



**Kungu v B.O.M Laikipia West Districtpublic Hospital (Cause  
206 of 2015) [2021] KEELRC 2416 (KLR) (4 May 2021) (Judgment)**

*Hezekiel Muturi Kungu v B O M Laikipia West District Public Hospital [2021] eKLR*

Neutral citation: [2021] KEELRC 2416 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE 206 OF 2015**

**HS WASILWA, J**

**MAY 4, 2021**

**BETWEEN**

**HEZEKIEL MUTURI KUNGU ..... CLAIMANT**

**AND**

**B.O.M LAIKIPIA WEST DISTRICTPUBLIC HOSPITAL ..... RESPONDENT**

**JUDGMENT**

1. The Claimant herein filed his Memorandum of Claim dated 6<sup>th</sup> July, 2015 on the 7<sup>th</sup> July, 2015 through the firm of wachira Wanjiru and Company Advocates and later an Amended claim on 10<sup>th</sup> December, 2018 contending unlawful and unfair termination of his employment and failure to pay his terminal dues by the Respondent.
2. The Claimant's case is that he was employed by the Respondent on the 27<sup>th</sup> January, 2005 as a night watchman at the respondents premises whose working hours was from 6:30pm to 6:30am without any rest day throughout the tenure of his employment at the respondent's employ.
3. The claimant avers that he was not issued with the copy of the contract of employment. Further that he worked for the respondent continuously till 15<sup>th</sup> June, 2012, when he was arrested for allegedly stealing a Yamaha motor cycle on 14<sup>th</sup> and 15<sup>th</sup> June 2012 and later acquitted sometimes on 22<sup>nd</sup> October, 2013 and attached a copy of the charge sheet and the said judgement.
4. The claimant was released on bond on 29<sup>th</sup> June, 2012 and later on went back to his place of work on 9<sup>th</sup> July, 2012 only to be informed verbally that his services were no longer required and the respondent failed to issue him with a letter of termination.
5. During the course of his employment the claimant was earning a salary of Kshs. 3,500/- which allegedly was lower than the recommended wage guidelines.



6. The claimant avers that the respondent failed to remit any statutory deductions for the claimant for the entire period when the claimant was in the respondent's employ.
7. The claimant therefore sought for the following reliefs;
  - a) A month pay in lieu of Notice of Kshs. 8,873/- as provided for under section 50 and section 49(1)(a) of the *Employment Act*.
  - b) Service pay of Kshs. 31,055/- as provide for under section 35(5) of the *Employment Act*.
  - c) Unpaid annual leave pay for 2 years of Kshs. 18,989/- as provided for under section 28 (1)(a) of the *Employment Act*.
  - d) This Honourable Court do Order the Respondents to pay the claimant 12 months compensation of Kshs. 106,476/- for unlawful termination of service as provided for under section 50 and section 49(1)( c) of the *Employment Act*.
  - e) This Honourable Court do Order the respondent to pay the claimant Kshs. 505,185/- being overtime payment.
  - f) This Honourable Court do order the respondent to pay the claimant all the underpaid wages for the period between January 2005 to June 2012 of Kshs. 185,270/- .
  - g) This Honourable court do order the respondent to pay all the underpaid wages for the period between January 2005 to June, 2012 of Kshs. 211, 270/-
  - h) This Honourable Court do order the respondent to bear the cost for this suit as provided for under section 12(4) of the *Employment and labour relations Court Act*.
  - i) This Honourable Court do make further orders as it shall deem fit a provided for under section 12(3)(viii) of the *Employment and labour relations Court Act*.
8. The Respondent did not file a response to this claim despite having been served with the pleadings herein as per the affidavit of service sworn by Morris Ajwang Akuku on 18<sup>th</sup> January, 2019.
9. This matter proceeded for formal proof on 24<sup>th</sup> October, 2019 where the claimant adopted his witness statement and documents as filed and reiterated his pleadings.

#### **Claimant submissions**

10. The claimant submitted that his services were unfairly terminated by the respondent when he was verbally informed on 9<sup>th</sup> July, 2012 that his services were no longer required. Further that no reasons were given to him regarding his termination. He argued that the basis for his termination was on an allegation of having stolen a motor cycle which charges were never proved leading to his acquittal.
11. The claimant submitted that, the respondent failed to observe the mandatory provision of section 41 of the *Employment Act* in terminating his services as he was verbally terminated without due procedure, notice contrary to section 35 and 36 of the *Employment Act*. Therefore the claimant urged this Court to declare his termination as unfair, in line with section 45 (4) (b) of the *Employment Act* and allow his claim as prayed.
12. I have examined the averments of the claimant herein. As indicated above this claim proceeded exparte as the respondent failed to enter appearance or file defence within the requisite period.



13. From the evidence submitted, the claimant was an employee of the respondent as seen from the charge sheet filed in court where he was charged with the offence of failing to prevent commission of a felony.
14. The claimant indicated he worked for the respondent and was paid kshs.3,500/= indicated.
15. That notwithstanding there is no evidence to show why and how the claimant was terminated.
16. In the circumstances the claimant was terminated unfairly as per Section 45 (2) of the Employment Act 2007 which provides as follows;

45.

- (1) .....
- (2) A termination of employment 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 employee's 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.

17. I therefore find for this claimant and enter Judgment for him as follows;-

1. 1 month's salary in lieu of notice = 8,873/=
  2. 8 month's as compensation for the unfair termination = 8 x 8,873 = 70,984
  3. Underpayment of wages as submitted for 3 years, the rest being time barred = 32,256 + 36,288 + 6,848 = 75,392/=
  4. Overtime pay at 4 hours per day for 3 years = 89,784 + 100,000 + 18,882 = 208,644
  5. Service pay for 7 years worked = 7 x ½ x 8,873 = 31,055.5  
Total = = 394,949/=
- Less statutory deduction
6. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this Judgment.

**DATED AND DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF MAY, 2021.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

In the presence of:

Wachira for claimant - present

No appearance for respondent

Court Assistant - Fred

