid her having regard to the regulations of wages (general amendment) order in force, worked overtime, rest days and public holidays without pay. The claimant thus claimed the sum of ksh 547,007/= as compensation for unfair termination and terminal dues.
4. The respondent entered appearance and filed a memorandum of response in which it pleaded in the main that the claimant was never its employee as alleged and on the dates alleged. The respondent further denied it unlawfully terminated the claimant's employment.
5. According to the respondent the claimant's service was terminated on accounts of gross misconduct and that the claimant was given an opportunity to defend herself but chose not to attend the disciplinary meeting.
6. The respondent therefore denied the particulars of unlawful dismissal and put the claimant to strict proof.



7. According to the respondents the claimant was dismissed on account of stealing from the respondent, failure to present herself for disciplinary hearing after she was issued with notice to show cause, performing duties she was not allocated and failure to heed directions issued by the respondent.
8. At the oral hearing the claimant stated inter alia that she recorded a witness statement on July 10, 2017 which she relied on as her evidence in chief. According to her she was employed on May 29, 2013 as a casual employee until September 1, 2013 when she signed her first contract for one year ending on August 31, 2014. The appointment letter was produced before the court as exhibit 1-3. It was further her evidence that she was issued with payslips and that she was paid through her bank.
9. On March 12, 2017 she was at work as usual until evening. The supervisor later called them to the changing room and told them some products had been found in their bags. They were asked not to touch their bags and that they were asked how the products got into their bags and said they had no idea. They left for home and came back to work the next day and continued working until on March 14, 2017 when they got suspension letters. The suspension was for 14 days however before the end of the suspension period they were called and issued with dismissal letters. According to the claimant, they were never called for any disciplinary hearing and upon termination never paid any dues.
10. According to the claimant, they were photographed by the supervisor who told them that the photos were for advertisement and that she never saw the photos again.
11. Regarding her work, she stated that her work entailed packaging labelling and cutting cheese. The supervisor found packets of milk in her bag and that she did not know how they got there. The supervisor thereafter asked them through the show cause letter to explain how the products got into their bags. They were given 48 hours. According to her she responded to the show cause letter. She however denied ever writing an apology letter however they were asked to apologise if they wanted summary dismissal lifted.
12. While she worked, she stated that she was never paid overtime. Regarding transport, she stated that the respondent dropped them home because whenever they left work it was late and that they used to go on one off per week and that they could go on double off when there was less work. She maintained that her dues were never paid upon termination.
13. The court on January 26, 2022 ordered the respondent's case closed after several applications for adjournment on the part of the respondent. The case therefore technically proceeded undefended.
14. Section 41 of the *Employment Act* requires that before an employee is terminated or dismissed, they should be given an opportunity to defend themselves against the accusations leveled against them.
15. The claimant herein was suspended for 14 days on the allegation that milk products were found in their handbags without authority from their supervisor. According to her they were called back before the end of the fourteen days and issued with dismissal letters.
16. Under section 43(1) of the *Employment Act*, the burden of proof of reasons for termination is cast upon the employer. In this particular case, the respondent. The respondent though filed a response to the claim, failed to avail witnesses to vouch for the allegations contained in their statement of response. The matter therefore proceed undefended. Implying the respondent failed to discharge the burden of proof cast upon them by law. Consequently, the court finds and holds that the termination of the claimant's service was unfair.
17. Regarding heads of compensation, the claimant made claims for unpaid holiday, overtime and leave dues however during her oral testimony she never provided any evidence or make any allegation to support these claims. For instance, the claimant never stated what time they reported to work and



when they left. Further she never alleged that the nature of her work was such that she had to work overtime and during public holidays. It was her evidence that she used to get weekly offs once and sometimes twice when work reduced. The court therefore rejects those heads of claim for lack of proof. The same goes for severance pay since this was a case of termination of employment on allegations of gross misconduct and not redundancy.

18. The claimant was employed by the respondent as a general labourer meaning she had no special skills for the work she was doing hence could perform any suitable work assigned to her. She worked for the respondent for approximately four and a half years and her exit salary was ksh 12,302. Considering the above and the failure by the respondent to defend the claim, an award of ten months salary would be adequate compensation for unfair termination.

19. In conclusion, the court awards the claimant as follows:

Ksh.

- a. One month's salary in lieu of notice 12,302.
- b. Ten months' salary as compensation for unfair termination 123,020  
=135,322
- c. Cost of the suit
- d. Items (a) and (b) shall where applicable be subject to taxes and statutory deductions.

20. It is so ordered

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

**Abuodha Nelson Jorum**

**Judge ELRC**

