



**Ouma v County Government of Kisumu & another (Cause E063 of 2024)
[2025] KEELRC 2603 (KLR) (29 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2603 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E063 OF 2024
JK GAKERI, J
SEPTEMBER 29, 2025**

BETWEEN

JOHN OCHIENG OUMA CLAIMANT

AND

COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT

HON PETER ANYANG' NYONG'O 2ND RESPONDENT

JUDGMENT

1. The claimant commenced the instant suit vide a statement of claim dated 20th July, 2024 received on 23rd April, 2025.
2. The claimant's case is that he was employed by the respondent vide letter dated 1st September, 2022 as the County Secretary for a term of 3 years, with a 6 months probationary period and was provided with an official residence, vehicle and other benefits, but the respondents terminated his employment vide letter dated 28th March, 2023 for undisclosed reasons.
3. The claimant avers that the termination of his employment was unfair for want of reason(s) for termination, notice or pay in lieu of notice and fair hearing.

The claimant prays for

- i. A declaration that the respondents letter of 28th March, 2023 was a breach of his rights under Article 10 and 47 of *the Constitution* of Kenya.
- ii. A declaration that termination of his employment was unfair.
- iii. A Judicial Review Order of certiorari to bring before this court and quash the termination.
- iv. An Order of prohibition to prohibit the respondents from interfering with the claimant from executing his duties?



- v. In the alternative;
 - a. Salary in lieu of notice Kshs.413,079.00.
 - b. 12 months compensation Kshs.4,956,948.
 - c. Salary for July, August, September and October 2023 Kshs.1,230,316.00.
 - d. General, exemplary and aggravated damages for breach of constitutional rights.
 - e. Certificate of service.
 - f. Costs of the suit and interest till payment in full.
4. The respondent file a Notice of Preliminary Objection dated 14th February, 2025 but it was not prosecuted prior to the hearing and has thus been overtaken by events.

Respondent's case

5. The respondent's case is that the claimant was employed as its County Secretary but his employment was terminated during the probationary period and had been spoken to privately on his unsuitability for the office.
6. That the claimant failed or faulted in rent payment and was paid pursuant to the guidelines of the Salaries and Remuneration Commission and did not exhaust internal dispute resolution mechanisms.
7. The respondent prayed for dismissal of the claimant's case with costs.

Evidence

8. During cross-examination the claimant admitted that after his employment was terminated he filed a petition whose particulars he did not disclose and was reinstated to employment but when he reported, the office was locked and did not resume duty.
9. The witness admitted having signed the appointment letter and admitted it had a probationary clause and his rent was supposed to be deducted from his salary. He admitted having received a notice to vacate the house and prepared an inventory of the items and sent the same to the employer by Securicor services.
10. The witness admitted that he had no employment card and met the Governor after he received the termination letter who told him that "life was like that" and he handed over.
11. He denied having been on probation when his employment was terminated and filed the Salaries and Remuneration Commission circulars on salaries.
12. CWI confirmed that as the County Secretary, he implemented the County's policies.
13. It was his testimony that he provided documents to show underpayment but was unaware of the months he was underpaid.
14. The witness testified that he left employment in August or September 2024. He then changed his evidence and stated "I think early 2025". He further clarified that after reinstatement the respondent continued paying him a salary but he was contesting the termination of employment on 28th March, 2023.

He testified that he was not given a certificate of service.



15. On re-examination the claimant maintained that he was not on probation as the date of termination of employment and did not resume duty after reinstatement because the office was locked.
16. RWI, Mr. Ajode Stephen testified that the claimant was still on the 6 months probationary period according to the letter of appointment dated 1st September, 2022.
17. RWI confirmed that termination of employment took place on 28th March, 2023 and the letter of termination did not set out the reason for termination which according to the witness was underperformance.

Claimant's submissions Counsel highlighted five specific issues for determination.

