



Githaiga v Concordia Building & Civil Engineering Co Ltd (Cause E6471 of 2020) [2025] KEELRC 2433 (KLR) (15 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2433 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6471 OF 2020
BOM MANANI, J
SEPTEMBER 15, 2025**

BETWEEN

MICHAEL NJOGU GITHAIGA CLAIMANT

AND

CONCORDIA BUILDING & CIVIL ENGINEERING CO LTD RESPONDENT

JUDGMENT

Background

1. The Claimant filed this case to challenge the legality of the decision that was allegedly made by the Respondent to terminate his contract of service. He avers that the Respondent employed him as a Site Engineer at its Mitubiri Sanitary Landfill project with effect from 1st May 2019. He contends that the project was meant to have been concluded in March 2020 but was extended beyond this date.
2. The Claimant contends that whilst the Mitubiri project was still underway, the Respondent deployed him to another project in Garisa County from August 2020. He avers that the Garisa project was to run for eighteen (18) months from August 2020. It is his case that the Respondent terminated his services during the currency of the Garisa project.
3. The Claimant contends that one of the Respondent's officers sent him a short text message on 3rd September 2020 informing him that his contract had been terminated. He avers that the Respondent did not give him reasons for its decision. He further avers that the Respondent did not afford him an opportunity to be heard before it rendered the impugned decision. As such, it is his case that the decision was unlawful.
4. The Claimant further avers that the Respondent unlawfully deducted Ksh. 17,000 per month from his salary from January 2020 until May 2020. He also contends that the Respondent did not pay his salary for June, July and August 2020.



5. In the premises, he prays for judgment against the Respondent in the following terms:-
 - a. A declaration that his contract of service was unfairly terminated.
 - b. A declaration that the decision to withhold Ksh. 17,000.00 per month from his salary for the period between January 2020 and May 2020 was unlawful.
 - c. Judgment for Ksh. 2,845,000.00 being payment for: notice pay; unpaid salary; pay in lieu of accrued leave; and anticipated salary under the new project.
6. In response, the Respondent admits that the Claimant was its employee but asserts that the employment relation between them was in respect of the Mitubiri project only. The Respondent denies that it deployed the Claimant to the Garisa project as asserted by him.
7. The Respondent avers that the Mitubiri project was to run for 350 days. It contends that the Claimant's contract was pegged on the lifespan of the project.
8. The Respondent avers that whilst the project was ongoing, it received a letter from its contracting client instructing it to remove the Claimant from the site because of the open defiance he had shown its (the client's) supervisory staff. It contends that this communication was copied to the Claimant.
9. The Respondent denies that its management sent the Claimant a text message terminating his services. It contends that it is a stranger to the text message which the Claimant relies on to prove his assertion that his contract was terminated through a text message.
10. The Respondent maintains that the Claimant was fully remunerated for the services he rendered during the currency of his contract. It denies that it withheld his salary or made unlawful deductions therefrom as alleged by him.
11. Although the Respondent asserts that the Claimant lost his employment after its instructing client demanded that he should be removed from its site for alleged defiance, it also alleges that the contract between the parties was terminated through effluxion of time. The two accounts are evidently contradictory.

Issues for Determination

12. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-
 - a. Whether the Claimant was employed by the Respondent to serve in two projects to wit the Mitubiri and Garisa projects.
 - b. Whether the Claimant's employment terminated on account of effluxion of time or was improperly terminated.
 - c. Whether the Claimant is entitled to the reliefs which he seeks through these proceedings.

Analysis

13. The employment relationship between the parties was anchored on their contract dated 1st May 2019. From the contract, it is clear that the Respondent hired the Claimant's services as a Site Engineer at its Mitubiri Sanitary Landfill Project. It is further clear that the Claimant's net salary was agreed at Ksh. 120,000.00 per month.



