



**Mugao v Britam General Insurance Company Limited (Employment and Labour Relations Cause E181 of 2021) [2025] KEELRC 2595 (KLR) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2595 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E181 OF 2021  
MN NDUMA, J  
SEPTEMBER 25, 2025**

**BETWEEN**

**DANIEL MURIUNGI MUGAO ..... CLAIMANT**

**AND**

**BRITAM GENERAL INSURANCE COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 26th February 2021 against the Respondent seeking the following reliefs:-
  - a. A declaration that there was a breach of contract, a breach of legitimate expectation in an employment contract, wrongful, unlawful, unfair termination, breach of [Employment Act 2007](#) and an unconstitutional labour practice.
  - b. House allowance of Kshs. 400,000.00 per month for 89 months (i.e. between February 2013 and June 2020) totaling to Kshs. 35,600,000.00.
  - c. 12 months' salary as general damages for unlawful and unfair termination amounting to Kshs. 15,137.76
  - d. Costs of this suit.
  - e. Interest on (b) above at court rate from the date of filing the suit until payment in full.
  - f. Interest on (c) and (d) above at court rate from the date of judgment until payment in full.
  - g. Certificate of service
  - h. Any further relief that this Honourable Court may deem fit to grant in the interest of justice.



2. CW1 the Claimant testified under oath and adopted a written statement, dated 19/2/2021 as his evidence in chief. The Claimant also relied on exhibits '1' to '29' produced before court to elaborate his case.
3. CW1 said he was presently without a job. That he previously worked for the Respondent in the position of County Sales Manager employed by a contract dated 8/1/2013 which took effect on 4/2/2013. That the employment was on a permanent and pensionable basis.
4. That the Claimant had a comprehensive job description dated 8/2/2013 placed before court which supports everything he did regarding matters that led to termination of his employment unlawfully and unfairly.
5. That he was confirmed to his position upon successful probation on 1/8/2013 and as at 30/1/2014, he was awarded a salary review upwards from Kshs. 660,000.00 to Kshs. 709,000.00 as per letter before court dated 30/1/2014.
6. On 24/4/2014, He received a performance bonus for the year 2013 in the sum of Kshs. 886,400.00 and on 24/4/2015, Kshs. 192,298.00 for the year 2014.
7. That on 21/12/2015 the Claimant was promoted to the position of Country Sales Manager and his salary was increased to Kshs.1,180,000.00 including an expanded range of benefits including membership and social clubs subscription and medical cover.
8. On 12/2/2016, the Claimant was confirmed to the position of Country Sales General Manager as a result of demerger process.
9. The position of Claimant was varied to General Manager Sales on 7/5/2018 in line with the new company structure.
10. That in March 2020, the Respondent introduced a performance improvement plan (PIP) for the Claimant and was on 12/3/2020, issued with a caution letter alleging cumulative performance gaps and lapses in the delivery in 2019. The Claimant was consequently placed on PIP for a period of 3 months from 19/2/2020 to 30/4/2020.
11. The Claimant states that the PIP was not genuine and was introduced in bad faith and so in a letter dated 16/3/2020, the Claimant wrote to the Respondent raising issues with the same in that it was issued retrospectively in that it was dated 12/3/2020 but commencing on 19/2/2020; whether all managers who had scored less than 80% had been placed on PIP and that the budget projection for the year 2020 was at 16.5% growth was over ambitious and performance of sales department depended on all other departments.
12. That a response dated 2013/2020 did not address those concerns, That on 13/3/2020, COVID 19 pandemic was announced by Kenya Government and movement of persons was restricted followed a lockdown of the country announced on 20/3/2020. That these measures gravely affected most businesses including the Respondent.
14. The Claimant states that despite having addressed all performance issues raised by the Respondent he was on 5/6/2020 issued a show cause letter in that performance review of the Claimant disclosed cumulative performance gaps and lapses in delivery in 2019 inter alia.
15. That the Claimant responded to the show cause letter dated 8/6/2020 but was invited to a hearing on 22/6/2020 where he reiterated his explanation.



