



**Kiptoo v Seal Honey Limited (Cause 160 of 2018)  
[2022] KEELRC 12832 (KLR) (14 October 2022) (Judgment)**

Neutral citation: [2022] KEELRC 12832 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 160 OF 2018  
NJ ABUODHA, J  
OCTOBER 14, 2022**

**BETWEEN**

**JONAH KIPKURUI KIPTOO ..... CLAIMANT**

**AND**

**SEAL HONEY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant averred that he was employed by the respondent on March 1, 2007 and worked until July, 2017 and worked until July, 2017 when the respondent unlawfully terminated his service and refused to pay his termination dues.
2. The termination according to the claimant was unlawful because his union was never informed, no payment was made in lieu of notice, severance pay was not made and the claimant was not given a chance to air his views.
3. The claimant further alleged that during the period he worked, the respondent underpaid him, he worked overtime during rest days and public holidays without pay.
4. The respondent filed a response alleging that it lawfully terminated the claimants service and in accordance with the law.
5. According to the respondent, the claimant was served with a show cause letter dated September 29, 2017 setting out particulars of the allegations against him. The claimant responded in writing and was thereafter invited for disciplinary hearing on October 5, 2017. The claimant exercised his right and attended the meeting accompanied by his colleague one Caleb Juma. The respondent deliberated on the representations made by the claimant at the disciplinary meeting and proceeded to terminate the claimants contract of employment. Upon termination the claimant was paid his terminal dues and issued with a certificate of service.



6. At the oral hearing the claimant stated among others that he recorded a witness statement on April 10, 2018 which he sought to adopt as his evidence in chief. According to him he was issued with a letter of appointment (annexture 6) produced as exhibit 1. He also stated that he was issued with a certificate of service and that he was issued with a summary dismissal letter.
7. According to the claimant he got sick during the time he used to work and was accused of lateness. He had a sick sheet. He used to work as a shop assistant and later became a supervisor. His last salary was Ksh.24,000/=.
8. After the closure of the claimant's case, the respondent filed an application dated October 29, 2019 seeking the setting aside of the exparte hearing and a trial de novo.
9. The parties however compromised the application and consented recalling the claimant for cross examination only. This was approved by the court however after several applications for adjournment by the respondent, the court ordered the respondent's case closed and matter proceeded to submissions by counsel.
10. In the witness statement dated April 10, 2018 the claimant stated that he was registered for NSSF and NHIF and that his employer used to make deductions from his salary and pay for both.
11. The claimant further stated that his monthly salary was Ksh.10,868/= inclusive of house allowance and overtime. The working hours were from 8.00am to 6.00pm Monday to Friday and Saturday from 8.00am to 1.15pm. The extra hours he worked were paid for separately. The claimant further stated that his salary was increased from 10,868 to Ksh.24,014/34.
12. According to the claimant, he initially worked at the respondent's Eldoret Branch but was later in July, 2017 transferred to Mombasa. He requested for a loan from the respondent to organize himself. That is to say rent a house in Mombasa and other requirements. His employer recovered the entire loan from his August salary and this made him fail to pay his house rent so the landlord locked his hours. This made him travel up country to look for ways of how he could pay rent and buy food. While at home he got sick hence he failed to resume duty within the time required. The claimant further stated that while at home, he received a show because letter dated 29<sup>th</sup> September, 2017 reminding him of disciplinary proceedings. On October 5, 2017 he attended the disciplinary meeting with his witness Mr. Caleb Juma. The respondent was not convinced by his explanation and resolved to dismiss him from employment without notice.
13. The claimant further stated that he was asked to report to the head office to be paid his terminal dues. When he reported he met one Jared Okelo who told him his cheque had been deposited into his bank account. Mr. Okelo gave him a photocopy of the Cheque to sign against but he refused. The cheque was for Ksh.82,0006/=.
14. Under section 47(5) of the *Employment Act*, the burden of proof that an unfair termination has taken place is on the employee while the burden of proof of reasons for the termination is on the employer.
15. The respondent herein did not attend trial to prove the reasons for the dismissal of the claimant. However, this did not discharge or lessen the evidentiary burden cast upon the claimant by section 47(5).
16. The claimant in his witness statement does not deny that the respondent terminated his service as a result of being absent from work without authority. According to the claimant he took 10 days off to look for money for rent and food. He however did not resume work upon the expiry of the ten days. According to him he fell sick and was issued with a sick sheet.



17. The respondent however did not believe him and issued him with a show cause letter and later invited him for a disciplinary hearing which he attended together with one Caleb Juma. At the conclusion of the hearing the respondent resolved to terminate the claimant's service summarily.
18. The termination letter which was attached as part of the claimants' documents elaborately sets out the accusations and grounds upon which the respondent arrived at the conclusion to summarily dismiss the claimant.
19. Absence from work without lawful cause or leave is one of the grounds upon which an employer can be summarily dismissed under section 44(4).
20. The claimant does not seem to deny that he was absent from work without leave. He however justifies his absence on the grounds that he became sick and produced a sick sheet. The respondent did not believe him for reasons elaborately set out in the letter of termination.
21. In reaching the decision whether a termination was fair or not, the court puts itself in the shoes of a reasonable employer. If a reasonable employer could dismiss in the circumstances, the court would not interfere. It is not the role of the court to over analyze the reasons for termination and substitute it or them with its own views of whether the reasons were justifiable or not.
22. The court has carefully considered the reasons for termination contained in the letter of dismissal and the claimant's own account of events contained in his witness statement and is persuaded that there existed justifiable reasons for termination of the claimant's service. The court is further satisfied that the claimant was accorded procedural fairness before his service was terminated. The claim for unfair termination is therefore rejected.
23. The claimant made claims for overtime, service pay, pro rata leave and underpayment but did not lead any evidence to support these claims. For instance, the claimant never attached the relevant wage order for the Court to compare with his payslip to seek of indeed there was a difference between the gazette wage and what was paid to him. Regarding over time, the claimant himself stated that overtime was paid for separately whenever worked. In any event the payslips attached showed overtime was paid for whenever worked.
24. The court therefore finds these heads of claim without merit and are hereby rejected.
25. In conclusion, save that the respondent is hereby ordered to pay the claimant his terminal dues as calculated during the dismissal if not paid already, the claim is found to be without merit and is hereby dismissed no order as to costs.
26. It is so ordered

**DATED AND DELIVERED AT ELDORET THIS 14<sup>TH</sup> DAY OF OCTOBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

