



**Kimemia v Kidde - Fenwal Inc & another (Cause 111 of 2018)  
[2024] KEELRC 2163 (KLR) (27 August 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2163 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 111 OF 2018  
J RIKA, J  
AUGUST 27, 2024**

**BETWEEN**

**DOMINIC MWANGI KIMEMIA ..... CLAIMANT**

**AND**

**KIDDE - FENWAL INC ..... 1<sup>ST</sup> RESPONDENT**

**UNITED TECHNOLOGIES CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant filed an inordinately lengthy Statement of Claim, amended on 28<sup>th</sup> July 2023. The original Statement is dated 22<sup>nd</sup> January 2018.
2. He describes the 1<sup>st</sup> Respondent as a company, incorporated in the USA. It is a division and /or subsidiary of the 2<sup>nd</sup> Respondent, with agencies across the world.
3. He describes the 2<sup>nd</sup> Respondent as a multinational conglomerate, with subsidiaries across the world, which include the 1<sup>st</sup> Respondent.
4. He was offered employment as a Regional Sales Manager by the Respondents, in the 1<sup>st</sup> Respondent's fire suppression business.
5. The offer was made on 21<sup>st</sup> September 2015, through Career Directions Limited, a recruitment agency based in Kenya.
6. He sought from the 1<sup>st</sup> Respondent's Human Resource Manager, clarification on the role of Career Directions; the benefits package; location of his office; work equipment; technical and procedural training; and supervision and work-related traveling, internationally and domestically.
7. He was availed a detailed contract of employment on 12<sup>th</sup> October 2015, which he approved on 13<sup>th</sup> October 2015.



8. He was invited by the 1<sup>st</sup> Respondent's Director of Sales, International, to travel to the 1<sup>st</sup> Respondent's offices at Massachusetts, USA. He was to be inducted for a week.
9. He was to be issued a work computer while there. He was required to quote locally, a windows phone, with ample data plan, and lowest long-distance roaming costs.
10. He raised further concerns with the 1<sup>st</sup> Respondent, concerning his medical cover; life and motor vehicle insurance; inclusion on the payroll; and closure of the agreement executed with Career Directions Limited.
11. He sourced the cell phone as instructed, and travelled to USA, where he was welcomed by the 1<sup>st</sup> Respondent, and inducted
12. There were amendments in the contract to address the concerns raised by the Claimant. He was offered a revised contract which he executed on 7<sup>th</sup> April 2016.
13. Issues between him and the 1<sup>st</sup> Respondent started to arise around March 2017, when his internet and phone bills went unpaid. It interfered with the Claimant's ability to attend scheduled revenue call meetings. He could not log in, to the 1<sup>st</sup> Respondent's server and attend to work-related e-mails and calls from customers.
14. His supervisor alleged in an e-mail dated 26<sup>th</sup> March 2017, that the Claimant had not dialled into revenue call meetings. He explained that he was hampered by non-payment of his internet and phone bills.
15. His phone was disconnected. He forwarded the invoice from the service provider to the 1<sup>st</sup> Respondent for the period February to March 2017.
16. He missed revenue call meeting again on 30<sup>th</sup> March 2017, for the same reason. His supervisor was not satisfied and formally warned the Claimant, that he ought to log in from any coffee shop with Wi-Fi connectivity. He felt that the warning was not made in good faith.
17. On 16<sup>th</sup> May 2017, the 1<sup>st</sup> Respondent wrote to the Claimant, asking him to explain his failure to attend staff meetings by phone; failure to respond to e-mails; and failure to provide details of his phone bill. He was warned that failure to respond would result in further disciplinary action, including dismissal.
18. He responded through e-mail on 21<sup>st</sup> May 2017, reiterating the problems he experienced concerning unpaid phone and internet bills. He emphasized his willingness to continue serving.
19. The 1<sup>st</sup> Respondent insisted that the Claimant should have utilized his communication allowance, which was not intended to be a substitute for payment of phone and internet bills by the 1<sup>st</sup> Respondent. The Claimant had always passed the phone and internet bills to the 1<sup>st</sup> Respondent for payment from the outset.
20. He was informed through a telephone conversation, on 12<sup>th</sup> July 2017, that the 1<sup>st</sup> Respondent was contemplating termination his contract. He was invited for a meeting, to be held in the offices of Otis Elevator [Kenya] Limited, Nairobi, also a subsidiary of the 2<sup>nd</sup> Respondent. The meeting was to take place on 13<sup>th</sup> July 2017.
21. At the meeting, he was informed by the 1<sup>st</sup> Respondent's Human Resource Manager that his contract would be terminated, because he had not been working for some time. It was stated that the Claimant's absence was without leave, or other lawful cause. The Claimant repeated his earlier explanation.