16. By a letter dated 29/6/2020, the Respondent terminated the employment of the Claimant on grounds that the Claimant had failed to improve his performance. The Claimant appealed the decision in terms of clause 20.6 of the Respondent's Human Resource Manual on 9/7/2020. The grounds of appeal are set out therein and key to that was that in terms of Human Resource manual before an employee is placed on a PIP, a three (3) months development plan is supposed to be prepared in liaison with the employee's supervisor. That this did not happen in case of the Claimant but instead PIP was introduced retrospectively. That the caution dated 12/3/2020 was given before HR system rating had been notified to the Claimant. That despite starting the year at a rating of 78% due to factors beyond the control of the Claimant, the performance of the Claimant had greatly improved and as at 2020 May and June respectively the sales were at 84% and 85% of the set target.
17. That the Respondent acknowledged that the Claimant had achieved 3 out of the 4 key performance indicators (KIPs) and the Claimant had given a reasonable explanation for the failure to achieve all the KIPs.
18. That indeed no sales manager in the company had managed to achieve the sales target of 95% due to the prevailing COVID-19 situation which ought to have been taken into account in the performance evaluation for the year. The Claimant stated that he had achieved the purpose of the PIP to improve performance as captured in the Respondent's HR manual.
19. The Claimant concluded that all his reasonable explanation was not taken into account. The Respondent had no valid reason to terminate his employment and did not follow a fair procedure in the application of the disciplinary action that led to the termination of his employment.
20. The Claimant prays that the suit be upheld and the Claimant be granted the reliefs sought.
21. The Claimant was cross-examined at length by Mr. Opole Advocate for the Respondent and he insisted that his promotions and award of bonuses was not a matter of course but was due to his continuous improved performance from the time of employment. That his performance began to be questioned all of a sudden in the year 2019 leading to year 2020, at a time when the company's performance like all other business was affected by movement restrictions, curfew and shut down due to the occurrence of COVID-19 pandemic. That the PIP was introduced without strict adherence to the HR manual Claimant insisted.
22. The Claimant said the target for PIP was 81% upto April 2020 and COVID-19 was declared in March 2020. That the pandemic had commenced earlier than that date and was already affecting sales performance. Claimant admitted that he was issued a notice to show cause and attended a hearing and that his appeal was considered and dismissed.
23. The Claimant insisted that his reasonable explanation was completely ignored and that there was no genuine reason to terminate his employment at the time.
24. Claimant emphasized that he became General Manager in 2016 and was confirmed to the position in 2018 upon completion of company restructuring. The Claimant added that the promotion could not have come if his performance had been wanting from the year 2013 to the year 2018. That issues raised all over sudden in 2019 and 2020, were not attributable to his personal performance but, other factors including COVID-19 pandemic and overall performance of the other managers and teams not under his direct supervision.
25. That performing at 81% during the PIP period was not a poor performance at all. That targets were always at 80% and was unreasonable to expect 95% target achievement in the year 2019 – 2020 during the COVID-19 pandemic.



26. RW1 Jackson Theuri testified in support of the Respondents case as set out in the statement of response. RW1 adopted a witness statement dated 19/1/2023 as his evidence in chief and produced exhibits '1' to '22' to elaborate the case by the Respondent opposing the claim and praying that the suit be dismissed with costs.
27. RW1 stated that the employment relationship between the Claimant and the Respondent was governed by the contract of employment and the HR manual of the Respondent.
28. That clause 15 of the HR manual covered the performance review and evaluation (PRE) of employees. That these are to be done every July and December by every employee together with the employees' supervisors. That the Respondent had developed a performance management system (PMS) for evaluation of performance which sets out the procedure to be followed in the conduct of performance evaluation. That in respect thereof the manager and the employee develop and agree on a balance score card with defined KPIs which are assigned to each role performed by the employee. The roles and weights are agreed. The employee logs into the system and accepts the KPIs.
29. The face to face discussion between the employee and manager is recorded in the system and signed off by the parties. That PMS is done every mid and end year and where the appraisal indicates a rating % does not meet the targets, the employee is placed on PIP.
30. That this process is initiated by a communication from the Director, Human Resources to affected employees prompting the employees to log in and initiate appraisal process. That at the end of the appraisal process in December, the system generates a report for every employee indicating the assessment by the employee and the supervisor for the mid and end year appraisal sessions.
31. RW1 admits the particulars of employment and promotions accorded to the Claimant by the Respondent.
32. RW1 stated that at the start of 2019 end year appraisal was notified to all staff vide an internal memo dated 24/1/2019. The appraisal were to begin on 24/1/2019 and close on 16/2/2020. The mid-year score of the Claimant was at 1.85 and was rated "Does not meet targets."
33. That this rating wanted the Claimant be placed on PIP however, the Claimant requested to be given more time to improve which request was granted by the Respondent.
34. RW1 stated that the overall end year score of the Claimant was 1.95 which was rated "Does not meet targets." RW1 said the performance did not improve since the 1.95 score was below a share of 2 meaning that he did not meet target and was therefore to be placed on PIP. The Claimant was consequently placed on PIP for 3 months for the period February, March and April 2020. This was communicated to the Claimant by a caution letter dated 2/3/2022. Attached to the caution letter were key deliverables that were to be used to review the Claimant's performance during the PIP. That these were in line with the gaps identified in the appraisal as follows:-
  - a. Failure to meet 2019 revenue targets.
  - b. Engagement with key intermediaries:
    - i. Regular meeting with key brokers and IFAS
    - ii. Lack of structured engagement plan for key intermediaries.
  - c. Lack of sufficient sales pipeline to cover new business targets for broker channel.
  - d. Supervision and support of the sales team including:



