



Munialo v Muindi t/a Kageni Resort Development and Farm (Cause E040 of 2024) [2025] KEELRC 2424 (KLR) (12 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2424 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E040 OF 2024
ON MAKAU, J
SEPTEMBER 12, 2025**

BETWEEN

BEATRICE KHAKALI MUNIALO CLAIMANT

AND

TIMOTHY MURIMI MUINDI T/A KAGENI RESORT DEVELOPMENT AND FARM RESPONDENT

JUDGMENT

Introduction

1. The claimant was dismissed from employment by the respondent on 16th March 2024 and brought this suit on 9th September 2024 seeking the following reliefs:
 - a. A declaration that the claimant’s termination from employment was unfair, unlawful and unprocedural.
 - b. An order for the respondent to pay the claimant her terminal dues amounting to Kshs.6,416,250.84.
 - c. An order compelling the respondent to remit the claimant’s NSSF and NHIF deductions for the entire employment period.
 - d. An order for the respondent to issue the claimant with a certificate of service.
 - e. Costs of the suit with interests at court rates.
2. The respondent filed his Response on 24th September 2024 denying admitting that it dismissed the claimant but he averred that the dismissal was due to the claimant’s failure to perform her responsibilities under the contract. Therefore, he averred that the claimant is not entitled to the reliefs sought and prayed for the suit to be dismissed with costs.



Facts of the case

3. The claimant was employed by the respondent as Farm General Manager under a contract dated 14th August 2023 for a monthly salary of Kshs.84,000 made of basic pay of Kshs.54,000 while Kshs.30,000 were allowances including Education Kshs.4000, medical Kshs.13,000 and pension Kshs.13,000. She worked from Monday to Saturday including holidays on normal pay rate and she never took any leave. The claimant was also disqualified from compensation for overtime work.
4. As the General Manager, the claimant was overseeing all the field activities including staff management; ensuring proper record and documentation are made; marketing and sales; financial and record keeping, reconciliation and management (Quick Books and Excel), among other duties. The claimant was required to perform her duties professionally, in good faith and to the best of her skills, abilities and experience. The contract was for 5 years subject to completing 7 months' probation period.
5. She worked until 3rd March 2024 when she was served with a Memorandum sending her to an unpaid leave. By the memo, she was denied access to the employer's property and homestead and prohibited from communicating with clients and other staff. It further stated that the respondent would schedule a follow-up meeting not later than 16th March 2024 to discuss the next steps. The promised meeting never took place as it was cancelled via phone call on 15th March 2024 and the driver was sent to collect the employer's items from her place. The following day, she was issued with a termination memorandum dated 16th March 2024 and non-disclosure agreement.
6. During the hearing, the claimant adopted her written statement as her evidence in chief and produced documents as exhibits. In brief, she contended that the dismissal was drastic as she was not given any opportunity to defend herself against the infractions cited in the dismissal letter. She was also not paid salary for March 2024 plus terminal dues. Therefore, she maintained that the termination was unfair and unlawful because no show cause letter was issued to her or due process followed as required under the *Employment Act*.
7. On cross-examination, averred that the contract she signed did not provide for 7 months' probation and as she disowned the unsigned copy filed by the respondent. She contended that she signed the contract by appending her e-signature in Mrs. Murimi's Laptop. However, she confirmed that the contract was similar to the one filed in court save for the clause on 7 months' probation.
8. She contended that she kept proper records of all the sales and procurements. However, she admitted that on page 9 of the respondent's bundle (WhatsApp correspondents) she acknowledged that in January 2024 she did a wrong entry in the Excel sheet. She further admitted that on page 10 she acknowledged that again in January 2024 she placed an order to Blue Agri, collected the items from Vet Lands and paid it, but then got a receipt from Blue Agri.
9. She further admitted that on 10th January 2024, she was told that she was supposed to give ETR Receipts for fuel purchases. She was using the respondent's vehicle to attend work at the farm which was 40kms from home. She admitted that in January 2024 she submitted fuel receipts for Kshs.48,000 out of which only Kshs.3,000 had an ETR receipt. She contended that she spent much fuel because she was not only using the vehicle for going to work, but also for other errands.
10. She contended that she did her best to account for all the money including ensuring that sales by Anne were accounted for as she was receiving the sale proceeds and then banking it. She admitted that in January 2024, the employer sent Peter Karoro to bring a phone with Mpesa Line in his name but before then, Anne was selling and then bank the proceeds in the respondent's account. She confirmed that



there were two or three clients who were paying via Anne's Mpesa line who later transferred the money to the respondent's Account.