22. He was sent the minutes of the meeting for his approval, by the 1<sup>st</sup> Respondent's Human Resource Manager. They had omissions which the Claimant asked the 1<sup>st</sup> Respondent to include. He was advised that the minutes were final. He declined to sign. He was invited again for a meeting at Otis Elevator on 21<sup>st</sup> July 2017, where he was summarily dismissed, on the ground of absenteeism.
23. He asks the Court to find that termination was unfair and unlawful. He had explained that he was hampered in discharging his role, by lack of payment by the 1<sup>st</sup> Respondent, of his phone and internet bills. He was not issued notice of termination. He was not given adequate notice of the meeting held on 13<sup>th</sup> July 2017. He was not given time to select a colleague to accompany him to the meeting. The 1<sup>st</sup> Respondent's Human Resource Manager chose the attendees. His representations at the meeting, were not correctly captured.
24. He states that termination was contrary to Sections 41, 43 and 45 of the Employment Act. His reputation and employability was ruined.
25. He prays for: -
  - a. Declaration that termination was unfair and unlawful.
  - b. 42 days of annual leave at Kshs. 1,270,243.
  - c. Unpaid telephone bill for the period between 30<sup>th</sup> January 2017 and 27<sup>th</sup> March 2017 at Kshs. 893,324.
  - d. Reimbursements of medical cover for 17 months at Kshs. 646,000.
  - e. Damages for wrongful and unfair termination at Kshs. 9,627,112.
  - f. General damages at Kshs. 48,135,560, for malice and tarnishing of reputation, mental anguish, diminished employability, loss of career, and risk of being listed under CRB.
  - g. A proper certificate of service showing commencement date as November 2015.
  - h. Costs.
  - i. Interest.
  - j. Any other suitable remedy.
26. The monetary claims add-up at a staggering sum of Kshs. 62,449,179.
27. The Respondents filed their Statement of Response on 6<sup>th</sup> July 2018. The 2<sup>nd</sup> Respondent states that it did not have any employment relationship with the Claimant. No cause of action is disclosed against the 2<sup>nd</sup> Respondent.
28. The 1<sup>st</sup> Respondent states that it first employed the Claimant as a Sales Manager with effect from 1<sup>st</sup> January 2016. Correspondence exchanged between the 1<sup>st</sup> Respondent and the Claimant before this date, concerned the recruitment process, when Parties negotiated the terms and conditions of service.
29. Between 13<sup>th</sup> October 2015 and 31<sup>st</sup> December 2015, the Claimant was an Employee of Career Directions, seconded to the 1<sup>st</sup> Respondent.
30. He travelled to the USA in December 2016, as an Employee of Career Directions. He derived benefits from Career Directions prior to 1<sup>st</sup> January 2016. The 1<sup>st</sup> Respondent only made arrangement for his tools of work, to facilitate his secondment.



