



Kenya Union of Commercial, Food & Allied Workers v Iriaini Farmers Cooperative Society Ltd (Cause E039 of 2021) [2022] KEELRC 13085 (KLR) (31 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 13085 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E039 OF 2021
DKN MARETE, J
OCTOBER 31, 2022**

BETWEEN
**KENYA UNION OF COMMERCIAL, FOOD & ALLIED
WORKERS CLAIMANT**
AND
IRIAINI FARMERS COOPERATIVE SOCIETY LTD RESPONDENT

JUDGMENT

1. This matter was originated by way of a Memorandum of Claim dated 30th June, 2021. The issue in dispute is therein cited as;

Failure to pay Terminal benefits to Fredrick Maina Ithiru.
2. The matter is not defended, or at all. The Respondent did not participate or even defend the suit in any way. This is despite service.
3. The claimant's case is that the parties have a mutual relationship through a valid Recognition Agreement and have been on Collective Bargaining Agreements with the latest being that of 1st October, 2017 to 30th September, 2019.
4. The claimant's further case is Fredrick Maina Ithiru – the grievant was employed by the Respondent on 1st April, 2010 as Secretary Manager. He earned Kshs.15,500.00 per month with a house allowance of Kshs.3,000.00. His was a dedicated service.
5. The claimant's other case is that upon change of the management board of the Respondent in February, 2019 and after several failed handing over meetings of the board, the grievant was issued with a letter of summary dismissal on 1st March, 2019. At this time he earned Kshs.29,891.00, a house allowance of Kshs.8,274.00 and another Kshs.8,274.00 being medical allowance. This totalled to Kshs.46,430.00.



6. It is the claimant's further case that the grievant was dismissed unprocedurally and unfairly and in contravention of section.41 (1) and Section.43 and 44(3) of the Employment Act, 2007.
7. This matter was referred to conciliation but this was not able to resolve the issues in dispute.

She therefore prays thus;

- i. Respondent to pay the following as the grievant terminal benefits.
 1. One month notice 46,439.00
 2. February 2019 salary 46,439.00
 3. Accrued annual leave for 2015 to 2018
 $46,439.00 \times 32 \text{ days} \times 4 = 26,228,662.80$
 4. Service gratuity for 9 years = $29,891.00 \times 30\% \times 12 \times 9 = 968,468.40$
 5. Salary arrears (illegal deductions for October 2018-February 2019) 28,237.00
 6. Maximum compensation for unlawful dismissal = $46,439.00 \times 12 \text{ months} = 557,268.00$Total 1,875,514.20

ii. Respondent to pay interest in a, b, c and d at court rate from date of dismissal.

iii. Cost.

8. The matter came to court variously until the 15th March, 2022 when it was agreed on a disposal by way of written submissions.
9. The claimant's written submissions dated 6th May, 2022 are a replication of her case. She relies on the authorities of;
 20. The parties' Collective Bargaining Agreement clause No.24 clearly states that "an employee may be suspended from duty pending investigations into circumstances or causes leading to suspension."
 21. Employment Act 2007 Section 41(1) is very clear and it reads;

"Subject to Section 42(1) of an employer shall before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employees, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation" it further states in (2) "notwithstanding and other provision of this part an employer shall before terminating the employment of an employee or summary dismissing an employee under section 44 (3) or (4) hear and consider any representation which the employee may on the grounds of misconduct or poor performance, and the person if any chosen by the employee within sub section (1) make.

22. The Constitution of Kenya 2010 Article 50 states;

- i. Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing.



ii. Every accused person has a right to fair trial.

10. Like was earlier observed, this matter is not defended, or at all.
11. The Claimant on their list of documents and witness statement enlist a case of unprocedural, unlawful and unexplained termination of employment. This is demonstrated by the claimant's lists of documents and witness statements in support of the claim. These are;

App.	Description
App.	Parties Collective Bargaining Agreement
App.	a. Appointment letter dated 26th March, 2010 b. Labour contract (permanent worker) form
App.	Minutes of management committee meeting held on 21st February, 2019 at Kamunyaka
App.	Respondent's summary dismissal letter to the grievant dated 1st March, 2019
App.	Claimant's letter to the Respondent on summary dismissal of the grievant
App.	Claimant's trade dispute report letter dated 9th July, 2019 to the Cabinet Secretary, Ministry of Labour
App.	Conciliator's appointment letter dated 25th July, 2019
App.	Joint conciliation meeting invitation letter dated 22nd August, 2019 to the parties
App.	Claimant's memoranda to the conciliator
App.	Joint conciliation meeting invitation letter dated 4th October, 2019 to the parties
App.	Referral certificate dated 2nd September, 2020

12. In the absence of a defence against the claim, it takes sway. The claimant has ably demonstrated a case of unlawful of termination of employment which she has attempted to thrash out through conciliation with no success. The Respondent merely ignored this overture. I therefore find a case of unlawful termination of employment and hold as such.
13. The 2nd issue for determination is whether the claimant is entitled to the relief sought. She is. Having succeeded in a case of unlawful termination of employment, she becomes entitled to the relief sought.
14. I am therefore inclined to allow the claim and order relief as follows;



- i. One (1) months salary in lieu of notice 46,439.00
- ii. Unpaid salary for February 2019 salary 46,439.00
- iii. Service gratuity for 9 years = $46,439.00 \times 15 / 30\% \times 9 = 208,975.50$
- iv. Salary arrears, illegal deductions for October 2018 to February 2019 28,237.00
- v. Six (6) months salary as compensation for unlawful termination of employment 46,439.00 x 6 months= 278,634.00
Total Of Claim.....Kshs.608,724.50
- vi. The Respondent be and is hereby ordered to meet and pay interest in i to v above at court rate from date of judgment of court till payment in full.
- vii. The costs of the claim shall be borne by the Respondent.

DATED AND DELIVERED AT NYERI THIS 31ST DAY OF OCTOBER 2022.

D.K.NJAGI MARETE

JUDGE

Appearances

- 1. Miss Macharia for the claimant union.
- 2. No appearance for the Respondent.