14. The contract does not state the period the project was to last. However, it is clear that the employment relation between the parties was pegged on that project.
15. The parties state that the project was to run for approximately one year. However, it is evident that it overshoot the one year period.
16. The fact that the Mitubiri project stretched beyond one year is evident from the evidence that was tendered by both parties. For instance, the Claimant stated that the Respondent moved him to work on the Garisa project in August 2020 whilst the Mitubiri project was still ongoing. This was more than one year after the Mitubiri project had commenced.
17. On the other hand, the Respondent contended that its client wrote to it on 24th July 2020 directing it to remove the Claimant from the Mitubiri site. This was more than one year after the project had commenced.
18. As noted earlier, the Claimant's services were pegged on completion of the Mitubiri project. The Claimant avers that the Respondent terminated his services on 3rd September 2020. There is no evidence that at this time, the Mitubiri project had been wound up. As such, the contention by the Respondent that the Claimant's contract came to a close through effluxion of time is unsupported by evidence.
19. The record shows that on 24th September 2020, the Claimant's advocates wrote to the Respondent alleging that the latter had unfairly terminated their client's contract of service on 3rd September 2020. There is no evidence that the Respondent responded to the said letter to contest its contents. As such, the court believes the Claimant's testimony that the Respondent terminated his services on 3rd September 2020.
20. Whilst the Claimant contends that the Respondent terminated his services without providing the reason for the decision and without giving him an opportunity to be heard, the Respondent avers that it removed the Claimant from its site on the instructions of its client who was allegedly unhappy with his defiance of instructions from its (the client's) supervisors. This evidence is critical because it: dispels the Respondent's assertion that the Claimant's contract was terminated through effluxion of time; and confirms that at the time the Claimant's contract was terminated, he was still in actual service of the Respondent.
21. Whether the Claimant had been deployed from the Mitubiri project to the Garisa project is of no material significance to the dispute. What is significant is that at the time the Claimant's employment was terminated, he was still an employee of the Respondent at whichever site.
22. During cross examination of the Respondent's witness, he contended that the Claimant was relieved of his duties after the Mitubiri client asked that he be removed from the site for alleged defiance. However, there is no evidence that the Respondent took the Claimant through a disciplinary process in terms of section 41 of the [Employment Act](#) to establish the assertions of defiance which had been leveled against him.
23. As the employer, the Respondent was under obligation to afford the Claimant a chance to be heard before his contract could be terminated. Absent compliance with section 41 of the [Employment Act](#), the process that resulted in termination of the Claimant's employment was unlawful. It is so declared.
24. The Claimant has claimed unpaid salary for the months of June, July and August 2020. He contends that the decision to terminate his contract was made on 3rd September 2020. As such, he contends that he was in the service of the Respondent for the entire period that preceded September 2020, including