18. On jurisdiction of the court to adjudicate the matter, counsel submitted that Petition No. E011 of 2023 determined the issue that this court had jurisdiction over the dispute as the claimant was not a member of the County Public Service Board as he was engaged on individual contract terms as the County Attorney and the respondent did not appeal the ruling and it settled the issue of jurisdiction.
19. On termination of the claimant's employment, counsel submitted that the provisions of Sections 41, 43 and 45 of the *Employment Act* were not complied with and placed reliance on the decision in *Power Group Technologies Ltd V Kibugi* [2021] KECA 62 (KLR), on the essence of due process in termination of employment.
20. On violation of constitutional rights, reliance was placed on the decision in *Maasai Mara University & Vice-Chancellor Maasai Mara University V Misia Munugoti Kadenyi* [2021] KECA 976 (KLR) to urge that the respondent's conduct of locking the claimant out of the office was a breach of *the constitution*.
21. On underpayment, counsel cited circulars of the salaries and Remuneration Commission SRC \SJE333 VOL XI (26) dated 17th June, 2023 and SRCTS246VOL 1 (35) dated 17th June, 2021 which bind the employer by virtue of Article 230(4)(b) of *the Constitution* of Kenya and Section 11(e) of the SRC Act on the power of the SRC to set and review remuneration and benefits for public officers, to urge that the claimant's gross salary rose from May 2023 to Kshs.404,000 and Kshs.423,079 from July 2023 thus he was underpaid in July, August, September and October, 2023.
22. Reliance was placed on the decisions in *County Government of Nyeri V Cecilia Wangechi Ndung'u* [2015] eKLR and *Machakos Universty V Professor Vincent Mukhongo Onywoki & another* [2018] eKLR, to urge that the claimant was entitled to the arrears.
23. On reliefs, counsel submitted that the claimant was entitled to all the reliefs sought.
The respondents did not file submissions.

Analysis

24. The facts of the instant case are fairly straight forward, that the claimant was employed by the respondent effective 1st September, 2022 as the County Secretary and was dismissed vide letter dated 28th March, 2023 about 7 months after employment.
25. Contrary to the evidence of RWI, Mr. Ajode Stephen the claimant's employment was not terminated during the probationary contract unless it was extended after 28th February, 2023, as no evidence to that effect was adduced by the respondent. By simple arithmetic having been employed on 1st September, 2022, which both parties agree was the effective date, he served the months of September, October, November, December, January, 2023, February 2023 and 28 days of March, 2023. The last month of service was undoubtedly the 7th month.



Section 42(2) of the *Employment Act* provides that:

26. A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.
27. In light of the foregoing, the court finds that termination of the claimant's employment took place after expiry of the probationary period.
28. Puzzlingly, the claimant's written witness statements made no reference to the alleged reinstatement or payment of salary thereafter or any service rendered to the County Government after 28th March, 2023. It is conspicuously reticent on the alleged unpaid salary for July, August, September and October 2023 or the constitutional rights allegedly breached.
29. Similarly, the statement was silent on the alleged hand over of the house inventory or the office to the respondents.
30. According to the claimant's written statement, the relationship between the parties ended on 28th March, 2023.
31. In the circumstances remedies (a), (c) and (d) under paragraph 13 of the statement of claim are lacking in context.

The issues for determination are:

- i. whether termination of the claimant's employment was unfair; and
 - ii. whether the claimant is entitled to the reliefs sought.
32. As to whether termination of the claimant's employment was unfair the provisions of Section 41, 43, 44, 45 and 47(5) of the *Employment Act* are unambiguous that there must have a valid and fair reason relating to the capacity, conduct or compatibility of the employee or operational requirements of the employer and the procedure followed in the termination of services must have been fair.
 33. While the provisions of Sections 45(2)(i) and (ii), 43, 44 and 47(5) address the reasons for termination of employment, Sections 41 and 45(2)(c) of the Act deal with procedure.
 34. Put in the alternative there must have been a substantive justification for termination of the contract and the procedural fairness in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR Ndolo J stated:

“...However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness”.

35. Concerning the reason or reasons for termination of services, Section 43 of the *Employment Act* provides:
 - (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.



38. In the instant case, the letter of termination of the claimant's employment under reference "Termination Of Contract" stated in part:

"Pursuant to your letter of appointment dated 21st October, 2022, Section 10 regarding "Termination of employment" I hereby direct that you be paid "one month's salary in lieu of notice" to vacate your office with immediate effect.

Please hand over to Ms Judith Anyango Oluoch, the CECM in charge of Public Service, County Administration & Participatory Development all current business in your office with a full report to my office.

