



Mwani v Rupia Micro Credit Limited (Employment and Labour Relations Cause E749 of 2022) [2025] KEELRC 2516 (KLR) (25 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2516 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E749 OF 2022
HS WASILWA, J
SEPTEMBER 25, 2025**

BETWEEN

DAVIS AYUGU MWANI CLAIMANT

AND

RUPIA MICRO CREDIT LIMITED RESPONDENT

JUDGMENT

1. The Claimants instituted this claim vide a Statement of Claim dated 17th October 2022 and he prays for judgment against the Respondent for:
 - a. A declaration that the Claimant's employment was unlawfully and wrongfully terminated by the Respondent in violation of Articles 28, 41(1), 47, 48 and 50(1) of *the Constitution* of Kenya, 2010, as well as Section 41 of the *Employment Act*, No. 11 of 2007, Laws of Kenya.
 - b. An award of damages for breach of contract and unlawful and wrongful termination of employment as hereunder:
 - i. Damages for unlawful termination (12 months' salary) Kshs. 271,800/—
 - ii. One month's salary in lieu of notice-Kshs. 22,650/=
 - iii. Unpaid salary for August, 2022 Kshs. 22,650/—
Total Kshs. 317,100
 - c. Interest on (b) above at court rates until payment in full.
 - d. Exemplary damages for breach of Claimant's constitutional right.



- e. Certificate of service.
- f. Costs of this suit plus interest at court rates until payment in full.
- g. Any other relief that the court may deem fit to grant.

Claimant's Case

2. The Claimant aver that he was employed by the Respondent as an Accounts Assistant earning a monthly salary of Kshs. 22,650 vide a contract of service dated 19th June 2021.
3. The Claimant avers that on 1st August 2022, he applied for sick leave in order to undergo surgery at Kakamega Teaching and Referral Hospital which permission was granted and he underwent surgery and was discharged on 11th August, 2022 and put to bed rest until 25th August, 2022
4. The Claimant avers that vide a letter dated 13th August, 2022, the Respondent suspended him from employment without pay. The said letter further referred to yet another letter dated the same day and sent at the same time indicating that he has failed to respond to the letter hence his suspension without being given opportunity to respond to the said letter referenced "Sick Leave".
5. The Respondent stated in the letter that "RUPIA Ltd employees shall be entitled to sick leave with pay for a period of 14 working days a year" and did not note the fact that the Claimant had undergone surgery which according to the doctor he required a longer period to recover.
6. It is the Claimant's case that the Respondent terminated his employment on 31st August, 2022 without according him a fair hearing as required by law.
7. The Claimant avers that at all material times, he executed his contractual and/or employment duties with due diligence, exercising reasonable care and without fail until on or about 31st August, 2022 when the Respondent without notice terminated his employment contract contrary to Articles 28, 41(1), 47, 48 and 50(1) of *the Constitution*, as well as Section 41, 43, 45 and 46 of the *Employment Act*, thus occasioning him to incur substantial loss.
8. It is the Claimant's case that the Respondent acted arbitrarily and oppressively towards him, and as such he is entitled to the payment of general damages to compensate him for the loss, aggravated damages to compensate him for the loss and exemplary damages due to the Respondent's reckless, malicious and deceitful actions to terminate the Claimant on account of sickness.
9. The Claimant avers that the Respondent never gave him one month's notice before terminating his employment as required by law; and he was never paid for the months of August 2022 despite having undergone surgery.
10. The Claimant further avers that upon termination of his employment, the Respondent refused to pay his terminal dues and to issue him a Certificate of Service.

Respondent's Case

11. In opposition to the Claim, the Respondent filed a Response to Claim dated 29th November 2022.
12. The Respondent avers that the Claimant did not seek for leave and the same was never granted. Further, the Claimant was never put to bed rest and the sick sheet dated 11th August 2022, allegedly procured from Kakamega County General Teaching and Referral Hospital is forgery.



13. It is the Respondent's case that the Claimant proceeded to work for Independent Electoral and Boundaries Commission (IEBC) in Shinyalu Constituency during the pendency of his contract under the guise he was ill.
14. The Respondent denies that the Claimant was suspended and avers that if he was suspended, it was after he had absconded duty and it was confirmed that he had taken on employment with IEBC during the pendency of his employment.
15. The Respondent denies that it terminated the Claimant's employment without according him a fair hearing and avers that the Claimant materially breached his employment contract by conduct as he was engaged in employment as an IEBC officer while still in the Respondent's employment.
16. The Respondent avers that the Claimant absconded employment by going AWOL and failing to respond to lawful instructions. He provided forged documents with a view to mislead the Respondent that he had been granted sick leave yet he was working for IEBC during the said period.

