



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wachira v Timwood Products Ltd (Cause 983 of 2016)  
[2022] KEELRC 13396 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13396 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 983 OF 2016  
AN MWAURE, J  
NOVEMBER 17, 2022**

**BETWEEN**

**JULIUS MUNYIRI WACHIRA ..... CLAIMANT**

**AND**

**TIMWOOD PRODUCTS LTD ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his notice of motion dated 20<sup>th</sup> May 2016 and a response was filed on 4<sup>th</sup> August 2016.

**Claimant's case**

2. The Respondent says he was employed on 1<sup>st</sup> April 1998 and his services were terminated on 1<sup>st</sup> December 2015.
3. He says his employment was terminated by the Chief Executive Officer without any notice and it was taken by a new motor vehicle mechanic. He says at the time of dismissal he had served the Respondent for 17 years and 7 months without blemish.
4. The Claimant says his dismissal was unfair and unlawful and prays for compensation of total of Kshs.1,636,458/30 plus interest and costs.

**Respondent's case**

5. The Respondent admits the services of the Claimant were terminated for gross misconduct, negligence and insubordination and use of insulting language. He claims that the Claimant was given an opportunity to defend himself with a representative of his choice but he refused to be represented leading to the dismissal.



6. The Respondent further says the Claimant is not entitled to the damages claimed as they are all in abstract. He says he paid his terminal dues.
7. The respondent avers he acted within the confines of the law and Claimant's termination was lawful. He prays that the Claimants claim be dismissed with costs.

### **Claimant's submissions.**

8. It is the Claimant's submissions that on 1<sup>st</sup> December 2015 he reported on duty as usual and was summoned by the Respondent's Chief Executive Officer Mr. V.H. Bakhrania who informed him that his services were no longer required. He says he was not given notice or a chance to defend himself and was not given salary in lieu of notice.
9. The Respondent filed a reply to the claim but failed to file a witness statement or to file submissions.
10. The Claimant further says at the time of termination his salary was at 25,000/- per month.
11. It is the Claimant's submissions that the Respondent save for general denials has failed to give specifics on nature of negligence committed or insulting language used or name of rank of the officer who it is alleged the Claimant insulted. The Claimant has cited the cases of *Walter Anuro vs Teachers Service Commission* (2013) eKLR and *Rebecca Ann Maina & 2 Others vs Jomo Kenyatta University* (2014) eKLR for his support. The first case provide that termination of employment to pass the fairness test there must be both substantive justification and procedural fairness." The case of Rebecca Maina & 2 Others Vs Jomo Kenyatta University (supra) provide that for an employee to respond to the allegations made against them the charge must be clear and the employee must be afforded sufficient time to prepare their defence.
12. The Claimant's submissions therefore are that the Respondent did not present a valid reason to terminate the Claimant and also did not follow the procedure which is mandatory as laid in section 41 of the *Employment Act*. He claims his termination was unfair and illegal and prays for compensation.

### **Determination**

13. The main issue for determination in this case is whether the Claimant was unlawfully terminated from his employment and is he entitled to any reliefs or not.
14. The Claimant says that one day on 1<sup>st</sup> December 2015 he reported to work as usual at the Respondent's organization. He says he was terminated by the Chief Executive Officer. He says he had worked for the Respondent for 18 years.
15. The Court is seized of the fact that the Respondent did not proffer a valid or indeed a concrete reason as to why he terminated the Claimant from his employment. He only says that the Claimant was guilty of gross misconduct, negligence, was insulting and was guilty of insubordination. The Respondent has not given any specifics pertaining to these serious allegations but are only generalities.
16. The case of Rebecca Maina vs Jomo Kenyatta University (2014) eKLR cited by the Claimant says:-  

“In order for an employee to respond to the allegations made against them, the charge must be clear and the employee must be afforded efficient time to prepare their defence. The employee is entitled to documents in possession of the employer which would assist them in preparing their defence. The employee is further entitled to call witness to buttress their defence.



17. Equally Section 45(1) & 2 of the *Employment Act* provides as:-
45. (1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove——
- a. that the reason for the termination is valid;
  - b. that the reason for the termination is a fair reason——
    - i. related to the employees conduct, capacity or compatibility; or
    - ii. based on the operational requirements of the employer; and
  - (c) that the employment was terminated in accordance with fair procedure.
18. Also section 41 of *Employment Act* provide as follows:-
41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, 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.
19. It is clear the Respondent did not provide a specific reason why he terminated the Claimant's employment. He also did not accord him an opportunity to defend himself as by law required. He should also have been informed he could bring a fellow worker during his explanation or a shop floor union representative during such a hearing.
20. If the Respondent gave the Claimant a chance to be heard he did not produce any evidence to prove the same and so it can only be said that the Claimant was not given an opportunity to defend himself.
21. In view of the foregoing the Court finds the Claimant has proved his case on a balance of probability and finds in his favour that he was unfairly terminated.

### **Remedies**

- a. Salary in lieu of notice Kshs 25,000/-
- b. Payment for leave and gratuity were withdrawn by the Claimant during the hearing.
- c. House allowance is also not proved and Claimant never raised it in the term of his employment and so is declined.
- d. Compensatory damages for unlawful termination @ 8 months Kshs 200,000/- Total awarded to him Kshs 225,000/-
- e. He is awarded costs as well.
- f. Interest at Court rates from date of judgment until full payment

Orders accordingly.

**DELIVERED, DATED AND SIGNED IN NAIROBI THIS 17TH NOVEMBER, 2022.**

**ANNA NGIBUINI MWAURE**

**JUDGE**

**ORDER**



In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules*, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court had been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate a just, expeditious, proportionate and affordable resolution of civil disputes.

**ANNA NGIBUINI MWAURE**

**JUDGE**