31. He wrote to the 1<sup>st</sup> Respondent on 25<sup>th</sup> November 2015, requesting for an update on his medical cover. The 1<sup>st</sup> Respondent was unable to provide such an update, because the Claimant was still an Employee of Career Directions. It is true that he visited the 1<sup>st</sup> Respondent's offices in the USA, but only as an Employee of Career Directions.
32. Sometime in November 2015, the 1<sup>st</sup> Respondent and the Claimant engaged in negotiations over the terms and conditions of his employment. They discussed his disengagement from Career Directions.
33. The Claimant was employed by the 1<sup>st</sup> Respondent as a Sales Manager, through a letter dated 25<sup>th</sup> March 2016.
34. During his employment, he exhibited lack of diligence. He was unresponsive to e-mails from customers and his supervisors. He repeatedly failed to attend dial-in meetings. On 17<sup>th</sup> March 2017, he failed to dial into an important revenue call meeting. The 1<sup>st</sup> Respondent's Manager Mehesen, wrote to him on 28<sup>th</sup> March 2017, stating that the Claimant's failure was not acceptable.
35. The Claimant failed again to dial in, on 30<sup>th</sup> March 2017. He alleged that his phone and internet had been disconnected. His explanation was false.
36. On 28<sup>th</sup> March 2017, he submitted a phone bill for the sum of USD 9,000. Mehesen asked the Claimant to supply supporting documents for his exorbitant bill. He did not provide any support. On 29<sup>th</sup> March 2017, he was asked to provide his official phone records, which he did not.
37. He absented himself for more than 6 weeks. He was asked to explain his absence by the Human Resource Manager, through an e-mail dated 16<sup>th</sup> May 2017. He did not respond by the end of the day as required.
38. On 6<sup>th</sup> June 2017, he again failed to dial into a revenue meeting, despite several warnings given to him in the past.
39. He was invited by the 1<sup>st</sup> Respondent's Human Resource Manager to a meeting on 13<sup>th</sup> July 2017, to explain himself. He was advised that the 1<sup>st</sup> Respondent was contemplating taking disciplinary action against him. Without reason, he declined to sign the minutes of the meeting held on 13<sup>th</sup> July 2017.
40. His contract was terminated on 21<sup>st</sup> July 2017, after the disciplinary hearing. Procedure was fair. He was dismissed on account of persistent absenteeism.
41. The disciplinary process was fair: he was issued a warning on 2<sup>nd</sup> April 2017; the 1<sup>st</sup> Respondent's Human Resource Manager made various attempts to resolve the Claimant's problem of unauthorized absence; he was invited to disciplinary hearing on 13<sup>th</sup> July 2017; he was notified of the venue and attendees; and he was duly heard.
42. His pursuit of payment of phone and internet bills by the 1<sup>st</sup> Respondent was baseless. He was receiving communication allowance. In addition, he had been given the opportunity to supply supportive evidence for the bills. He did not have such support of expenditure.
43. He was paid Kshs. 1,043,051 as final dues. Termination was fair and lawful. The prayer for compensation is baseless. He utilized all annual leave days. He was paid monthly communication allowance of Kshs. 20,000. His prayer for phone bills is groundless. The 1<sup>st</sup> Respondent paid monthly contributions for the Claimant's medical insurance upon his request, from 17<sup>th</sup> February 2017. His prayer for Kshs. 48,135,560 has no factual or legal foundation. His certificate of service is accurate.
44. The 1<sup>st</sup> Respondent prays for dismissal of the Claim with costs.



45. The Claimant gave evidence, and rested his case, on 11<sup>th</sup> July 2023. The 1<sup>st</sup> Respondent's witness Eryn Bass, gave evidence on 1<sup>st</sup> February 2024, when the hearing closed. The Claim was last mentioned on 4<sup>th</sup> April 2024, when the Parties confirmed filing and exchange of their last submissions.
46. The Claimant told the Court he is presently working for Huawei Kenya Limited, as a Data Analyst. He was at the time of giving his evidence, 40 years old. He exhibited documents marked [1-35]. He similarly relied on his witness statement, in his evidence-in-chief.
47. He restated the contents of his Amended Statement of Claim, concerning his employment history, and the relationship between him and the Respondents.
48. Initially, he was told by the 1<sup>st</sup> Respondent that there was no company in Kenya to employ him. The 1<sup>st</sup> Respondent used Career Directions. The contract was for 2 years, from 16<sup>th</sup> November 2015 to 15<sup>th</sup> November 2017. It was altered to term-indefinite, the Claimant having explained that he left a permanent and pensionable position with Safaricom plc, to join the 1<sup>st</sup> Respondent.
49. He was Regional Sales Manager. He was to recruit distributors of the 1<sup>st</sup> Respondent's products. He was able to recruit about 25 of them. The 1<sup>st</sup> Respondent dealt with fire suppression equipment. The 1<sup>st</sup> Respondent did not raise issues concerning the Claimant's performance.
50. However, the 1<sup>st</sup> Respondent stopped supporting the Claimant in discharge of his role. It ceased to pay for his phone and internet bills. Prior to 23<sup>rd</sup> December 2016, he incurred bills in the sums of Kshs. 603,000 and Kshs. 484,000 respectively, which the 1<sup>st</sup> Respondent paid. Between 30<sup>th</sup> January 2017 and March 2017, he incurred a bill of Kshs. 873,000 which the 1<sup>st</sup> Respondent refused to pay.
51. His line was disconnected. He could not reach the 1<sup>st</sup> Respondent and the customers. He was summoned to meetings by the 1<sup>st</sup> Respondent's Human Resource Manager, where it was alleged that he had missed meetings and his contract would be terminated. He had been issued an unreliable second-hand [mutumba] phone. He did not have office space. He felt discriminated against. He travelled to Hong Kong and was not paid for transport. He was demoralized.
52. Cross-examined, he told the Court that, he seeks a proper certificate of service, showing that the 1<sup>st</sup> Respondent employed him, effective November 2015. He did not have a contract with the 1<sup>st</sup> Respondent, to support this.
53. His contract with the 1<sup>st</sup> Respondent commenced on 25<sup>th</sup> March 2016. The initial contract by Career Directions commenced in November 2015. He was seconded to the 1<sup>st</sup> Respondent. Career Directions was just a platform.
54. He was not an embittered Employee. He complained about racial discrimination to his supervisor. His Claim shows discrimination. He was not able to trace the complaint in his documents. He had not prayed for damages for discrimination.
55. The contract of 25<sup>th</sup> March 2016 made reference to Otis Elevator Kenya Limited. His medical package was provided through Otis Kenya.
56. The 1<sup>st</sup> Respondent had a procedure for reimbursement of expenses incurred by its Employees. The Claimant submitted his phone and internet bills, on 28<sup>th</sup> March 2017. His supervisor asked him for details. He had not supplied details by the time of his dismissal. The Claimant confirmed that he was earning a communication allowance. He was informed by the Human Resource Manager that communication allowance was for official use, not personal use. He informed her, that he would be utilizing his communication allowance for official work.