Evidence in Court

17. The Claimant (CW1) adopted his witness statement dated 17th October 2022 as his evidence in chief and produced his list of documents dated even date as his exhibits 1-6.
18. Upon cross-examination, CW1 testified that his contract is open ended, however, the same is not in court.
19. CW1 testified that he has a medical letter from Kakamega Hospital dated 11th August 2022 which is not legible.
20. He testified that he is not aware that the Respondent wrote to Kakamega Hospital and they have denied having him as a patient, he has now seen the letter.
21. CW1 testified that he was terminated for absconding duty.
22. CW1 testified that he was granted leave before going to hospital, however, he has no evidence that he asked for leave.
23. The Respondent's witness, Mildred Wafula (RW1), testified that she is Manager of the Respondent and adopted her undated witness statement as her evidence in chief and produced the Respondent's bundle of documents as her exhibits.
24. During cross-examination, RW1 testified that on 13th August 2022, they issued the Claimant with two letters; he was issued with a suspension letter in the evening and subsequently, he was issued with a termination letter.
25. RW1 testified that the Claimant was served the letter through his email and WhatsApp and she provided the emails in court.
26. RW1 testified that the Claimant was never invited for a disciplinary hearing and he did not appear for a disciplinary hearing.

Claimant's Submissions

27. The Claimant submitted on three issues: whether the Claimant's employment was unfairly terminated; whether the Claimant is entitled to compensation sought; and who bears the costs of the suit.



28. On the first issue, the Claimant submitted that vide letter dated 13th August 2022 (exb no.4), the Respondent suspended him from employment. The said letter referred to yet another letter dated the same day and sent to the Claimant at the same time indicating that he had failed to respond to the said letter (exb no.3) hence he was suspended without being given an opportunity to be heard and without pay.
29. The Claimant submitted that the Respondent terminated his employment vide a letter dated 31st August 2022 which did not refer to any disciplinary hearing or proceedings.
30. It is the Claimant's submission that he was never invited to a disciplinary hearing as there is no invitation to the same nor minutes of the same.
31. It was submitted for the Claimant that Section 45 of the [Employment Act](#) provides that a termination of employment is unfair if the employer fails to prove that the reason for the termination is valid; that the reason for the termination is a fair reason and that the employment was terminated in accordance with fair procedure. According to the Claimant's testimony, the Claimant's services were unexpectedly terminated without notice and he was not heard as envisaged Section 35 and 45 of the [Employment Act](#).
32. The Claimant submitted that the evidence before court is enough to demonstrate that the substance and procedure adopted by the Respondent in terminating his employment was unfair, unjust and unlawful. He relied in Janet Nyandiko v Kenya Commercial Bank Limited [2014] KECA 293 (KLR).
33. The Claimant submitted that the Respondent failed to follow the procedure laid down in Section 41 of the [Employment Act](#) hence the Respondent's action of terminating the Claimant's employment is unfair.
34. On the second issue, the Claimant submitted that after establishing that the Claimant was unfairly terminated then it follows that he is entitled to relief sought.
35. It is the Claimant's submissions that he is entitled to Kshs. 22,650 being one month's salary in lieu of notice before terminating the Claimant's employment as provided under Section 40 of the [Employment Act](#). The Claimant further contends that he was never paid salary in the month of August, 2022 hence Kshs. 22,650 and the Claimant is entitled to Kshs. 271, 800 being twelve months' salary for unlawful termination of employment would be fair and reasonable compensation.
36. On the final issue, the Claimant submitted that Section 27 of the [Civil Procedure Act](#) gives the court discretion to grant costs. As the successfully party is always entitled to costs, except in exceptional circumstance, there being no exceptional circumstance, he is entitled to costs of the suit.
37. The Claimants submitted that under Section 51 of the [Employment Act](#), he is entitled to be issued with a Certificate of Service by the Respondent.
38. I have examined all the evidence and submissions of the parties herein. It is apparent that the claimant was an employee of the respondent who aver that he was terminated apparently for absconding duty.
39. The claimant indicated that he never absconded duty but was unwell at the time it is alleged he absconded duty.
40. The respondents also aver that the documents that the claimant sought to rely on to show he as unwell were forged. There was however, no witness called from the hospital to confirm that the documents were a forgery. The allegation of the claimant forging documents therefore remain as just mere allegations.



41. Other than this the claimant has averred that he was served with 2 letters one for suspension and termination on the same day and was never given an opportunity to defend himself. The respondents admitted that they actually served the claimant with the 2 letters and he also never gave him an opportunity to be heard. He was thus condemned unheard and contrary to the law at section 41 of the Employment Act 2007 which states as follows;

41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

42. Section 45 (2) of the Employment Act 2007 also states as follows;-

A termination of employment by an employer 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 employees 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

43. The claimant having been terminated without any fair hearing and without establishing the validity of reasons leading to his termination, it is my finding that his termination was unfair and unjustified and I decree so.

44. In view of this finding I find for the claimant and I award him as follows:

1. 1 months' salary in lieu of notice kshs 22,650/-
2. Unpaid August 2022 salary kshs 22,650/-
3. Compensation for unfair termination equivalent to 8 months' salary = 8x 22,650= kshs181,200/-
Total kshs 226,500/- less statutory deductions
4. Issuance of certificate of service.
5. Respondent to pay cost of this suit plus interest at court rates with effect from date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

