



**Sitieni v County Assembly Service Board Uasin Gishu County Assembly & another
(Cause 269 of 2017) [2022] KEELRC 13451 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13451 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE 269 OF 2017
NJ ABUODHA, J
DECEMBER 7, 2022**

BETWEEN

JULIUS KIPKEMBOI SITIENIEI CLAIMANT

AND

**THE COUNTY ASSEMBLY SERVICE BOARD UASIN GISHU COUNTY
ASSEMBLY 1ST RESPONDENT**

ISAAC CHIRCHIR 2ND RESPONDENT

JUDGMENT

1. The claimant pleaded that:
 - a) At all material times to this suit, the claimant was employed by the respondents as an Assistant Secretary with effect from July, 2013. As at the time of termination from employment, the claimant was earning a basic salary of Kenya Shillings Eighteen Thousand (Kshs 18,000.00)
 - b) The claimant served the respondents with loyalty, diligence and with full dedication and commitment until September, 2015 when the respondent wrongfully, orally and unlawfully terminated him and refused to pay his terminal benefits.
 - c) The claimant submits that the respondents terminated his services without following the right procedure laid down in the *Employment Act*.
 - d) The claimant further avers that the termination was unfair because the respondents did not act in accordance with justice/equity and that the respondents failed to prove that the reason of termination was valid thus violated section 45 (2) (a) 4 (b) of the *Employment Act*.
 - e) The claimant further avers that owing to the unfair and unlawful, termination from employment, his terminal benefits which he now claims are as itemized hereunder:



- i) Declaration that the claimant's termination from employment was unlawful, unprocedural and unfair and in the circumstance the claimant is entitled to compensation as prayed for herein below:-
 - ii) The sum of Kshs 1,059,000/= as set out herein below.
 - iii) Costs of the suit and interest at court rates from time of filing suit until payment in full.

Calculations

- i) One month pay in lieu of notice Kshs 18,000/=
 - ii) Unpaid salary Kshs 60,000/=
 - iii) Breach of contract Kshs 630,000/=
 - iv) Severance pay Kshs 45,000/=
 - v) Leave dues Kshs 90,000/=
 - vi) Compensation for unfair termination Kshs 216,000/=
- Total Kshs 1,059,000/=

2. The 1st respondent filed a response to the claim in which it pleaded among others that:

- a) The 1st respondent denies the contents of paragraph 4 of the claim particularly that the claimant was its employee and avers that the claimant worked for the 2nd respondent as a Ward Office staff in Soy Ward but was later relieved of his duties by the 2nd respondent and was not at any single time an employee of the 1st respondent. There was no privity of employment contract between the claimant and the 1st respondent.
- b) The 1st respondent denies the claimant's claim in paragraphs 5,6, and 7 that the 1st respondent terminated the claimant's employment wrongfully, orally, unfairly, unlawfully and without following the right procedure. No contract of employment was entered into between the claimant and the 1st respondent. Since the claimant is not the 1st respondent's employee there is no way a non-existent employment relationship would be terminated.
- c) The 1st respondent avers that the claimant was employed by the 2nd respondent pursuant to the provisions of section 20 of the [Uasin Gishu County Assembly Services \(Ward Office\) Act](#) No 3 of 2013 which provided: "a member shall employ a ward office assistant and other staff as the member shall require subject to the ceiling of staff salaries approved by the County Assembly Service Board and budget for"
- d) The 1st respondent denies the contents of paragraph 8, 9, and 10 of the claim particularly that the 1st respondent never explained to the claimant precisely the reasons for his termination from employment as provided by the [Employment Act 2007](#) which results to unfair termination and avers that the 1st respondents' ward staff are governed by the [Uasin Gishu County office ward Act](#) No 3 of 2013.
- e) The 1st respondent avers that if at all the claimant was unfairly dismissed by the 2nd respondent (which is denied), are not liable for the actions of the 2nd respondent and for resultant claims for damages for breach of contract unfair dismissal or terminal benefits.