- i. Oversight of the 2019 monthly performance across all channels
  - ii. Oversights of the 2020 budgeting process.
35. That the Claimant acknowledged receipt of the caution letter and the deliverables but raised concerns by a letter dated 16/2/2020. The Respondent addressed the concerns raised by a letter dated 20/3/2020 as follows:-
  - a. On the Claimant's concern that the PIP was acting retrospectively, the Respondent clarified that the effective date is based on when the performance appraisal and feedback was conducted and given on the 2019 performance and gaps, that is 19<sup>th</sup> February 2020.
  - b. On the Claimant's concern as to whether the PIP applied to all managers who scored below 80%, the Respondent made it clear that the PIP was based on Claimant's performance on his key performance indicators (KPIs) as the General Manager Sales.
  - c. On the Claimant's concern that the sales department depended on the efficiency of the other departments, the Respondent clarified that all departments were reviewed on the KPIs and assessed appropriately. Further, the PIP factored in the key KPIs for the sales department that are the responsibility of the General Manager Sales.
  - d. On the Claimant's concern that the 2019 budget growth was ambitious and that is why the Respondent's board approved 2020 budget projection at 16.5% growth after observing that no channel achieved the 2019 budget, the Respondent clarified that the PIP would be reviewing the Claimant against the 2020 approved budget numbers, where the Claimant was involved in the development of the budget numbers.
36. That the deliverables were subsequently reviewed by the Claimant on 31/3/2020 and were discussed with RW1 and agreed on with the Claimant.
37. RW1 stated that at the end of PIP and upon discussion by the Claimant and RW1, RW1 assessed the targeted revenue for the PIP to have not been met as the Claimant had achieved only 81% which was well below the targeted minimum threshold of 95% set for the PIP period.
38. RW1 stated that he concluded that the criteria for removal from PIP had not been met. The Claimant's performance did not improve during the PIP. RW1 stated and so Respondent issued the Claimant with a notice to show cause dated 5/6/2020 to which the Claimant responded by a letter dated 8/6/2020. RW1 said the reasons given for the Claimant's poor performance were found to be unsatisfactory and as a result the Claimant was notified to attend performance hearing by a letter dated 17/6/2020 which the Claimant attended on 22/6/2020 and his employment was terminated by a letter dated 29/6/2020 on grounds that the Claimant had failed to meet the key performance deliverables and explanation given was not satisfactory.
39. That the Claimant lodged an appeal by a letter dated 9/7/2020. The Claimant appeared before the Appeal Committee on 12/7/2020. The committee dismissed the appeal as follows:
  - i. The PIP was undertaken within acceptable parameters and in line with the Respondent's procedures.
  - ii. The termination of employment was not unfair, pre-determined or made in bad faith.
  - iii. There is no convincing reason to interfere with the finding of the disciplinary committee and its recommendation.



- iv. There is no evidence presented in the appeal to warrant a re-hearing or review of the final decision made.

That the suit lacks merit and it be dismissed with costs.