Yours sincerely,

Signed

Hon (Prof.) Peter Anyang' Nyong'o

Governor

39. Contrary to the respondents' witness, Mr. Ajode Stephen's testimony that the letter of termination of the claimant's services had a reason for the termination namely underperformance, a statement he contradicted almost immediately, the letter did not provide any reason(s) for termination of the claimant's employment.
40. Without a valid and fair reason, for termination of the claimant's employment, the respondent failed to discharge the burden of proof under the provisions of Sections 43(1), 45(2)(1) and (ii) and 47(5) thereby rendering the termination of employment substantively unfair within the meaning of Section 45 of the *Employment Act*.
41. Concerning procedural fairness, Section 41 of the *Employment Act* provides as follows:
- (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.
44. While the claimant confirmed, on cross-examination that his right to fair administrative action was breached by the respondent, RWI, Mr. Ajode Stephen neither testified nor allege that the foregoing provisions of the *Employment Act* were complied with.
45. The provisions of Section 41 of the *Employment Act* are expressed in mandatory tone and as such must be complied with by an employer who is considering terminating the services of an employee or summary dismissal.



46. The foregoing position is fortified by the sentiments of Mbaru J in *Jane Samba Mukala V Ol Tukai Ltd* [2013] eKLR where the Judge stated:

“Where this procedure as set out under Section 41 of the *Employment Act* is not followed, then a termination that arises from it will be procedurally flawed. It is procedurally irregular. This holding was as similarly held in the case of *Avril Elizabeth Home for the Mentally Handicapped V commission for Conciliation Mediation & Arbitration & Others* [2006] 27 ILJ 1644 LC...”

47. Similarly, in *Pius Machafu Isindu V Lavington Security Guards Ltd* [2017] eKLR the Court of Appeal stated as follows:

“...A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the *Evidence Act* and the *Civil Procedure Act* Rules...”

48. Clearly, failure to comply with the provisions of Section 41 of the *Employment Act* renders a termination of an employee’s employment procedurally unfair.

49. From the foregoing, it is patently discernible that termination of the claimant’s services by the respondent vide letter dated 28th March, 2023 was unfair within the meaning of Section 45 of the *Employment Act*.

Appropriate reliefs

Declaration

50. Having found as above, a declaration that termination of the claimant’s employment by the respondent was unfair is merited in this instance.

Salary in lieu of notice

51. The letter of termination of the claimant’s contract of service with the respondent clearly stated that one month’s salary was payable after clearance.

52. Although the claimant claimed that he cleared with the respondent, he did not avail a copy of the clearance form or report as required by the letter of termination.

53. The claimant is awarded one month’s salary in lieu of notice unless the same was paid and the amount payable was the claimant’s salary as at the date of termination of employment.

Salary for July, August, September and October, 2023

54. Intriguingly, neither the claimant’s written witness statement nor the oral evidence adduced in court made reference to any outstanding salary or when the services were rendered.

55. The claim lacks supportive evidence and it is dismissed for the simple reason that the claimant neither alleged nor demonstrated that he rendered any services to the respondent after termination of employment on 28th March, 2023, payment of salary or the alleged reinstatement notwithstanding. This is because Section 17(1) of the *Employment Act* provides that:



56. Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya— ...
57. An employer is under no legal obligation to pay wages or salary to an employee who has not rendered services as by law required.
The claim is unsustainable.
58. Similarly, the claim for general, exemplary and aggravated damages for breach of constitutional rights lacked supportive evidence and it is accordingly dismissed.
59. The claimant is entitled to a certificate of service by dint of the provisions of Section 51 of the Employment Act.
60. Finally, having held that termination of the claimant's employment by the respondent was unfair, the claimant is entitled to compensation by dint of the provisions of Section 49(1)(c) of the Employment Act and considering that the claimant was not to blame for the termination did not contribute to it, and the respondent blatantly disregarded due process as ordained by the provisions of the Constitution of Kenya and the Employment Act among other laws, the fact that the claimant expected to serve for a period of three years, but further considering the fact that the claimant continued earning a salary while not rendering any services to the respondent the court is satisfied that the equivalent of one (1) month's gross salary is fair.
61. The amount shall be the claimant's salary as at the date of termination of employment.
62. In the upshot judgment is entered in favour of the claimant against the respondent as follows:
- a. Declaration that termination of the claimant's employment was unfair.
 - b. One (1) month's gross salary in lieu of notice unless already paid.
 - c. Equivalent of one (1) month's salary compensation.
 - d. Certificate of service.
 - e. All other reliefs are declined.

Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 29TH DAY OF SEPTEMBER, 2025.

DR. JACOB GAKERI

JUDGE

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty



of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