3. The 2nd respondent in its response to the claim pleaded that:



- a) The 2nd respondent denies the contents of paragraph 4 of this claim and avers that the claimant was his employee since 2014 until around November, 2015 when his contract of employment was terminated for misconduct.
- b) The 2nd respondent denies the claimant's claim in paragraphs 5 and 6 that the 2nd respondent terminated the claimant's employment wrongfully, orally, unfairly, unlawfully and without following the right procedure. The 2nd respondent reiterates that the claimant was summarily dismissed for gross misconduct and as such his dismissal was fair, justified, procedural and lawful.
- c) The 2nd respondent denies the claimant's claim in paragraph 7 and avers that due process was followed with regard to the termination of the claimant and further avers that the actions taken by the 2nd respondent was lawful and justifiable since the claimant was in breach of section 44(4) of the *Employment Act*.
- d) The 2nd respondent denies the contents of paragraph 9 and 10 of the statement of claim that the claimant's dismissal was illegal, unfair and unlawful and violated the provisions of section 41, 43, and 45(2) of the *Employment Act*, and aver that the claimant was terminated from employment by the 2nd respondent, lawfully, fairly and summarily as the claimant was guilty of gross misconduct. The 2nd respondent was guided by good faith and duty to act fairly when taking its action against the claimant.
- e) The 2nd respondent denies the contents of paragraph 11 of the statement of claim and avers that summary dismissal as envisaged by section 44 (1) of the *Employment Act* 2012 Laws of Kenya does not require the employer to issue a notice of termination of employment. Further, the conduct by the claimant amounts to a valid ground for summary dismissal under Section 44(d) of the *Employment Act* Cap 226 Laws of Kenya hence the claimant is not entitled to the benefits claimed herein.
- f) In response to paragraph 13 of the statement of claim the 2nd respondent would wish to respond as follows:-
- i) Due process was followed by the 2nd respondent before reaching a decision to summarily dismiss the claimant herein.
- ii) Where the conduct by an employee constitutes one of the grounds for summary dismissal under section 44(4) of the *Employment Act*, 226, Laws of Kenya, the employer is under no obligation to issue a notice of termination.
- iii) The claimant was employed by the 2nd respondent pursuant to the provisions of section 20 of the *Uasin Gishu County Assembly Service (ward office) Act* No 3 of 2013.
- iv) The *Uasin Gishu County Assembly Service (ward office) Act* No 3 of 2013 under section 21 (iii) provides that notwithstanding the provisions of subsection (1), the staff recruited shall not be paid house allowance, overtime allowance or any honorarium and shall not be entitled to any gratuity at the end of contract period.
- v) The official working days and hours for the claimant was as per provided for under section 25 (ii) of the *Uasin Gishu County Assembly Service (ward office) Act* No 3 of 2013.
- vi) The 2nd respondent paid the claimant all his dues.



- vii) The claimant is not entitled to any benefits since he was summarily dismissed for lawful cause in a fair manner.
 - viii) The reasons for termination of employment were duly communicated to the claimant.
 - ix) The 2nd respondent acted in accordance with the provisions of section 45 in terminating the claimant's employment.
4. At the hearing the claimant stated that he adopted his statement filed on October 4, 2017 as his evidence in chief. He also adopted the documents filed with in claim. According to him, the contract was between himself, the County Assembly Public Service Board and the Member of County Assembly. He started to work in 2013 and worked until September, 2015. He further stated that his monthly salary was Kshs 18,000/= and further that he never absconded duty. It was further his evidence that his place of work was about 300 meters from where he lived and that he used to walk to work.
 5. The claimant contended that he was never issued with any warning letter, notice to show cause nor invited for any disciplinary hearing. According to him by the November 4, 2015 he had already left employment and that he was never called for any meeting on November 4, 2015. It was his evidence that he was not given any termination letter and that he was terminated verbally. He was not told his mistake. He was just told his job had ended and someone else had been hired in his place. He was only paid his salary for that month.
 6. In cross-examination by 1st respondent he stated that he was employed by both respondents and that he worked as a Ward Assistant. He got the report of the vacancy from the 2nd respondent and that he never saw any advertisement for a vacancy. It was further his evidence that he signed a contract and the 2nd respondent signed as his employer. His monthly salary was indicated as Kshs 10,000/= but was told it would be increased to Kshs 18,000/=. According to him the County Assembly was responsible for his salary. They used to receive money from the county Assembly. It was about Kshs 70,000/= per month. The MCA was to decide how the money should be spent in running the Ward office.
 7. According to the claimant he was not issued with any termination letter and that the termination was done verbally. Shown the minutes he stated that he had previously seen them but was not present at the meeting where the minutes were taken and did not sign them. The signature on the minutes was not his. The claimant further stated that the second respondent was not re-elected and that all his colleagues left employment when the 2nd respondent was not re-elected.
 8. The 1st respondent's witness Ms Mitchel Saina stated that she was the legal counsel to the County Assembly of the 1st respondent and that she filed her witness statement on September 6, 2017 and that she relied on the same as her evidence in chief. She also relied on the list of documents filed with the response.
 9. According to him there was a contract between the MCA (2nd respondent) and the claimant. He produced the contract in evidence. He stated that he provided a copy of bank statement showing funds provided to the MCA. The 2nd respondent was crediting about Kshs 69,000/= per month to the Ward Account.
 10. It was Ms Saina's evidence that when the 2nd respondent dismissed the claimant he informed the 1st respondent to remove the claimant as a signatory to the Ward Account.
 11. The Assembly notified the Bank accordingly. The 2nd respondent furnished the 1st respondent with minutes of the meeting where the claimant was removed and his service terminated. According to him the claimant was not an employee of the 1st respondent.