11. She was asked for her Mpesa statement and provided but she was not asked for Anne's statement. She contended that since Peter Karoro brought the phone, she always checked the sales to verify the same.
12. She contended that due to the premature termination of her contract, she was entitled to anticipated salary for 53 months plus compensation for unfair termination. She admitted that she served for less than one year. She admitted that the contract provided for pension and medical insurance cover but no NSSF and NHIF.
13. She reiterated that the termination of her employment was unjustified as the employer did not prove any loss of money caused by herself. She contended the money paid to Vet Lands for goods supplied was genuine transaction and the respondent got value for the money he gave. Besides, the Kshs.2,400 shown on page 9 of the respondent's documents was properly paid and the only mistake admitted in the said WhatsApp text was on the inputting of the data in the Spreadsheet. She maintained that she only conceded to a wrong entry on the spreadsheet and not the payment and consequently, she contended that recovery of the amount from her was not justified.
14. The respondent testified as RW1. He also adopted his written statement and produced documents as exhibits. In brief, his evidence was that he employed the claimant on 14th August 2023 as General Manager of his farm and her contract gave a detailed job description. As he General manager, she was the overall supervisor of the farm activities, employees and sales. She was also required to maintain accurate financial record of all transactions, and avail them for inspection.
15. She was also given a cell phone for business in December 2023 being No.0741-XXX and 0741XXX but she continued to use her personal cell phone, number 0712-XXX for business. Upon request, she refused to provide him with statements for the business transactions done through the personal cell phone. Upon analysing the business transactions for January 2024, he noticed unusual ones, as well as others which were done contrary to the agreed procedures. She further failed to reconcile the transactions for January and February 2024 and failed to adequately explain the reason.
16. He stated that the claimant spent Kshs.48,000 on fuel in January 2024 meaning the vehicle travelled over 3000Km yet daily journeys from Skuta to Kiawara (farm) was 80km. He contended that the claimant failed to explain the expenditure of Kshs.48,000 on fuel. Besides, the receipt for Kshs.45,000 fuel was not supported by ETR receipt while only Kshs.3000 was supported by ETR Receipt.
17. He further stated that the claimant failed to reconcile accounts, overpaid workers or purported to purchase goods from a supplier, but paid another supplier for the same goods. As a result of the above, he sent the claimant on an unpaid leave and subsequently summarily dismissed her on 16th March 2024, for gross misconduct.
18. On cross-examination, he admitted that he poached the claimant from a hotel in Samburu where she was working. He confirmed that they negotiated a gross salary of Kshs.84,000 made of Kshs.54,000 basic salary and Kshs.30,000 allowances. He confirmed that the claimant worked from 14th August 2023 to 16th March 2024. He reiterated that he employed her as Farm Manager fully aware that she was not an Agronomist.
19. He admitted that he was aware about disciplinary process under Kenya law but he never issued the claimant with show cause letter or accorded her disciplinary hearing. He contended that the claimant refused to meet him and therefore never travelled to Kenya.



20. He contended that he believed that the claimant stole money from the farm but he never reported to the police or raised a counter claim against her in this suit.
21. He admitted that the claimant never took any leave, and she also worked in some of the public holidays on the normal salary. He confirmed that the contract did not provide for house allowance. He admitted that he never paid NSSF or Pension for the claimant during her employment and he never paid her any terminal dues after the separation. However, he stated that the amount payable to her was Kshs.8,839 which she can go for it upon clearance.
22. During re-examination, he admitted that he never remitted the pension contribution for the claimant because he was waiting for her to provide the details of the pension scheme. He further admitted that he was still holding the pension money at the rate Kshs.13,000 per month save for August 2023 when she worked half month which amounts to Kshs.6,500.
23. He further stated that he had paid for medical cover amounting to Kshs.139,491, and also deducted from her pay Kshs.2400 which she conceded that it was an overpayment to workers. He reiterated that he dismissed the claimant after she failed to provide a reconciliation report of finances, inventory, supplies and harvest upon request. She even blocked him from her WhatsApp, which they were using to communicate.
24. After the hearing, both parties filed written submission. Having considered the pleadings, evidence and submissions, the following issues fell for determination: -
 - a. Whether the termination of the claimant's contract of service was unfair and unlawful.
 - b. Whether the reliefs sought are merited.

Unfair and unlawful termination

25. Section 45(1) & (2) of the *Employment Act* provides that: -
 - “(1) No employer shall terminate the employment of an employee unfairly.
 - (2) 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 employee's conduct, capacity and compatibility; or
 - (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.”
26. The gist of the above mandatory provision is that for termination to pass muster, the employer must prove that there was a valid reason and fair procedure was followed. In *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR, the court held that:
 - “14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination



must be carried out in accordance with the procedure laid down in the employers' human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee's guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made."

27. In the instant case, there is admission that the claimant was not served with a show cause letter to defend herself in writing, nor was she accorded any opportunity to defend herself orally in the presence of a fellow employee of her choice.

28. section 41 of the *Employment Act* which provides that: -

“(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.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”

29. The admission by the respondent under oath that he never complied with the above mandatory process renders the termination procedurally unfair.

