

KENYA / JUDGMENT

Maina v Kenya Fire Appliance Company Limited [2025] KEELRC 1358 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

MN Nduma

CASE / FILE NUMBER

Employment and Labour Relations Cause E215 of 2021

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Maina v Kenya Fire Appliance Company Limited (Employment and Labour Relations Cause E215 of 2021) [2025] KEELRC 1358 (KLR) (8 May 2025) (Judgment)

Neutral citation:

[2025] KEELRC 1358 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nairobi

Employment and Labour Relations Cause E215 of 2021

MN Nduma, J

May 8, 2025

Between

Stanley Douglas Maina

Claimant

and

Kenya Fire Appliance Company Limited

Respondent

Judgment

1. a.A declaration that the Claimant's termination was wrongful, unlawful and unfair.b.Unpaid salary of Kshs. 192,500/= for the months of May, June, July, August and September 2020c.Unpaid leave days from 2017 (120 days) amounting to Kshs. 154,000/=d.General damages for wrongful dismissal of Kshs. 462,000/=e.One month's salary in lieu of notice being Kshs. 38,500/=f.Service pay at Kshs. 19250/= x 24 years of Kshs. 462,000/=g.Certificate of serviceh.Costs of this claimi.Interestsj.Any other or further relief that this Honourable Court may deem just and fit to grant
2. The Claimant (CW1) testified that he was employed by the Respondent on 15/8/2013 as an accountant. That he worked diligently until 4/9/2020 when he received a letter from the Respondent advising the Claimant to proceed on unpaid leave with effect from 7/9/2020 until further notice.
3. That on 7/9/2020 the Claimant proceeded on unpaid leave as directed. That the Claimant enquired severally on the return date but no response was forthcoming.
4. That the said forced leave amounted to termination of employment without notice, notice to show cause or hearing. That indeed it was a constructive dismissal.
5. That the Respondent violated sections 41, 43 and 45 of the Employment Act, 2007 and the termination was unlawful and unfair. That the Claimant was owed salary for the month of May, June, July, August and September 2020 in the sum of Kshs. 192,500/= since he earned Kshs. 38,500/= per month. That the Claimant also had 120 days leave days not taken and was entitled to Kshs. 154,000/= in lieu of the untaken leave.
6. That the Claimant was entitled to one month's salary in lieu of notice in the sum of Kshs. 38,500. 00.
7. The Claimant prays to be awarded service pay and maximum compensation for the unlawful and unfair termination of employment and grant of certificate of service.
8. Under cross-examination the Claimant denied that he had resigned from employment as alleged by the Respondent. The Claimant admitted that he had filled a Jubilee Insurance claim form seeking payment of his contributions and in the said form the Claimant had indicated that he had resigned from employment with effect from 30/4/2018.
9. The Respondent produced the Jubilee Insurance claim form dated 18/5/2018 in which the Claimant noted that he worked for the Respondent from 15/8/1995; had joined the Jubilee Insurance Scheme on 1/8/1996 and that he had left the employer on 30/4/2018 by way of resignation.
10. The Claimant was referred to the Staff Retirement Benefits withdrawal member certificate dated 9/7/2018, which indicates that the claimant was paid Kshs. 1,654,522. 09 by Jubilee Insurance pursuant to the said application form.

11. The claimant insisted that he was placed on unpaid leave until further notice and was never recalled back. The Claimant denied that he had visited the Respondent's office on 23/1/2021 for a meeting in which he had requested for a recommendation letter. The Claimant denied that he was paid any terminal benefits claimed in the suit and prays to be awarded accordingly.
12. RW1 Mark John Tilbury adopted a witness statement dated 18/10/2022 as his evidence in chief. He also produced documents dated 18/10/2022 as exhibits '1' to '37'. RW1 stated that the Claimant had resigned from employment in April 2018 as set out in the Jubilee claim form before court.
13. That the Claimant did not write a separate letter of resignation to the Respondent.
14. RW1 said he had no evidence of final payment of terminal dues claimed by the Claimant. RW1 stated that the Claimant had no letter of employment. RW1 said he had a letter which the Claimant signed to proceed on unpaid leave. That this was upon a discussion between the Claimant and the Respondent on the difficult financial status of the company at the time due to COVID – 19 Pandemic.
15. That the Claimant did not work diligently since he had a case of falsely obtaining petty cash from the Respondent in the sum of Kshs. 500,000. 00. That the matter was discussed between the Respondent and the Claimant. That the Respondent had reported the matter to the police but investigations had not been concluded when the Claimant resigned from employment.
16. That the company records kept by the Claimant on remittance of statutory dues had discrepancies. That the Claimant was not subjected to a disciplinary hearing. That he had opted to resign.
17. That vouchers with which money was falsely obtained were signed by different persons including the Claimant. That a meeting on the matter was held. That the Respondent then reported one Mr. Mukune, to the police. That the Claimant did not return upon being sent on leave. He had instead resigned. That by the letter dated 28/4/2021, the respondent reported the matter of theft of petty cash by the Claimant and Mukune to the OCS Industrial Area. That this followed the meeting attended by the Claimant, Mukune and others. That the suit be dismissed for want of proof.

