



**Onyango v Express Drycleaners Limited (Cause E6520 of 2020)
[2025] KEELRC 2547 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2547 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E6520 OF 2020
JW KELI, J
SEPTEMBER 26, 2025**

BETWEEN

HARRISON OPIYO ONYANGO CLAIMANT

AND

EXPRESS DRYCLEANERS LIMITED RESPONDENT

JUDGMENT

1. The claimant alleged unfair dismissal and filed a memorandum of claim dated 10th November 2020 and amended on the 1st April 2022 against the respondent seeking the following Orders:-
 - a. The sum of Kshs. 57,000.00 being the outstanding salary balance.
 - b. Bank Penalties amounting to Kshs. 2,300.00 for the dishonoured cheque.
 - c. The sum of kshs. 30,000 as payment for unclaimed annual leave.
 - d. One month's wages of the amount of Kshs. 30,000.00 in lieu of notice.
 - e. Damages for unfair termination equivalent to 12 months' salary at Kshs. 30,000.00 per month with a total of Kshs. 360,000.
 - f. Unpaid salary for the 9 days worked in January 2020 of Kshs. 9,000.00
 - g. Certificate of service.
 - h. Interest on the above at the commercial rates prevailing from time to time from its due date until payment in full.
 - i. Costs of this suit together with interest thereon as such rate and for such period of time as this honourable Court may deem fit to grant.
 - j. Any such other or further relief as this Honourable Court may deem appropriate.



2. The claimant, in support of the claim, filed his witness statement dated November 10, 2020, and a list of documents dated November 10, 2020, with the bundle of attached documents.
3. The Respondent entered appearance through the law firm of Vusah Onsembe & Mambiri Advocates. The said advocates filed application vide Notice of Motion dated 17th may 2022 and sought to cease acting for the respondent on basis of lack of instructions. The application was allowed. There was no defence filed within the statutory time or before the date the matter was fixed for hearing and the matter proceeded for formal proof as undefended claim.

Hearing and evidence

4. The claimant's unopposed case was heard on June 11, 2025, with the respondent absent. The claimant testified under oath, adopted his witness statement dated November 10, 2020, as his main evidence, and presented his documents listed on November 10, 2020. The respondent's case was marked as closed due to non-attendance.

The Claimant's case in summary

5. The Claimant's case was that on 9th January 2020, several employees including the claimant were dismissed from their employment as the 2nd Respondent declared their positions redundant with immediate effect. That the Respondent issued two cheques of Diamond Trust Bank to him as payment of the outstanding salary balances of November 2019 and December 2019. That the first cheque dated 20th January 2020, was for the amount of Kshs 27,000.00 while the second cheque dated 30th January 2020 was for the amount of Kshs 30,000.00. That on 24th January 2020, he proceeded to Equity Bank Dagoretti Corner branch to bank the first cheque. Subsequently, he was informed by the bank that the cheque was dishonoured due to insufficient funds in the Respondents account. That as a result of the bounced cheque, Kshs 2,300 was deducted from his account as bank penalties. Furthermore, he was advised by the bank not to deposit the second cheque as it was likely to be dishonoured as well. That upon his query of this issue, the 2nd Respondent promised to make amends and pay him what he was owed. That unfortunately to date, the 2nd Respondent has not kept his word and has refused to pay him his dues.
6. Initially, the claimant had sued the 1st respondent and one Alfred Namu as the 2nd respondent. The 2nd respondent was claimed to be the owner of the 1st respondent. The claim was amended to remove the 2nd respondent as a party to the suit. The claimant stated that he had suffered greatly due to the failure of the Respondents to pay his rightfully owed wages and had had his rented home, which he shares with his wife and two children, locked due to rent arrears. The claimant stated that he had been unemployed since January 2020 till date and had the intention of using his owed salary to start an income generating business. He sought for a declaration that his employment was terminated was without due process and thus procedurally unfair. He asserted that during the period of employment he was never allowed to claim his annual leave which he rightfully deserved. The Respondents had been taking advantage of the dire unemployment rate in the country to exploit its staff and employees. That the 2nd Respondent is a man of means as he runs several businesses in Nairobi. That the 2nd Respondent has shown remarkable arrogance and rudeness against him. That despite his Legal representatives in this matter making demand and notice of intention to sue having been duly given, the Respondents had neglected, refused and/or otherwise failed to pay me in full.
7. The claim was unopposed.



Determination

Issues for determination

8. The claimant filed written submissions identifying the issues for determination in this case to be:
 - i. Whether the claimant was unfairly and unlawfully terminated?
 - ii. Whether the Claimant is entitled to prayers sought.
 - iii. Who should pay the costs of the suit.
9. The court adopted the issues identified by the claimant in determination of the dispute.

Whether the claimant was unfairly and unlawfully terminated?

10. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the *Employment Act* to wit:- ‘45(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 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.’” To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the *Employment Act* (Walter Ogal Anuro v Teachers Service Commission[2013]eKLR).
11. Section 43 provides for proof of reasons for termination as follows:- ‘43. Proof of reason for termination
 - (1) 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.’”

The claimant’s submissions

12. The Claimant’s employment was terminated on 9th January 2020 on alleged grounds of redundancy attributed to low business. However, the Respondent failed to comply with the procedural requirements under Section 40 of the *Employment Act*, 2007, which sets out mandatory steps including: Giving one month’s notice to the employee and the labour officer, considering seniority, skill, reliability in selecting persons to be declared redundant, Payment of severance at the rate of not less than 15 days’ pay for every completed year of service. The Claimant was not given notice of redundancy, was not consulted, nor was he issued with a written notice or redundancy letter. In *Thomas De La Rue (K) Ltd v David Opondo Omutelema* [2013] eKLR, the Court of Appeal affirmed that compliance with Section 40 is mandatory, and failure renders the redundancy invalid. The Claimant was employed



for over a year without a written contract. This violates Section 9(1) and (2) and Section 10(1) of the *Employment Act*, which require that an employer issue a written contract to any employee employed for a period exceeding three months. In *Everret Aviation Ltd v Kenya Revenue Authority* [2013] eKLR, the court reiterated the importance of compliance with statutory documentation as proof of lawful employment relationships.