40. The cross-examination by Advocate Kimakia for the Claimant was relentless and aimed at deconstructing the evidence by RW1 that Respondent had followed a fair procedure initiating the PIP and that the Respondent had a valid reason to terminate the employment of the Claimant on grounds of poor work performance. RW1 agreed that though the PIP was meant to be for a 3 months period given the date the letter commencing PIP was issued and received by the Claimant and the anticipated end date of 30/4/2020, the exercise was only undertaken for a period of 2 months and not the intended 3 months.
41. RW1 insisted that the Respondent had explained the issue of retrospective commencement of the PIP and issue of departmental interdependence and the difficulties experienced at the time in conduct of sales due to COVID-19 restrictions imposed by the Government.
42. RW1 admitted that during the PIP period in March and April 2020 Government had imposed restriction on movement and a 7 days total lock down was also commenced in Nairobi at the time.
43. RW1 asked how the Respondent expected the Claimant to improve performance during the time RW1 said that the Respondent did not shut down but worked over digital channel in conjunction with brokers and agents. RW1 admitted that sales depended on many other businesses which had either shut down or had restricted their operations due to the COVID-19 measures taken by the government at the time. RW1 admitted that the notice to show cause dated 5/6/2020 was issued less than 3 months from the date PIP actually commenced after 12/3/2020 but was 3 months from the date of the letter on 19/2/2020. RW1 admitted that the performance of the Claimant had improved to 81% despite the challenges faced at the time. RW1 said the reason for termination was the failure to meet the set PIP deliverables. He denied that he had accelerated the evaluation process. RW1 admitted that out of 4 deliverables the Claimant met 3 and only one on revenue increase to 95% had not been met though there was improvement from 78% to 81%. RW1 stated that deliverables depended on liaison with agents, brokers and internal actors and the Claimant had met those targets despite the COVID-19 pandemic at the time.

## **DETERMINATION**

44. The parties filed written submissions which the court has carefully considered together with the evidence adduced by CW1 and that by RW1.

The issues for determination are:

- i. Whether the Respondent followed a fair procedure in conducting a PIP against the Claimant.
  - ii. If the answer to (i) above is in the negative whether the Respondent has established it had a valid reason to terminate the employment of the Claimant.
45. In answer to issue (i) above two documents produced by RW1 are key, that is the letter by the Claimant dated 16/3/2020 in which he acknowledged receipt of the caution letter dated 12/3/2020 which informed the Claimant of induction of a 3 month PIP. In the said letter the Claimant asked critical questions including why the 3 month PIP was commenced retrospectively as it was said to start from 19/2/2020 upto 30<sup>th</sup> April yet the letter was dated and received almost a month later on 12<sup>th</sup> March 2020. RW1 in his testimony before court admitted that the PIP took 2 months only instead of the intended 3-month period. RW1 admitted that the assessment that led to termination of the



employment of the Claimant was conducted by him before the expiry of the 3-month period set for the PIP. RW1 also admitted that as at the time, the Claimant had already met 3 of the 4 set deliverables and that on the remaining deliverables on revenue from sales the Claimant had already made improvement from 78% to 81% and the set target was 95%. RW1 would not explain whether or not given the 3 months period the Claimant would have achieved this indicator. The explanation by RW1 that he had not accelerated the PIP assessment was patently false and without credibility. RW1 did not also satisfactorily explain if all managers who had performed below 81% in 2019 had been placed on PIP like the Claimant and the explanation given on whether the Respondent had properly taken into account the occurrence of COVID-19 pandemic during the PIP (performance) was properly taken into account by the Respondent in evaluating the Claimant after 30<sup>th</sup> April 2020.

46. The court upon a careful consideration of the evidence by CW1 and RW1 has arrived at the conclusion that the Respondent was bound to take into consideration the occurrence of COVID-19 pandemic and the difficulties the measures imposed by the government including restriction in movement and total shut down at Nairobi during the period of PIP was unreasonable and this failure led to an unfair and unjust decision to terminate the employment of the Claimant without properly determining that the Respondent had a valid reason to terminate the employment of the Claimant.
47. The fact that the letter of termination including the caution letter was completely silent on the impact of COVID-19 pandemic on the sales operations of the company appear to this court to be dishonest and therefore discrediting the decision made against the Claimant at the time despite acknowledged improvement on all set deliverables and only failing to meet the target on one indicator.
48. In terms of section 43(1) and (2) of the *Employment Act*, 2007, the employer has to prove that it had a valid reason to terminate the employment of the Claimant. The court finds that the Respondent has not discharged this onus and has thus fallen fowl of section 45(1) and (2) of the Act which prohibits an employer from terminating employment of a person without a valid reason and without following a fair procedure. Admittedly, the Respondent violated its own HR manual in the manner it conducted the PIP as admitted by RW1 in the suspension of the Claimant.
49. The court is guided in its conclusion by the decision in Vincent Namai versus National Bank of Kenya Limited (Constitutional Petition E059 of 2023) [2023 KEELRC 1497 (KLR) 22 June 2023 where this court sitting differently stated:-

“The court has perused all exhibits on record including the Petitioner’s appeal and its being disallowed. He raised the same issues he had informed the capacity hearing meeting. The issues were not taken into consideration. Essentially, he was raising well-grounded grievances or complaints as envisaged in section 46 of the *Employment Act*, 2007 and instead of the Respondent amicably addressing them, the scores of unsatisfactory performances were taken as if they existed in vacuum or that such valid grievances. The court therefore finds that in the instant petition and as urged for the Petitioner, the Respondent acted unreasonably in breach of Article 47 which imposed upon the Respondent the obligation to act reasonably.