Determination

18. The parties filed written submissions which the court has considered together with the evidence adduced by CW1 and RW1. The issues for determination are: -i.Whether the Claimant has proved that his employment was terminated by the Respondent.ii.Whether the Claimant has proved he is owed the reliefs sought.

19. The Respondent's case as set out in the statement of response dated 15/10/2022 and as per the evidence by RW1 is that the Claimant resigned from employment and indicated his resignation in a Jubilee Insurance Occupational Scheme Claim form dated 18/5/2018 which was placed before court. In the claim form filled and signed by the Claimant, he had stated that he had resigned from the employment of the Respondent with effect from 30/4/2018. The Claimant admitted having filled this form to claim his pension contribution from the Jubilee Insurance. The Claimant did not allege that he was coerced or misled to fill the form or that he had indicated that he had resigned from employment of the Respondent in the said form by mistake.
20. The Claimant testified to repudiate the claim form through which he admitted he was paid Kshs. 1,654,522. 09 as his staff retirement benefits. The Claimant stated that his employment had been constructively terminated by the Respondent upon being sent on compulsory unpaid leave from which he was never recalled by the Respondent despite enquiries by him as to when the Respondent would recall the Claimant back to work.
21. In terms of section 107 and 108 of the Evidence Act Cap 80 laws of Kenya, he who alleges, must prove the said allegations. That the person with the burden of prove is one who would stand to lose if the Respondent said nothing about the claim made.
22. In the present matter, RW1 explained that the Claimant had been sent on unpaid leave due to the financial difficulties being faced by the Respondent at the time. That the Respondent had also discovered that the Claimant and his colleagues had made false petty cash claims from the Respondent. That though the matter was discussed with the Claimant, the Respondent did not discipline the Claimant over the matter. That the Claimant had tendered his resignation. That the Respondent had reported the matter to the police but the investigations had not been concluded by the time the Claimant resigned from employment.
23. The court finds that the Claimant had proved that he was employed by the Respondent on verbal contract, earning Kshs. 38,500. 00 per month. That the Claimant worked as an accountant for the Respondent from 15/8/1993. The Claimant had not proved that he was not paid salary by the Respondent for the months of May, June, July, August and September 2020 because he had resigned from the employment of the Respondent by that time, his last date of work being 30/4/2018 as per the pension claim form before court.
24. The Claimant however proved that he was owed for 120 days untaken leave and that upon separation he was not given a certificate of service.
25. The Claimant has also failed to prove that his employment was terminated by the Respondent and is therefore not entitled to any notice pay. The Respondent ably rebutted the testimony by the Claimant that his employment had been terminated by the Respondent by demonstrating that the Claimant had in fact resigned from his employment and that pursuant to that resignation, the Claimant was paid his retirement dues by Jubilee Insurance.

26. The claim for unlawful and unfair termination of employment is therefore dismissed for lack of merit. The claim for an award of general damages for unlawful termination of employment is therefore dismissed. Furthermore, the Claimant has not proved that he is entitled to payment of service pay as claimed or at all having received his retirement benefits from Jubilee Insurance. The claim is dismissed for lack of merit also.
27. In the final analysis judgment is entered in favour of the Claimant against the Respondent as follows: -i.Kshs. 154,000. 00 in lieu of unpaid leave days.ii.The Respondent to provide certificate of service to the Claimant within 30 days of this judgmentiii.Interest at court rates from date of judgment till payment in full.iv.Costs of the suit.

DATED AT NAIROBI THIS 8TH DAY OF MAY 2025MATHEWS NDUMAJUDGEAppearance:Kabue Thui and Company Advocates for the ClaimantThiongo and Company Advocates for the RespondentMr. Kemboi – Court Assistant

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Prepared on 14 October 2026 · Esheria