



**Wafula v Creative Consolidated Systems Ltd (Cause 2391 of 2016)
[2025] KEELRC 2496 (KLR) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2496 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2391 OF 2016
K OCHARO, J
SEPTEMBER 18, 2025**

BETWEEN

WILFRED WAFULA CLAIMANT

AND

CREATIVE CONSOLIDATED SYSTEMS LTD RESPONDENT

JUDGMENT

Background

1. Contending that at all material times, he was an employee of the Respondent, whose employment the latter terminated unfairly, wrongfully, and unlawfully, the Claimant sued them seeking various reliefs via his Memorandum of Claim dated 21st November 2016.
2. The Respondent opposed the Claimant's claim by a Response to Claim dated 1st July 2022. They denied his cause of action against them and entitlement to the reliefs sought.
3. In accordance with this Court's directions, the parties' Counsel filed their respective written submissions for and against the Claimant's claim herein.

The Claimant's Case

4. At the hearing, the Claimant adopted his witness statement filed herein as his evidence in chief, and had the documents he had contemporaneously filed with the Statement of Claim admitted as his documentary evidence.
5. It was the Claimant's case that he first came into the employment of the Respondent on the 1st of July 2010, at a monthly salary of Kshs.9,800.00/=
6. Throughout his tenure of employment with the Respondent, he discharged his duties dedicatedly, often exceeding the expectations of the Respondent company.



7. On July 21, 2016, he received a letter dated July 11, 2016, from the Respondent, indicating the termination of his employment. He considers the termination unjust, wrongful, and unlawful, as it was carried out without affording him the opportunity to be heard. Further, the termination was without any justifiable reason.
8. At the time of the unfair and wrongful termination, the Respondent failed to pay him dues as required by law, which include the following:
 - One (1) month's salary in lieu of notice at the rate of Kshs9,800.00.
 - Unpaid leave Kshs.9,800 x 6 years = Kshs.58,800.00
 - Unpaid overtime (Kshs.9,800)30 x 1.5 = 490 x 57 days = Kshs. 27,930.00
 - Service Kshs. (Kshs.9,800)30 days = Kshs.326.66 x 15 days = Kshs.4,900/= . Kshs.4,900 x 6 years = Kshs.29,400.00
 - Unpaid salary for July, Kshs.9,800.00
 - TOTAL: Kshs.135,730.00
9. He asserted that by reason of the premises, he is entitled to the above-stated dues, compensation for unfair termination, twelve months' gross salary, Kshs.117,600, and punitive general damages for the violation of his constitutional right.
10. Cross-examined by Counsel for the Respondent, the Claimant testified that the Respondent did not supply him with any formal contract of employment. Additionally, he did not lodge in court any document from which his monthly salary can be discerned.
11. Though the Respondent served him the termination letter, even after reading it, he wouldn't understand why his employment was terminated.
12. He testified further that he did not have any documents to demonstrate that he worked overtime.

The Respondent's Case

13. The Respondent presented one witness, Daniel Obwana, their Deputy Human Resources Manager, to testify on their behalf.
14. The Respondent's witness testified that at all material times, the Claimant was an employee of the Respondent stationed at the Kenya School of Monetary Studies, which had outsourced its cleaning services. The contract between the two came to an end, forcing the Respondent to terminate the Claimant's employment. The termination was effected through a letter dated July 11, 2016. It was not only the Claimant who was affected. Other employees also lost their jobs for the same reason.
15. Subsequently, after the Claimant complained to the Labour Office, the witness wrote a letter to that office urging the Claimant to present him for the calculation of his dues. At one point, the witness and the Claimant sat and deliberated on the terminal dues. However, he abandoned the conversation midway and rushed the matter to court.
16. Cross-examined by Counsel for the Claimant, the witness asserted that the Claimant was employed under a short-term contract. However, the Respondent did not submit any document to the court from which this can be discerned.
17. Though the Claimant was issued with a termination letter, the letter did not outline the reason[s] for the termination of his employment.



18. The witness testified further that the termination of the Claimant’s employment was a result of the lapse of the contract between the Kenya School of Monetary and the Respondent. However, the Respondent did not present to the court any document to illustrate that, in the first place, there was a contract between the two, and that the same came to termination.
19. The Respondent hasn’t placed any document before the Court to show how much the Claimant is owed.

Analysis and Determination

20. I have carefully considered the pleadings and evidence presented by the parties. The submissions filed herein, too, and the following issues arise for determination;

Whether the Claimant’s employment was unfairly and unlawfully terminated.

Whether the Claimant is entitled to the reliefs sought.

21. There is not a contest that the Claimant was at all material times an employee of the Respondent, and that the Respondent terminated his employment via a letter dated 11th July 2016. The letter read in part;

“Take Notice that the Company hereby gives you a month's notice to terminate your services in accordance with the [Employment Act](#). The notice commences from 11th July 2016.

22. TAKE FURTHER NOTICE that you are expected to hand over all the company’s properties and equipment, including the scrubber machine, to the Human Resources Manager’s office on or before 10th July 2016.”

