



**Onyango v Frodak Cleaning Services Ltd (Cause 78 of 2018)
[2022] KEELRC 12941 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12941 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 78 OF 2018
S RADIDO, J
OCTOBER 26, 2022**

BETWEEN

MICHEAL OCHIENG ONYANGO CLAIMANT

AND

FRODAK CLEANING SERVICES LTD RESPONDENT

JUDGMENT

1. Michael Ochieng Onyango (the claimant) sued Frodak Cleaning Services Ltd (the respondent) on March 27, 2018, and he stated the issue in dispute as: unfair termination, unlawful termination, and failure to pay full terminal benefits.
2. The respondent filed a response on April 7, 2021, and the cause was heard on June 21, 2022. The claimant and a witness presented by the respondent testified.
3. The claimant filed his submissions on July 21, 2022, and the respondent on August 26, 2022.
4. The court has considered the pleadings, evidence, and submissions.

Unfair Termination Of Employment

5. The primary legal provisions to consider in a case challenging the termination of an employment contract are set out in sections 35(1), 41, 43, 45 and 47(5) of the *Employment Act*, 2007.
6. The claimant contended that he was not afforded a fair hearing before the termination of his employment on December 15, 2017. According to the testimony of the claimant, he reported to work on the day in question but was stopped from working by a supervisor called Oscar allegedly because of allegations of theft on December 11, 2017.
7. The respondent pleaded defence on how it separated from the claimant was that the claimant's contract lapsed by effluxion of time on October 14, 2017.



8. The claimant's contract was set to expire on January 16, 2018. The respondent produced in court payment schedules extending beyond October 2017. The schedules show that the claimant was attending work and was paid accordingly.
9. The respondent's defence that the contract expired by effluxion of time is, therefore, incorrect.
10. With the court discounting the primary defence advanced by the respondent and lacking any other evidential basis, the court can conclude that the claimant's supervisor stopped him from working on December 15, 2017, allegedly because of the theft allegations.
11. The respondent did not show that it afforded the claimant a hearing before stopping him from work, and the court finds that there was unfair termination of employment.

Compensation And Pay In Lieu Of Notice

12. The claimant served the respondent from September 2015 to December 15, 2017.
13. Considering the length of service, the court awards the equivalent of 2 months' salary as compensation (claimant was on a daily rate of Kshs 300/- and the court will adopt a multiplier of 26 days each month).
14. The court will also allow the equivalent of 1 month's salary in lieu of notice.

Underpayments

15. The claimant was a helper (general labourer). the prescribed daily rate for a general labourer in 2015 was Kshs 295/-. The claimant was not underpaid.
16. The daily rate was increased to Kshs 349/- from July 2017, and any underpayment up to the separation is insignificant. The court has factored this in awarding compensation.

Service Pay

17. The claimant prayed for Kshs 24,256/- service pay.
18. The copy of the provisional member statement of account from the National Social Security Fund produced by the claimant indicates that monthly contributions were paid up to November 2017.
19. The claimant is not entitled to service pay by dint of section 35(5) & (6) of the *Employment Act, 2007*.

Leave

20. The respondent's witness admitted that the claimant did not go on leave, but the claimant did not prove that he applied for leave and was denied or that he carried forward the leave with the approval of the respondent.
21. The court declines to grant the relief sought.

Certificate of Service

22. A certificate of service is a statutory entitlement, and the respondent should issue one to the claimant.

Conclusion and Orders

23. The court finds and declares that the respondent unfairly terminated the claimant's contract.
24. The claimant is awarded:



- i. Compensation Kshs 15,600/-
 - ii. Pay *in lieu of* notice Kshs 7,800/-
- Total Kshs 23,400/-

- 25. The respondent to issue a certificate of service within 21 days.
- 26. The claimant to have costs.

Delivered virtually from Voi, dated and signed on this 26th day of October 2022.

Radido Stephen, MCI Arb

Judge

Appearances

For Claimant Ben Aduol Nyanga & Co. Advocates

For Respondent Okongo Wandago & Co. Advocates

Court Assistant Chrispo Aura

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