



**Amwoga v Mbogo & another (Cause 1393 of 2018)
[2025] KEELRC 2448 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2448 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1393 OF 2018
S RADIDO, J
SEPTEMBER 18, 2025**

BETWEEN

HENRY JESIJERI AMWOGA CLAIMANT

AND

BENARD WERU MBOGO 1ST RESPONDENT

AMSTA TRADING CO LTD 2ND RESPONDENT

JUDGMENT

1. Henry Jesijeri Amwoga (the Claimant) sued Benard Weru Mbogo and Amsta Trading Co Ltd (the Respondents) on 21 September 2018, alleging unfair termination of employment and breach of contract.
2. The Respondents filed a Response on 4 March 2019, and the Cause was heard on 10 May 2023. The Respondents' advocate did not participate in the hearing after the Court declined a request for an adjournment.
3. The Court delivered judgment on 6 July 2023, but on 14 October 2024, the Court adopted a consent by the parties to vacate the judgment and hear the Cause afresh.
4. The Cause was heard on 3 June 2025. The Claimant testified and closed his case, after which the Respondents made an application for an adjournment.
5. The Court declined to grant the adjournment, and the reasons are on record. The Respondents thereafter closed their case.
6. The Claimant filed his submissions on 5 June 2025, and the Respondents filed their submissions on 23 June 2025.
7. The Claimant identified the Issues as:



- i. Whether the Claimant was an employee of the Respondents?
 - ii. Whether the Claimant was unfairly terminated?
 - iii. Whether the Respondents have rebutted the Claimant's case?
 - iv. Whether the Claimant is entitled to the prayers sought?
8. The Respondents set out the Issues in contention as:
- i. Whether there exists an employment relationship between the parties herein?
 - ii. Whether the balance of probability tilts towards an employment or independent contractor relationship?
 - iii. Whether the Claimant has proved his case to the required standard of proof?
 - iv. Whether the Claim is uncontroverted?
9. The Court has considered the pleadings, evidence and submissions.

Employment relationship

10. The general law of employment allows both oral and written contracts of employment. Where the law requires a written contract, section 9 of the *Employment Act* places the obligation on the employer to draw up the contract.
11. The Claimant testified that the Respondents employed him in 2004 as a matatu business manager and later in their real estate business. The Claimant stated that he was not issued with a written contract, but he produced copies of cash sale receipts, land certificate, vehicle registration books, police cash bail receipt, 2nd Respondent's certificate of incorporation and mpesa statements to show that he was in an employment relationship with the Respondents.
12. The Claimant sought to rely on secondary records to demonstrate an employment relationship with the Respondents. The records show there was a contractual relationship between the parties.
13. The Respondents did not lead any evidence, and the Court has no hesitation in finding that the Claimant was in an employment relationship with the Respondents.

Unfair termination of employment

14. The yardstick for determining whether there has been an unfair termination of employment is set out in sections 35(1), 41, 43 and 45 of the *Employment Act*, 2007.
15. The Claimant testified that he served the Respondents until 20 January 2018, when he was dismissed orally without notice and without being granted an opportunity to make representations.
16. Section 35(1) of the *Employment Act* contemplates written notice of termination of employment, while section 41 of the Act demands that the employer hears out the employee.
17. There is nothing on record to show that the Respondents complied with these peremptory steps, and the Court can therefore conclude that the Respondents unfairly terminated the Claimant's employment.



Pay in lieu of notice

18. The Respondents did not give the Claimant written notice, and the Court awards the equivalent of 1-month pay in lieu of notice in the sum of Kshs 20,000/-.

Compensation

19. The Claimant served the Respondents for about 14 years, and there is nothing on record to suggest that he contributed to the termination through misconduct, poor performance or incapacity.
20. Considering these, the Court is of the view that the equivalent of 10 months' gross salary as compensation would be appropriate (gross monthly salary was Kshs 20,000/-).

Gratuity

21. The Claimant prayed to be awarded Kshs 196,154/- as gratuity, but he did not lay an evidential or legal foundation to this head of the claim and relief is declined.

Outstanding salary

22. The Claimant pleaded to be granted Kshs 140,000/- on account of salary arrears. He did not lay a foundation for the grant of this relief in the witness statement, which was adopted as part of his testimony, and the relief is declined.

Unpaid leave

23. Equally, the Claimant did not set out an evidential basis to anchor this head of the claim and relief is declined.

Conclusion and Orders

24. The Court finds and declares that the Claimant was an employee of the Respondents and that they terminated his employment unfairly.
25. The Claimant is awarded:
- i. Pay in lieu of notice Kshs 20,000/-
 - ii. Compensation Kshs 200,000/-
- Total Kshs 220,000/-
26. The Respondents caused the judgment to be vacated, but they did not call any witnesses without any sufficient explanation.
27. The Claimant is therefore to have interest at court rates from the date of judgment and costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN ISIOLO ON THIS 18TH DAY OF SEPTEMBER 2025.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Julius Juma & Co. Advocates



For Respondents Esther Muchiri & Co. Advocates
Court Assistant Wangu

