



**Angwenyi v Jumbo North (EA Ltd) (Cause 214 of 2018)  
[2022] KEELRC 13130 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13130 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
CAUSE 214 OF 2018  
NJ ABUODHA, J  
NOVEMBER 1, 2022**

**BETWEEN**

**WALTER SURE ANGWENYI ..... CLAIMANT**

**AND**

**JUMBO NORTH (EA LTD) ..... RESPONDENT**

**JUDGMENT**

**The Claimant's Case**

1. From the memorandum of claim dated January 17, 2017 the claimant averred in the main that:
  - a. At all material times to this cause, the claimant was employed by the respondent as a looperman operator in the year 2010.
  - b. The claimant avers that his services were terminated in July 2016, without any notice and without being paid his terminal dues.
  - c. The claimant avers that, the respondent failed and or refused to calculate his dues as per the labour laws provisions of Kenya, leading to him being underpaid at the time of his dismissal.
  - d. The claimant avers that his termination was unlawful for the following reasons;  
Particulars of unlawfulness
    - i. No leave pay was given.
    - ii. No three (3) month's salary in lieu of notice was paid.
    - iii. The required severance pay was not paid, despite the claimant having worked for the respondent for 6 years
    - iv. No good reasons were advanced for his termination.



- e. The claimant thus seeks a declaration that the termination process as carried out by the respondent was unlawful and unfair to him.
  - f. The claimant hence claims against the respondent as hereunder: -
    - a. 3 months' salary in lieu of notice.  
Kshs 22,140 x 3 months = Kshs 66,420/=
    - b. 12 months' salary compensation for wrongful termination of employment  
Kshs 22140 x 12 months = Kshs 265,680/=
    - c. Service for years worked at 15 days per year.  
Kshs 22,140 x 15 x 6 years = Kshs 1,992,600/=

Total claim = Kshs 2,324,700
2. The respondent on its part averred as follows:
    - a. The respondent denies the contents at paragraph 3 of the statement of claim in their entirety and in particular denies that the claimant was employed by the respondent as looperman operator in the year 2010, accordingly the claimant is put to strict proof thereof and to proof the particulars of his averments at paragraph 3 of the statement of claim.
    - b. The respondent categorically maintains that the claimant's cause is poorly pleaded, ambiguous, unclear and/or otherwise defective and hereby seeks of the claimant's further and better particulars of the cause of action.
    - c. The claimant's claim under paragraph 9 of the statement of claim lacks clarity and failure to give proper particulars to support the same is conjecture meant to invite the honourable court into speculation, obscure clarity, clog the respondent's appropriate response to the same and it is accordingly a gross abuse of the court process.
    - d. Without prejudice to the foregoing, the respondent contends that if at all the claimant was employed by the respondent which is strongly denied, then the termination of the claimant's employment was law compliant.
  3. At the oral hearing the claimant stated that he recorded a witness statement on January 17, 2017 which he relied on as his evidence in chief. According to him he got injured in the course of his employment, was treated and returned to work but could not work. He was asked to write a letter which he did and was later asked to leave. He was thereafter locked out from the respondent's premises.
  4. It was claimant's evidence that he was not issued with a termination notice and that he had worked for the respondent for about seven years and was never paid service. He was never warned and that there was no disciplinary hearing before termination. He denied ever signing the declaration of settlement.
  5. In cross-examination he stated that he did not know when the respondent was incorporated and that he only worked in the Eldoret Branch. He further stated that he used to earn Kshs 620 per day without overtime and that payment was done weekly. He however had no copy of voucher signed or bank statement. According to the claimant on April 1, 2016 he was at the respondent working and that he never knew Reap HR Ltd and never signed any contract with them.
  6. Regarding bonus, the claimant said he was paid annual bonus and that he signed the vouchers



7. The respondent's witness Mr Zakaria Ngaira informed the court that she worked for the respondent as the Human Resource Manager and that he recorded his witness statement on July 2, 2018 which he adopted as his evidence in chief, he also relied on the documents filed with the claim. According to him the claimant was employed in 2012 as casual labourer and that the respondent was not operational in Eldoret in 2010. The respondent had been incorporated in 2009 in Nairobi and by 2010 it was still collecting views in Eldoret. He produced questionnaires to support this. According to him, the claimant was not dismissed in 2016. He just left and further that the claimant was an employee of HR Resolutions. He stated that he had contract between the claimant and REAP-Human Resource. According to him the claimant left because he got another job and further that the respondent paid all the claimant's terminal dues by the time he left.
8. It was his evidence that the claimant was paid his terminal dues upon termination and that he never earned Kshs 22,000/- per month.
9. In cross-examination he stated that the claimant started working for the respondent in 2012 to 2015 and that he was entitled to leave during the period he worked and that they used to remit NSSF and NHIF.
10. Mr Ngaira further stated that the respondent was incorporated in 2011 although he did not have certificate of incorporation in court. Further that the claimant was paid Kshs 720 per day including overtime. The voucher dated October 22, 2013 was for final dues for the period January 28, 2012 to September 17, 2013 and that the voucher had attachment which showed how the amount was arrived at.
11. Regarding termination, he stated that the claimant was not given termination letter because his termination was not disciplinary matter. The claimant went on leave.
12. In a claim for unfair termination of employment, the burden of proof that unfair termination has taken place rests with the employee while the burden of proving the reasons for termination rests with the employer. The claimant in his witness statement filed in court on February 1, 2017 and which he adopted as his evidence in chief stated that he was employed by the respondent in 2010 and worked until July, 2016 when his services were abruptly terminated without any warning. He further alleged that he was not paid terminal benefits as per the labour laws.
13. During the oral hearing, the claimant in departure from his witness statement alleged that he got injured in the course of his employment. He got treated but when he returned to work he was not able to work. He was asked to put this down in writing which he did and was thereafter asked to leave. He could not report to work thereafter because he was locked out from the respondent's premises. It could therefore not be true as the claimant alleged in his witness statement that the respondent abruptly stopped him from working. Further the claimant although alleges he was injured in the course of employment, did not produce any medical reports or treatment notes to support the claim.
14. The respondent herein denied the claimant's allegations through its response to the claim and also filed a witness statement through one Zacharia Ngaira.
15. According to the respondent, it commenced operations in Eldoret in 2011 and that the claimant was hired in 2012 as a casual labourer earning Kshs 720/= per day. According to the respondent, the claimant was not terminated but rather left voluntarily after the respondent's production level reduced and he got employed by REAP Human Resource Solutions Limited in 2016. The respondent filed together with the bundle of documents a copy of the contract between the claimant and Reap Human Resource Solutions.



16. The response to the claim, witness statement and supporting documents were filed on September 4, 2018. The claimant never raised any objection to any of the documents prior to the hearing. All he did was to merely deny that he left the respondent and joined REAP.
17. From the forgoing the court is not persuaded that the claimant has sufficiently discharged the burden cast upon him by law with the consequence that the claim is found without merit and is hereby dismissed with costs.
18. It is so ordered

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

**ABUODHA NELSON JORUM**

**JUDGE ELRC**

