



REPUBLIC OF KENYA



KENYA LAW
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Muindi v Roberto (Cause 1911 of 2014)
[2022] KEELRC 14656 (KLR) (27 October 2022) (Judgment)

Neutral citation: [2022] KEELRC 14656 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1911 OF 2014
M MBARÚ, J
OCTOBER 27, 2022

BETWEEN

PETER MUTUA MUINDI CLAIMANT

AND

ANSALDI ROBERTO RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a stableman on January 15, 2013 at his residence in Karen, Nairobi at a wage of ksh 12, 000 per month.
2. On February 12, 2014 while the claimant was looking after the horses he had an accident and got injured to his head-collar and his ring finger of the right hand got fractured.
3. The claim is that the claimant requested the respondent for money to get treatment and compensation for the injuries suffered but the respondent declined and dismissed him from employment causing him loss and injury and resulting in unfair termination of employment.
4. The claimant is seeking for payment of the following dues;
 - a. Severance pay Ksh 6,000;
 - b. Notice pay Ksh 12,000;
 - c. Compensation for unfair termination of employment Ksh 144, 000.
 - d. Costs of the suit and interests.
5. The claimant testified in support of his case that upon injury he was all alone taking care of the horses and his co-worker was away for the day and when night came, he went to the hospital with the assistance of a neighbour and when he sought for



6. Treatment upon return to work the respondent dismissed him from his employment without notice or payment of his terminal dues.
7. The claimant called a witness Mr Mote Mbithuka who testified that the claimant was his neighbour and when he informed him that he had been injured while at work taking care of horses he took him to the hospital and was treated. Later he learnt that the claimant had been dismissed from his employment by the respondent.
8. In response, the defence is that the claimant injured his finger on February 12, 2014 while at work for the respondent and after treatment he reported back but demanded to be paid compensation for the injury. The respondent reported the matter to the labour office and after investigations it was decided that the claimant ought to be paid ksh 18, 641 together with a refund of all medical expenses which was acceptable to the respondent but the claimant declined such payment and demanded ksh 200, 000 and then stopped reporting to work. The claims made are not justified and should be dismissed with costs.
9. The respondent called Sarah Gikuhi the secretary and who testified that when the claimant got injured while at work he was allowed to seek treatment and when he resumed work he demanded to be paid for the injuries and the respondent consulted the labour officer who advised that he be paid ksh 18, 000 and costs for the treatment. The claimant demanded to be paid ksh 120, 000 and then refused to report to work. Despite several calls and persuasion to take the offered compensation and resume work, the claimant declined.
10. At the close of the hearing both parties filed written submissions. Determination
11. It is not in dispute that the claimant got injured while at work with the respondent in February, 2014 and as a result he sought treatment for the injury. The matter was reported to the labour officer who advised on the due compensation per the [Work Injury benefits Act, 2007](#).
12. The claimant rejected the payment in compensation and failed to resume work.
13. An employee who refuses to work, absconds duty or is absent from duty is subject to summary dismissal save, the employer is bound to issue notice to the employee and
14. not leave him at large as such only invites a claim such as this one against the employer for failure to issue notice to the employee and where the employee totally refuses to comply as directed. Such notice can issue through the office of the labour officer for the area.
15. Upon the claimant being injured the respondent reported the matter to the Labour Officer and who investigated and advised on the compensation due to the claimant. On the aspect of the claimant failing to report to work, similar advice would have protected the respondent and in the absence of any action by the respondent against the claimant such resulted in unfair termination of employment. Notice pay is due as well as compensation.
The claimant was earning Ksh 12, 000 which is due in notice pay.
16. On compensation, such is due pursuant to Section 49 of the [Employment Act, 2007](#) but the court is also required to look at the conduct of the employee leading to termination of employment pursuant to Section 45(5) of the [Act](#) and having absconded duty for no good cause and despite being allowed time off to seek treatment, to award a compensation would be to reward gross misconduct. There is zero (0) compensation.
17. On the claim for severance pay, such an award only arise pursuant to Section 40 of the [Employment Act, 2007](#) and this case does not relate to a redundancy and such a claim is misplaced.



18. Accordingly, judgement is hereby entered for the claimant against the respondent for payment of notice pay at ksh 12, 000 only. Each party shall bear own costs.

Delivered in court at Nairobi this 27th day of October, 2022.

M. MBARŪ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

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