



**Mulwa v Style Industries Limited (Cause 1186 of 2017)
[2022] KEELRC 3964 (KLR) (22 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3964 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1186 OF 2017
L NDOLO, J
SEPTEMBER 22, 2022**

BETWEEN

TITUS KASIVA MULWA CLAIMANT

AND

STYLE INDUSTRIES LIMITED RESPONDENT

JUDGMENT

1. By a memorandum of claim dated June 9, 2017 and filed in court on June 23, 2017, the claimant sued the respondent for unfair dismissal and failure to pay terminal dues.
2. In response, the respondent filed a statement of defence on November 20, 2018.
3. The matter went to trial with the claimant testifying on his own behalf. The respondent chose not to call any witness. The claimant further filed written submissions. At the time of writing this judgment, no submissions had been filed on behalf of the respondent.

The Claimant's Case

4. The claimant states that he was employed by the respondent as a general labourer from April 2006. He claims to have been appointed as a quality controller in 2007 a position he held until February 18, 2012, when he was transferred to Nakuru as an assistant supervisor, which is the position he held when his employment was terminated on July 5, 2016. At termination, the claimant earned a monthly salary of Kshs 17,392.
5. The claimant states that on July 5, 2016 he reported to work as usual but his employment was terminated by the human resource manager on allegations that the respondent's records and the record fed into the system by the supervisor were not tallying.
6. The claimant lays a claim for unlawful and unfair termination of employment and now seeks the following remedies:



- a) One month's salary *in lieu* of notice.....Kshs 17,392.00
- b) Leave pay for 3 years.....36,523.02
- c) Prorata leave for 2 months.....2,029.06
- d) Service gratuity for 10 years.....86,960.00
- e) 12 months' salary in compensation.....208,704.00
- f) Costs plus interest

The Respondent's Case

7. In its statement of defence dated November 19, 2018 and filed in court on November 20, 2018, the respondent admits having employed the claimant as an assistant supervisor. At the time of separation, the claimant earned a monthly basic salary of Kshs 17,392 plus a house allowance of Kshs 2,609.
8. The respondent states that on June 27, 2016, the claimant while on duty, failed to follow the production guidelines thus occasioning wastage of raw materials. The respondent adds that the claimant was issued with a warning letter by the production manager, which he refused to acknowledge.
9. On the same date, the claimant was issued with a show cause letter accusing him of wastage of materials and insubordination in the form of refusal to acknowledge the warning letter.
10. The respondent avers that the claimant did not respond to the show cause letter and was therefore issued with a notification to appear for a disciplinary hearing on July 2, 2016. The respondent claims that the claimant was notified of his right to be accompanied by a fellow colleague at the disciplinary meeting.
11. The claimant was subsequently dismissed for gross misconduct to wit; refusing to accept a warning letter and wastage of raw materials at the production site.
12. The respondent states that the claimant was paid notice period and accrued leave days.
13. Regarding the claimant's previous disciplinary record, the respondent avers that the claimant was issued with a warning letter on April 1, 2016 for recording and giving wrong waste production and another warning letter on July 1, 2016 on account of low production.

Findings and Determination

14. There are two (2) issues for determination in this case:
 - a) Whether the termination of the claimant's employment was lawful and fair;
 - b) Whether the claimant is entitled to the remedies sought.

The Termination

15. The termination of the claimant's employment was formalised by letter dated July 5, 2017 stating as follows:

“Dear Mr Titus,

RE: Termination of employment contract



Within the last 12 months you have signed two warning letters for various reasons. On July 27, 2017 you were issued with a third warning letter for failing to monitor and ensure correct recording of waste products in production department at Nakuru branch, but you refused to sign.

Please note that this is not acceptable to the company as it portrays an employee who does not follow the company rules and regulations and also amount to gross misconduct under section 44(4)(c) of the Employment Act 2007 which states, “an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly” and section 44(4)(e) which states that “an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer” and are punishable by summary dismissal.

The management has however downgrade (sic) this to termination and you will be paid your contractual dues as follows,

You will be paid your contractual dues as follows:

- 1) Your salary up to and including July 5, 2016, (for days worked).
- 2) One month’s pay *in lieu* of notice.
3. Earned but unutilised leave.

The above payment will be less any monies you may be owing to the company and Strategic Sacco Ltd. The same will be subject to tax and other statutory deductions where applicable.

The payments will also be subject to the return of any company assets in your possession. Payment of NSSF dues is the responsibility of the fund. You are however advised to obtain the relevant claim forms from the Fund’s office (if or when you are qualified for payment) and bring the same to the human resources office for updating and confirmation of your contributions.

A schedule of payments as detailed above, together with a certificate of service will be ready for collection on or after August 8, 2016.

Yours faithfully,

(signed)

Margaret L. Geno

HRHead-east Africa”

16. According to this letter, the claimant’s employment was terminated on the ground gross misconduct, particulars being failure to monitor and ensure correct recording of waste products and refusal to sign a warning letter.
17. In his testimony before the court, the claimant denied both charges, stating that there was no wastage of raw materials and that he was not issued with any warning letter. The claimant further testified that he was not issued with a show cause letter nor was he invited to any disciplinary hearing. According to the claimant, the only letter he received was the termination letter.



18. The respondent did not adduce any evidence to counter the claimant's testimony. What is clear is that the charges raised in the termination letter were not put to the claimant at the shop floor and he therefore had no opportunity to respond to them. The emerging result is that the charges were not proved as required by section 43 of the Employment Act. Moreover, the claimant was denied an opportunity to be heard as dictated by section 41 of the act.
19. The inescapable conclusion is that the termination of the claimant's employment was substantively and procedurally unfair and he is entitled to compensation.

Remedies

20. I therefore award the claimant eight (8) months' salary in compensation. In arriving at this award, I have taken into account the claimant's documented length of service and the respondent's unlawful conduct in the termination transaction.
21. From the evidence on record, the claimant's terminal dues as tabulated and paid out by the respondent were inclusive of notice pay and leave pay. The claims thereon are therefore misplaced and are disallowed.
22. The claim for service gratuity was abandoned at the trial.
23. Ultimately, I award the claimant kshs 160,008 being 8 months' salary in compensation for unlawful and unfair termination of employment.
24. This amount will attract interest at court rates from the date of judgment until payment in full.
25. The claimant is also entitled to a certificate of service plus costs of the case.
26. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Kamau for the Claimant

Miss Obonyo for the Respondent