30. As regards the Reason for the termination, I will not belabor the point. The claimant admitted that she spent Kshs.48,000 on fuel but only Kshs.3000 fuel was supported by ETR Receipt. She admitted that on 10th January 2024, she was instructed to obtain ETR Receipts for all purchases but then on 10th and 20th January 2024 she went ahead to purchase fuel of Kshs.30,000 without ETR Receipt.

31. The claimant further admitted that she paid Kshs.2,400 to employees and made a wrong entry in the spreadsheets contrary to her contractual duty to act professionally and maintain accurate financial records. The said admissions smacks of negligence and improper performance of duty. This finding is fortified by section 44(4)(c) of the *Employment Act* which entitles an employer to summarily dismiss an employee if the employee:

“Willfully neglects to perform any work which it was his duty to perform or if he careless and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly.”



32. In view of the said two incidences of improper performance of duty, I find that the respondent has proved a valid reason that justified the termination of the claimant's employment contract before the lapse of the 5 years term. However, as already observed above, the termination was not done in accordance with fair procedure and that rendered the termination unfair and unlawful altogether within the meaning of section 45 of the Employment Act.

Reliefs

33. In view of the foregoing, conclusion, I find that the claimant is entitled to declaration that the employment was unfairly and unlawfully terminated. For the same reason, she is entitled to compensation for unfair termination plus salary in lieu of notice under section 49 of the Employment Act.
34. Considering that the claimant worked for less than one year and caused the termination through misconduct, I award her two months gross salary as compensation for the unfair termination. I further award one-month salary in lieu of notice guided by section 35(1)(c) of the Employment Act which provides for at least 28 days termination notice to an employee whose salary is paid in intervals of one month or more. The above awards are based on the claimant's gross salary of Kshs.84,000.
35. The claim for anticipated salary of Kshs.4,452,000 is declined as it is not supported by evidence and the law. However, the claim for salary for 16 days in March 2024 is granted since there is admission by the respondent that he sent the claimant on unpaid leave from 3rd March 2024. There is no law that permits an employer to unilaterally send an employee on unpaid leave. Hence $Kshs.84,000 \times 16/30 = Kshs.43,354.84$
36. The claim for leave is also granted under section 28 of the Employment Act which provides for minimum 21 days annual leave or 1.75 days per month on pro-rata basis. The claimant worked for 7 months and earned $12.25 \text{ leave days} \times Kshs.54,000/30 = Kshs.22,050$.
37. The claim for house allowance is also granted because it's a right under section 31 of the Employment Act which requires an employer to provide reasonable housing to his employee at his own costs or pay the employee an allowance in addition to the basic salary, as rent for a reasonable accommodation.
38. The claimant's contract expressly provided for basic salary, plus Education and medical allowances but omitted housing allowance. There is also no evidence that the respondent provided housing to the claimant during the 3 months claimed. Consequently, I award the sum of $Kshs.54,000 \times 15 \text{ percent} \times 3 = Kshs.24,300$.
39. The claim for public holidays worked lack particulars and supporting evidence. The respondent admitted that the claimant worked on some of the public holidays. The claimant had the burden of specifically pleading the particulars of her claim and support it with evidence but she did not do so and therefore the claim is declined.
40. Likewise, the claim for unpaid NSSF and NHIF is declined because there is no evidence to prove that the claimant was deducted the said sum from her salary.
41. The claimant prayed for pension for 53 months totalling to Kshs.689,000 but provided no basis for the same. Accordingly, I find that she is only entitled to the pension for the 7 months worked. RW1 admitted under oath that he is holding the pension at the rate of Kshs.13,000 per month waiting for her to state which pension scheme to deposit the money. Consequently, I award the sum of $Kshs.13,000 \times 7 \text{ months} = Kshs.91,000$ being the amount deducted as pension from her salary.



Conclusion

42. I have found that the respondent terminated the claimant’s contract of employment unfairly and unlawfully when he failed to follow the due process provided under law. I have further found that she is entitled to some of the reliefs sought. Consequently, I enter judgment for her as follows: -

- a. Declaration that the termination of the claimant’s employment was unfair and unlawful.
- b. The respondent to pay the claimant;
Notice.....Kshs.84,000.00
Compensation.....Kshs.168,000.00
Salary for March.....Kshs.43,354.84
Leave.....Kshs.22,050.00
Housing allowance.....Kshs.24,300.00
Pension.....Kshs.91,000.00
Total Kshs.432,704.84
- c. The award is subject to statutory deductions.
- d. The claimant is awarded costs of the suit plus interest at court rates from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF SEPTEMBER, 2025.

ONESMUS N MAKAU

JUDGE

Order

This judgment has been delivered to the parties via Teams video conferencing with their consent, 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.

ONESMUS N MAKAU

JUDGE