....

Upon looking at the case, while the Respondent purported to comply with a notice and a hearing per section 41 of the *Employment Act* 2007, in the full analysis of the Petitioner’s lamentations, the Respondent acted unreasonably by failing to take into account the Petitioner’s valid grievances about his work environment at the Kitengela Branch that essentially explained the levelled unsatisfactory performance.”



50. The Claimant having lost his employment unlawfully and unfairly is entitled to remedies under section 49(1) (c) and 4 of the *Employment Act* 2007 as was stated by the Court of Appeal in the case of *Ol Rejata Ranching Limited versus David Wanjau Mutua* [2017] eKLR.
51. Breaches of employment contracts by employer need not be elevated to constitutional disputes. It suffices for this court to consider matters set out under section 49 (4) with respect to the case, as presented by the Claimant and determine the suitable remedy applicable to the case. In the present matter, the Claimant had served the Respondent diligently from the year 2013 to the year 2020, a period of about 7 years. The Claimant was promoted for good performance and earned a very good salary which he lost abruptly and for no good cause. The Respondent failed to prove that the Claimant had contributed to the termination having failed to prove that it had a valid reason to terminate his employment when it did. The Respondent acted unreasonably in failing to consider the prevailing circumstances at the time.
52. The Claimant had not obtained alternative employment as at the time of hearing this case. The Claimant had suffered immense loss and damage. The Claimant had not been compensated for the loss and his career growth and development had been stunted by the unfair decision by the Respondent.
53. In the case of *D. K. Njagi Marete versus Teachers Service Commission* [2013] eKLR, the Claimant had worked for 6 years and was awarded 12 monthly salary in compensation for the unlawful and unfair dismissal. The Supreme Court decision in *Ken freight (E.A.) Limited v Benson K. Nguti* [2016] e KLR provides a good guidance in this respect. The Court held that;
- ‘To the extent that the learned Judge explained that the award of 12 months gross salary was in consideration of the respondent’s rank and the difficulty he was likely to face to obtain another employment, we think that the discretion was judicially exercised. We may only add to this list the treatment of the respondent as explained earlier and the long period of service to the appellant’
54. The court allowed compensation equivalent to twelve months salary for unlawful and unfair termination of employment.
55. The Respondent refers the court to the case of *Mwangi versus Kenol-Kobil Limited* (Cause 587 of 2017) [2003 KEELR 1806 KLR – where the court awarded six (6) month salary as compensation for unlawful and unfair dismissal where the Claimant had served for 25 years.
56. Other cases referred to the court include *Josphat Ingosi Anditi and another versus Nightingale Rulabe* [2014] eKLR, where the court awarded six (6) months’ salary in compensation for unlawful and unfair dismissal where the Claimant had served for 7 years. The court considered that the Respondent had conceded and paid notice pay and service gratuity.
57. The Respondent also referred the court to the case of *Boniface Mutadi versus Al Barbers Restaurant Limited* [2016] eKLR, where the court awarded the equivalent of three (3) months’ salary for unlawful dismissal where the Claimant had worked for six (6) years. The court considered that the Claimant was likely to secure alternative employment.
58. In the present case, the Claimant was not dismissed from employment and so was paid in lieu of notice. The Claimant testified that he was not paid house allowance during the tenure of his employment and seeks to be paid for the entire period he worked. That claim is not supported by the contract of employment between the Claimant and the Respondent. the claim was not raised during the tenure of employment. Indeed, the Claimant received a consolidated gross salary which from his testimony he had no issue with.



59. The court dismisses this claim and is not a relevant consideration in determining the level of compensation to be awarded the Claimant.
60. In the final analysis, the court awards the Claimant the equivalent of six (6) months' salary in compensation for the unlawful and unfair termination of employment.
61. Judgment is entered in favour of the Claimant against the Respondent as follows:-
- a. Equivalent of six (6) months salary in compensation for unlawful and unfair termination of employment in the sum of Kshs. (1,216,500.00 x 6) per the payslip of June 2020 Kshs. 7,299,000.00.
  - b. Grant of certificate of service within 30 days of judgment.
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit.

**DATED AT NAIROBI THIS 25<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Kimakia for Claimant

Mr. Opole for Respondent

Mr. Kemboi – Court Assistant