- the months of June, July and August 2020. Yet, he avers that the Respondent did not pay him his salary for these three months.
25. As noted earlier, the Claimant remained in the Respondent's employment beyond May 2020 when the one year period that had been projected for the Mitubiri project ended. Clearly and from the letter dated 24th July 2020 tendered in evidence by the Respondent, the project extended beyond the one year initially projected.
 26. Although the Respondent admits that it terminated the Claimant's contract on account of its client's demands contained in the letter of 24th July 2020, it does not state when the decision to send the Claimant away was made after it received the letter dated 24th July 2020. On his part, the Claimant avers that the decision was made on 3rd September 2020.
 27. As noted earlier, although the Claimant's lawyers made the assertion that the Claimant's contract was terminated on 3rd September 2020 in their demand letter to the Respondent in September 2020, the Respondent did not write to controvert this assertion. As such and as indicated earlier, the court is convinced that the Claimant's contract was terminated on 3rd September 2020.
 28. There is no evidence that the Respondent paid the Claimant's salary for June, July and August 2020 before it terminated his services on 3rd September 2020. Under sections 10 (6) and 74 of the *Employment Act*, the Respondent was expected to maintain and produce before court records showing that it paid the Claimant's salary for the period (see Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021] eKLR). As the record shows, it did not do so.
 29. In the premises, the court finds that the Respondent owes the Claimant salary for the period between June 2020 and August 2020. Accordingly, the court enters judgment for the Claimant for unpaid salary for the three months in the sum of Ksh. 360,000.00.
 30. The Claimant contends that although his net salary per month was agreed at Ksh. 120,000.00, the Respondent paid him Ksh. 103,000.00 per month from January 2020 until May 2020 thus creating a shortfall of Ksh. 17,000.00 per month. In response, the Respondent simply stated that it paid the Claimant all his salary.
 31. Under sections 20 and 21 of the *Employment Act*, the employer has a duty to furnish his employee with an itemized pay slip showing the gross salary payable to the employee and the statutory deductions made therefrom. A pay slip is therefore critical evidence of the salary that is paid to the employee and the deductions effected against it (the salary).
 32. By virtue of sections 10 (6) and 74 of the *Employment Act*, the employer bears the obligation of maintaining these records. As such, it was the Respondent's responsibility to keep and place before the court evidence to demonstrate that it paid the Claimant the amount claimed (see Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021] eKLR). As the record shows, it (the Respondent) did not. As such, the court enters judgment in favour of the Claimant for Ksh. 85,000.00 being salary unlawfully withheld by the Respondent.
 33. The Claimant has claimed leave commutation for one year. During his oral testimony, the Respondent's witness stated that he could not tell whether the Claimant had taken his annual leave. Yet and as previously indicated in the judgment, the duty to keep employment records which include leave records and present them to court lay with the Respondent as the Claimant's employer (see section 74 of the *Employment Act* and Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021] eKLR). Absent this evidence by the Respondent, the court must believe the Claimant's case



that he did not utilize his leave days. As such, he is awarded Ksh. 120,000.00 to cover his commuted leave days.

34. The Claimant has prayed for salary in lieu of notice to terminate his contract. No evidence was tabled by the Respondent to demonstrate that before it released the Claimant from service, it issued him with the requisite notice to terminate his contract in terms of section 35 of the *Employment Act*. As such, it (the Respondent) is obligated to pay him in lieu of notice as required under section 36 of the Act. Accordingly, I enter judgment for the Claimant for pay in lieu of notice to terminate his contract in the sum of Ksh. 120,000.00.
35. The Claimant has prayed for loss of anticipated salary. However, the law only entitles him to compensation for the unfair termination of his contract that is equivalent to his gross salary for twelve (12) months.
36. I have considered the elements to be taken into account in assessing compensation for unfair termination of a contract of service (see section 49 of the *Employment Act*). In particular, I have considered that the parties had not been in the employment relation for long. Having regard to this, I award the Claimant compensation for unfair termination of his contract which is equivalent to his salary for three (3) months, that is to say, Ksh. 360,000.00.
37. The award to the Claimant is subject to the applicable statutory deductions.
38. The Claimant is awarded interest on the amount awarded at court rates from the date of this decision.
39. The Claimant is awarded costs of the case.

Summary of the Findings and Award

- a. The court finds that there is no evidence to support the Respondent's assertion that the Claimant's contract was terminated through effluxion of time.
- b. The court finds and declares that the Respondent unfairly terminated the Claimant's contract of service.
- c. The court awards the Claimant compensation for unfair termination of his contract in the sum of Ksh. 360,000.00.
- d. The court awards the Claimant unpaid salary for the months of June, July and August 2020 in the sum of Ksh. 360,000.00.
- e. The court awards the Claimant the sum of Ksh. 85,000.00 to cover his salary that was wrongfully withheld by the Respondent.
- f. The court awards the Claimant the sum of Ksh. 120,000.00 as pay in lieu of his accrued leave.
- g. The court awards the Claimant the sum of Ksh. 120,000.00 as pay in lieu of notice to terminate his contract of service.
- h. The award to the Claimant is subject to the applicable statutory deductions.
- i. The court awards the Claimant interest on the amounts awarded to him at court rates from the date of this decision.
- j. The court awards the Claimant costs of the case.

DATED, SIGNED AND DELIVERED ON THE 15TH SEPTEMBER, 2025

B. O. M. MANANI



JUDGE

In the presence of:

..... for the Claimants

.....for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

