



**Adeya v Eastern Produce Kenya Limited (Sitoi Tea Estate) (Cause 116 of 2017) [2022] KEELRC 13078 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13078 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 116 OF 2017  
NJ ABUODHA, J  
NOVEMBER 1, 2022**

**BETWEEN**

**CHRISTINE MATAGA ADEYA ..... CLAIMANT**

**AND**

**EASTERN PRODUCE KENYA LIMITED (SITOI TEA ESTATE) . RESPONDENT**

**JUDGMENT**

1. The Claimant in this case filed her Statement of Claim dated June 29, 2017 seeking for the following orders which I replicate verbatim, as against the Respondent;
  - a. A declaration that the Claimant’s termination from employment was unlawful, unprocedural and unfair in the circumstances and that the Claimant is entitled to compensation as prayed for herein above.
  - b. The sum of Kshs. 477, 280.9 as set out herein above
  - c. Costs of this suit and Interests at court rates from the time of filing suit until payment in full.
  - d. A certificate of service as per section 51 of the *Employment Act*.
  - e. Any other further and better(sic) relief the Honourable court may deem fit to grant.

**The Claimant’s case**

2. The Claimant avers in her Statement of Claim that she was employed by the Respondent as a Tea plucker on January 1, 2011 ; that as at the time of her unlawful termination, the Claimant’s salary was Kshs 4,869.35 per month excluding house allowance and other allowances; that the Claimant served the Respondent dedicatedly and without any lawful warning in her employment records until the date of her unfair termination from service by the Respondent on June 1, 2016, without any lawful reason



and/or justification; that the Respondent terminated her services on allegation that she had absconded duty which according to the Claimant was not true.

### **The Respondent's Replying Memorandum**

3. The Respondent filed its Replying Memorandum on August 10, 2017 denying the claim and averred that on February 15, 2016, the Claimant informed the Respondent that she had been injured while on duty and that she was granted sick leave with full pay for 48 days from 15<sup>th</sup> February to April 13, 2016 and sick leave with half pay for 60 days from 1<sup>st</sup> May 2016 to June 30, 2016. The claimant did not report back to work thereafter.
4. According to the Respondent, the Claimants contract was to expire on June 30, 2016, a fact that the claimant was well aware and that she had even accepted the same on June 13, 2016 by signing the notice of termination.
5. The Respondent therefore averred that it did not unfairly terminate the Claimant's employment as pleaded but rather that her contract of service had expired by effluxion of time.
6. The Respondent maintained that the Claimant was not entitled to the reliefs she was seeking as she was paid all her dues at a rate above the minimum wage for the term of her contracts and consequently urged this Court to dismiss the claim in its entirety with costs to the Respondent.

### **The Claimant's Evidence**

7. CW1, Christine Mataga Adeya, the Claimant, gave evidence on 9/11/2021. She substantially reiterated the matters raised in the Statement of claim. She stated that her employment was terminated in June 2016 on accusation of deserting duty but was not issued with any notice. According to CW1, she used to report to work at 7 am and leave at 6pm and did not go on leave during the period that she worked. CW1 further stated that she got injured while at work; that she was given a sick leave and when she came back, she was told not to come to work again. She stated that she was never invited for a disciplinary hearing and was not issued with a termination letter before being dismissed.
8. On cross examination, she stated that she was employed by the respondent on January 1, 2011 and was not issued with a written contract. She contended that she was injured in 2016 and had not been issued with any written contract.
9. On re-examination, she reiterated that she was not given any termination letter.

### **The Respondent's Case**

10. RW1, Moses Chezaza testified on March 15, 2022 and introduced himself as the supervisor at the Respondent's company. He confirmed that the Claimant was an employee of the Respondent whose job was tea plucking; that on February 15, 2016 the Claimant while in the course of her duties, stepped into a depression and injured her leg. She was taken to a dispensary for treatment. According to RW1, the Claimant was on a fixed term contract which commenced on October 1, 2015 and was to end on June 30, 2016; that the Claimant was issued with a two weeks' notice of the expiry of the contract and was paid during the sick leave. RW1 maintained that the Claimant did not report to work upon the expiry of the sick leave as her contract had expired and that the claimant never sought for renewal of her contract and that according to CBA, contracts are renewed based on performance. It was further averred that the Claimant was paid all her dues including the statutory deductions.
11. On cross examination, the RW1 stated that the Claimant was employed on October 1, 2012 and that she was not working for the Respondent in 2011. RW1 averred that the claimant had renewed her



contracts from 2011 and she worked on and off. RW1 conceded that the claimant was not issued with a termination letter and attributed this to the fact that the claimant's contract had expired.

12. With that evidence, the court directed parties to file written submissions. The Claimant filed her submissions on April 21, 2022 whereas the Respondent filed its submissions on May 16, 2022.

### Determination

13. The Court has considered the pleadings, the evidence of the of the parties herein and the cited authorities and is of the view that the issues for determination are:-

- i. Whether the Claimant was employed on a fixed term contract
- ii. Whether the termination was unfair
- iii. Whether the Claimant is entitled to the reliefs sought in the Claim.

14. On the 1<sup>st</sup> issue, the Claimant has averred that she was employed by the Respondent as a tea plucker on January 1, 2011 and that she worked until February 15, 2016 when she got injured in the course of her employment. She stated she was given a sick leave and on coming back on the June 30, 2016, her employment was terminated. She maintained in her evidence that she was never issued with contract letters during the course of her employment

15. The Respondent on the other hand has averred that the claimant was on a fixed term contract and her contract lapsed when she was on her sick off leave.

16. I have analysed the evidence at length. I have also perused the Respondent's notice of termination which is in the Respondent's list of documents. From that documentary evidence, it is clear that it was signed by the Claimant on 13<sup>th</sup> June 2016, two weeks before the end of the contract.

17. The court in the case of *Samuel Chacha Mwita v Kenya Medical Research Institute* [2014] eKLR, held:

“Once there is a written contract, the court will seek to give meaning to such a written contract based on its terms in determining any issue that may arise especially any dispute. The court as guided by the provisions of section 10 of the *Employment Act* will give the ordinary meaning to any written agreement between parties unless there is proof that there is ambiguity on the face of the contract.”

18. In the case of *Tom Ukiru Kamaliki v Centres for International Programs Kenya* [2021] eKLR, Justice Nzioki when dealing with a similar case held;

“The Courts have repeatedly held that fixed term contracts end by effluxion of time and that there is no scope for a court to rewrite the parties contract.”

19. Being persuaded by the above authorities, it is my view that the Claimant herein was on a fixed term contract and therefore it cannot be said that her employment was terminated unfairly.

20. The Claimant's contract of employment lapsed when she was on her sick leave. It therefore follows that the termination of her employment was not unfair as the employment contract had expired hence bringing the employment relationship to an end.

21. The next issue that I need to address myself to is to what reliefs I should grant in the circumstances of this case. RWI while giving his evidence stated that the Claimant was given all her dues. From the notice of termination that was signed by the Claimant, there is a Clause to the effect that the Claimant



would be paid her dues. The claimant signed the notice acknowledging that she had received her dues and confirmed that she had no further claims against the respondent. The Court further noted that the claimant was unionisable hence if there was any issue or discrepancy around her termination and payment of terminal dues these could have been pursued by the Union on her behalf.

22. In conclusion the Court finds the claim unmerited and hereby dismisses the same albeit with no order as to costs.

23. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 1<sup>ST</sup> DAY OF NOVEMBER, 2022**

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