12. In cross-examination she stated that the 1st respondent's role was to facilitate payment of the claimant's salary. The claimant was paid by the 2nd respondent from funds deposited by the Board to the Ward Account. It was further his evidence that the claimant was not in attendance at the meeting captured by the minutes. The MCA (2nd respondent) never provided any letter inviting the claimant to the meeting and that he never supplied any warning letters or notice to show cause addressed to the claimant. The claimant's contract was for five years but was terminated before expiry of his contract. His monthly salary was Kshs 10,000/=.
13. The 2nd respondent though served, never attended court to give evidence and produce documents in support of their defence.
14. The court has carefully considered the pleadings, witness statements and testimony, the court has further considered the documents filed by the 1st respondent in opposing the claim and is persuaded that there existed no employer employee relationship between the claimant and the 1st respondent.
15. Clause 20 and 21 of the Uasin Gishu County Ward Officers Bill places the responsibility of staffing ward offices and setting their terms and conditions of service including salaries on the MCA in this case the 2nd respondent further clause 22 provides that the terms of service for ward staff shall be a maximum of five years contract tied to the political term of the member appointing them.
16. The court has further perused the contract for service dated July 1, 2013 attached to the respondents' documents and noted that the parties to the contract are clearly stated as the claimant and the 2nd respondent to this extent the suit against the 1st respondent by the claimant was misconceived and is hereby dismissed. With costs.
17. Concerning the 2nd respondent the court having found that he was the claimant's employee, the question which arises is whether in terminating the claimant's service he adhered to the substantive and procedural requirement provided in the *Employment Act*. The court has perused the record and noted that in the minutes of the meeting held on November 4, 2015 where the issue of terminating the claimant was discussed, he was not present. There was no evidence that he was invited but failed to attend. In the minutes the claimant was accused of absconding duty by the 2nd respondent.
18. In the response to the claim, the 2nd respondent never attached any letter or document calling upon the claimant to show cause why his service should not be terminated on account of absconding duty. From the foregoing the court takes the view that in terminating the claimant's service the 2nd respondent failed to adhere to the provision of sections 43 of the *Employment Act* hence the termination is deemed unfair within the meaning of section 45 of the *Employment Act*.
19. The claimant was hired on July 1, 2013 and stated that he worked until September, 2013 when his service got terminated meaning he had worked for slightly over two years. The court further notes that this was a fixed term contract tied to the five-year political term of the 2nd respondent. Considering the above, the court deems an award of six months' salary is reasonable compensation for unfair termination.
20. In conclusion the court enters judgment against the 2nd respondent as follows.
Ksh
 - a) One month's salary in lieu of notice 10,000
 - b) Two months' salary on account of leave 20,000
 - c) Six months' salary as compensation for



unfair termination of contract 60,000

90,000

- d) Cost of the suit
- e) Items (a) (b) and (c) shall attract interest at court rates but subject to taxes and statutory deductions.

21. It is so ordered

DATED AND DELIVERED AT ELDORET THIS 7TH DAY OF DECEMBER, 2022

ABUODHA NELSON JORUM

JUDGE ELRC