Decision.

13. The claim was not contested. It was for unfair dismissal due to redundancy. The claimant stated that he was engaged as a casual worker in January 2019, and in January 2020, he was told to stop working immediately because the business was slow. The claimant also stated that he was issued two salary cheques, one for Kshs. 27000 dated January 20, 2019, and another for Kshs. 30000 dated January 30, 2020- both produced under a list dated November 10, 2020. The cheque for Kshs. 27000, due on January 20, 2019, bounced and caused him charges of Kshs. 2300. The bank advised him not to bank the second cheque. The court noted that the cheques were drawn by White Wings Chartered International. The claimant had initially sued the respondent together with Alfred Namu, who he claimed was the owner of the respondent. The said Alfred had his name removed from the claim.
14. There was no defence despite service. The court found no basis to doubt the employment of the claimant by the respondent. The court further found the claimant's statement of employment of January 2019 and dismissal in January 2020 was not challenged and was indeed supported by the evidence of the bounced cheque and the unbanked cheque of Kshs. 30000. The claim for redundancy was unchallenged. Redundancy is a lawful means of separation of employer and the employee. The process is guided by section 40 of the *Employment Act*. The employee is innocent in the process as per definition of redundancy under section 2 of the *Employment Act* to wit: "redundancy" means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;" In this case the claimant stated he and other staff were dismissed from employment as the respondent declared their positions redundant with immediate effect. The claimant was not at fault and this was an involuntary loss of employment. The respondent ought to have complied with the process of redundancy under section 40 of the *Employment Act* to wit:- '40. Termination on account of redundancy
 - (1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—
 - (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
 - (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
 - (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
 - (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not



placed the employee at a disadvantage for being or not being a member of the trade union;

- (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.”

15. It was evident to the court that no notices were issued in compliance with redundancy process (Section 40, supra). The process is meant to ensure that the redundancy is not abused to do away with unwanted employees. For failure to invoke the statutory process, the court can only conclude that the reason for the termination on the basis of redundancy was not proved to have existed. The court then finds that the claimant had proved on a balance of probabilities that the termination was unlawful and unfair.

Whether the claimant was entitled to relief sought

16 The claimant had sought for several reliefs.

17. The claim for the sum of Kshs. 57,000.00 being the outstanding salary balance- The claimant produced evidence of a bounced cheque of Kshs. 27000 and unbanked cheque of Kshs. 30000 being unpaid salary for November 2019 and December 2019, respectively. The court found prove of unpaid salary for Ksh. 57000 and the same is awarded.

18. Bank Penalties amounting to Kshs. 2,300.00 for the dishonoured cheque- The court found evidence of bounced cheque and the sum of Ksh. 2300 is allowed.

19. The sum of Kshs. 30,000 as payment for unclaimed annual leave. The claimant had worked for one year. The claim for leave was uncontroverted and is allowed for statutory 21 days thus $21/30 \times 30000$ Thus Kshs. 21000 is awarded as untaken leave.

20. One month's wages of the amount of Kshs. 30,000.00 in lieu of notice. The court established unlawful; termination on basis of redundancy. Notice pay is due under Section 40 to wit:- ‘(f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice;’ Section 35 also provides for Notice Pay as well as section 49 of the *Employment Act* as a remedy for unfair termination. The claimant is awarded Notice pay of 1 month in lieu of Kshs. 30000.

21. Damages for unfair termination equivalent to 12 months' salary at Kshs. 30,000.00 per month with a total of Kshs. 360,000. The termination was held as unlawful and unfair. The claimant had worked for just one year. The court finds that compensation equivalent of 3 months' salary is adequate thus Kshs. 90,000.

22. Unpaid salary for the 9 days worked in January 2020 of Kshs. 9,000.00. The same is allowed.

23. Certificate of service. The same to issue under section 51 of the *Employment Act* to wit:- ‘51. Certificate of service

- (1) An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.
- (2) A certificate of service issued under subsection (1) shall contain—



- (a) the name of the employer and his postal address;
 - (b) the name of the employee;
 - (c) the date when employment of the employee commenced;
 - (d) the nature and usual place of employment of the employee;
 - (e) the date when the employment of the employee ceased; and
 - (f) such other particulars as may be prescribed.
- (3) Subject to subsection (1), no employer is bound to give to an employee a testimonial, reference or certificate relating to the character or performance of that employee.”

Conclusion

24. In conclusion, the claim is allowed, judgment is entered for the claimant against the respondent as follows:-

- a. A declaration that the claimant’s dismissal was wrongful and unfair.
- b. Notice pay of Kshs. 30000
- c. Compensation for unfair termination Kshs. 90000
- d. Untaken leave in lieu of Kshs. 21000
- e. Unpaid salary of Kshs 66000
- f. Cost for bounced cheque 2300
- g. The total sum of Kshs. 209,300 (b to e above) is payable with interest at court rates from the date of filing suit until payment in full.
- h. Costs of the suit.
- i. Certificate of service to issue under section 51 of the *Employment Act*

25. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2025.

J.W. KELI,

JUDGE.

In The Presence Of:

Court Assistant: Otieno

Claimant: Wafula

Respondent: absent

