



**Okisegere v Brookside Dairy Co Ltd (Cause 11 of 2018)
[2022] KEELRC 3935 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELRC 3935 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 11 OF 2018
S RADIDO, J
SEPTEMBER 21, 2022**

BETWEEN

ANDREW AWOLI OKISEGERE CLAIMANT

AND

BROOKSIDE DAIRY CO LTD RESPONDENT

JUDGMENT

1. Andrew Awoli Okisegere (the Claimant) was employed by Brookside Dairy Co Ltd (the Respondent) on 1 August 2014 as a Store Attendant.
2. On or around 19 October 2016, the Respondent issued a letter notifying the Claimant of the termination of his employment. The Respondent offered the Claimant the equivalent of 1 month's salary in lieu of notice.
3. The Claimant was dissatisfied, and he sued the Respondent on 15 January 2018, alleging unfair termination of employment.
4. The Respondent filed a Response on 12 February 2018.
5. The Cause was heard on 7 February 2022 when the Claimant testified and on 17 May 2022, when the Respondent's General Manager, Human Resources, testified.
6. The Claimant filed his submissions on 30 June 2022, and the Respondent on 19 July 2022.
7. The Court has considered the pleadings, evidence, and submissions.



Unfair termination of employment

Procedural fairness

8. The Claimant asserted that he was not heard before the decision to terminate his employment was made.
9. The Respondent's witness, however, countered that the decision to terminate was lawful and fair because the Claimant was offered 1 month's salary in lieu of notice.
10. Termination on notice without lawful cause is no longer part of the law in Kenya. The Court says so because of sections 35(1) and 41 of the *Employment Act*, 2007.
11. Section 35(1) of the *Employment Act*, 2007, requires the employer to issue a written notice (unless it is a case of summary dismissal). The Respondent did not give the written notice of termination as contemplated by the section. The Claimant's case was not a summary dismissal.
12. Further, section 41 of the *Act* behoves the employer to allow the employee to make representations, preferably in the company of a colleague or trade union official, in appropriate cases.
13. The Respondent in the case at hand did not allow the Claimant to make representations before deciding to terminate.
14. The Court is satisfied that the Respondent was not in compliance with the statutory fairness threshold as outlined in section 41 of the *Employment Act*, 2007, hence the decision was unfair.

Substantive fairness

15. Sections 43 and 45 of the *Employment Act*, 2007, require the employer to prove that the reasons that precipitated the termination of an employment contract were valid and fair.
16. The reason(s) for the termination of the Claimant's contract was failing to comply with procedures and instructions on loading products into trucks (excess products were loaded onto a truck).
17. Apart from a general statement in the witness statement filed on behalf of the Respondent that:

In the months of September and October 2016, several incidences reported that as a Stores Attendant, the Claimant was executing his duties below the required standards. There were instances where the Claimant was reported to have loaded products into distribution vehicles without authority and instructions from seniors the Respondent did not give any other particulars to connect the Claimant with any such incidences.
18. The Court finds the vague and general testimony from the Respondent's witness did not meet the burden expected of the Respondent rendering the decision unfair.

Compensation

19. The Claimant served the Respondent for about 2 years, and in consideration of the length of service, the Court is of the view that the equivalent of 2 months' gross wages as compensation would be appropriate (gross wage was Kshs 22,572/-).

Certificate of Service

20. A Certificate of Service is a statutory entitlement, and if the Respondent did not issue one to the Claimant, it should.



Conclusion and Orders

21. The Court finds and declares that the termination of the Claimant's employment was unfair and awards him:
 - (i) Compensation Kshs 45,144/-
22. The Respondent to issue a Certificate of Service within 21 days.
23. Claimant to have costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 21ST DAY OF SEPTEMBER 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Mr Nyanga instructed by Nyanga & Co. Advocates

For Respondent Mr Njuguna instructed by Wainaina Ireri Advocates LLP

Court Assistant Chrispo Aura