23. In a case like the current one, where the dispute concerns the termination of an employee’s employment, the Court is tasked with the responsibility of considering and deciding whether both statutory aspects—procedural and substantive fairness—were present in the termination. Where the Court finds that both aspects were present, it will return that the termination was fair. However, where it finds that both or one of them was absent, it will hold that the termination was unfair by dint of the provisions of Section 45 of the [Employment Act](#).

24. Section 45 of the [Employment Act](#), 2007 provides;

“[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 that the reason for the termination is valid; that the reason for the termination is a fair reason – related to the employee’s conduct. Capacity or compatibility, or based on the operational requirements of the employer; and that the employment was terminated in accordance with fair procedure.”

25. Section 43 of the [Employment Act](#) provides that in a dispute regarding the termination of an employee’s employment, the employer must demonstrate the reason for the termination, and where such is not shown or insufficiently shown, the termination shall be deemed unfair by dint of the provisions of Section 45. A close examination of the two provisions will then reveal that, under the current labour relations legal dispensation, there cannot be a termination of an employee’s employment or a summary dismissal of any employee from their employment without cause. The termination letter, as correctly admitted by the Respondent’s witness in his evidence under cross-examination, the Respondent did not set out the reason for the termination of the Claimant’s employment. If the termination was on



account of a cause, nothing could have been easier for the Respondent than to set out the cause in the termination letter.

26. From the outset and throughout the proceedings, the Claimant maintained that the termination of his employment was without cause and therefore substantively unfair. An employer aware of their duty under sections 43 and 45 of the *Employment Act*, and considering the Claimant's assertion, could do no better than present evidence to the Court demonstrating that a contract existed between it and the Kenya School of Monetary Studies, that the contract had expired at a specific point, and that the Claimant's employment depended on the existence of the contract between the Respondent and the School. The Respondent did not demonstrate this. This, coupled with the foregoing premise [para. 26], leads this Court to conclude that the Respondent did not prove the reason for the termination of the Claimant's employment and that the same was valid and fair. The termination was substantively unfair, therefore.
27. When I carefully consider the Respondent's position, I see it arguing that the termination was due to operational requirements. However, this, with great respect, was a bald assertion without any supporting evidence. Even if, for a moment, one were to agree with the Respondent's version that the termination was on the grounds of operational requirements, still the termination could be deemed unfair, as there was no demonstration on the part of the Respondent that the elaborate procedure set out in Section 40 of the *Employment Act*, 2007 was adhered to.
28. In sum, I come to the inescapable conclusion that the termination of the Claimant's employment was both procedurally and substantively unfair.
29. I now turn to consider the remedies sought by the Claimant. He inter alia sought compensation for unfair termination. Section 49 of the *Employment Act* bestows on this Court the authority to grant compensatory relief for an employee who has successfully assailed their employer's decision to terminate their employment or summarily dismiss them. The authority is discretionary, exercised depending on the peculiar circumstances of each case.
30. I have carefully considered the circumstances under which the Claimant's employment was terminated, without cause, and without regard for the dictates of procedural and substantive fairness, the length of service he had for the Respondent, and the fact that he did not in any proven manner contribute to the termination of his employment, and conclude that he is entitled to the relief, to an extent of 9 month's gross salary.
31. He further claimed aggravated general damages for the violation of his constitutional rights. The Claimant did not plead that any of his constitutional rights were violated; the specific rights infringed, and how they were infringed. No evidence was presented to establish the same. In the circumstances, the relief cannot be granted.
32. The Claimant's employment was terminable by a notice under section 35 of the *Employment Act*, and as such, he was entitled to the benefit contemplated thereunder, service pay. The Respondent did not discount the Claimant's evidence that service pay was not paid. I find the Claimant is entitled to the relief.
33. Without any specifics, the basis thereof, the Claimant sought for overtime compensation. As such, if the Court were to grant the relief, it could only do so on speculation. This Court is not ready to venture into the realm of speculation. The relief is unmerited.
34. Under Section 28 of the *Employment Act*, the right to annual leave is a statutory right for the employee. The Section, therefore, creates a corresponding obligation on the part of the employer to facilitate enjoyment of the right. The Claimant asserted that the Respondent did not allow him to enjoy



this right throughout his tenure. In the circumstances of the claim under this head, I find it to be a continuous injury claim. See also *The German School Society & another v Ohany & another* [2023] KECA 894 [KLR]. The Respondent did not put forth evidence demonstrating that at all material times, it allowed the Claimant to enjoy his annual leave. The Claimant's evidence remained un rebutted. I award him the relief.

35. Lastly, the Respondent did not demonstrate that the Claimant was paid his salary for July 2016. I have no reason not to award him the same.

36. In the upshot, Judgment hereby entered for the Claimant in the following terms;

A declaration that the termination of his employment was both procedurally and substantively unfair.

Compensation pursuant to the provisions of section 49[1][c] of the *Employment Act*, nine months' gross salary, Kshs.89,200.

Salary for July 2016, Kshs.9,800.

Compensation for leave earned but unutilized, Kshs.41,160.

Service pay, Kshs.29,400.

Interest on the awarded sum from the date of this Judgement till full payment.

Costs of the suit.

READ, SIGNED AND DELIVERED THIS 18TH DAY OF SEPTEMBER 2025.

SIGNED:

HON. MR. JUSTICE OCHARO KEBIRA