57. The Claimant was invited for disciplinary hearing on 12<sup>th</sup> July 2017. He was asked to show cause. He was informed about the charges. He responded. He was given the date and venue of the hearing. He was told to avail himself at Otis Kenya. He was advised of his right to be accompanied by a colleague of his choice. Time was not adequate for him to make the choice. He did not request for postponement. Hearing proceeded. He made his representations. A decision was made to terminate his contract.
58. He was paid a net sum of Kshs. 1,043, 051 in terminal benefits. He acknowledged the payment as full and final, in an agreement signed by the Parties on 29<sup>th</sup> August 2017. He did not pay for the phone and internet bill to the service provider. He claims this from the 1<sup>st</sup> Respondent. He did not have proof of medical expenses incurred. He did not have documents to support the prayer for damages at over Kshs. 48 million.
59. Redirected, he told the Court that Career Directions was an agency, which acted for the 1<sup>st</sup> Respondent. Communication allowance was like airtime allowance, a personal allowance, which he enjoyed in his previous employment with Safaricom plc. The 1<sup>st</sup> Respondent agreed to pay this as a personal allowance. He would be paid expenses directly by the 1<sup>st</sup> Respondent, on surrender of receipts. The notice for disciplinary hearing was insufficient, because the disciplinary panel was resident in a different time zone. He only secured alternative job in December 2022.
60. Bass told the Court that he works for Fidelity Investments, based in the USA. He adopted his witness statement as his evidence-in-chief. He similarly adopted documents filed by the 1<sup>st</sup> Respondent, as exhibits [1-22].
61. He told the Court that the Claimant started working for the 1<sup>st</sup> Respondent in January 2016. Prior to this, he was not an Employee of the 1<sup>st</sup> Respondent.
62. He was employed by Career Directions. He had no relationship with the 2<sup>nd</sup> Respondent, and no prayer is addressed to the 2<sup>nd</sup> Respondent.
63. Leading to termination of his contract, he failed to attend Managers' staff meetings. He was absent from 5<sup>th</sup> April 2017 to 3<sup>rd</sup> June 2017. He failed to support the claim for phone and internet bills at USD 9,000.
64. He was issued charges and letter to show cause. He responded. He was invited to disciplinary hearing, which he accepted. He was heard, and decision to terminate his contract made. He was paid terminal dues
65. He had communication allowance to enable him perform basic functions. He was asked to submit documents, to support his exorbitant phone and internet claim of Kshs. 898,324, which he did not.
66. Cross-examined, Bass told the Court that he was employed by the 1<sup>st</sup> Respondent in 2016. The Claimant was initially employed by Career Directions. Bass was not aware that he was previously employed by Safaricom plc. There were several revenue calls, he was expected to attend. Bass did not know the frequency of these meetings. The Claimant's job required he uses the internet.
67. He missed revenue call meetings. Bass did not know, if the Claimant was the first Regional Sales Manager, tasked with creation of a network for sale of the 1<sup>st</sup> Respondent's products regionally. He was not aware that the Claimant created such market networks.
68. He ceased attending revenue call meetings from April 2017. The meetings involved Regional Managers. He abused communication allowance. It was Kshs. 20,000 monthly. His phone bills were quoted at over Kshs. 800,000, but were unsupported. It is not true that the 1<sup>st</sup> Respondent did away



- with the Claimant, only after he had established a market network for sale of the 1<sup>st</sup> Respondent's products. Bass was not aware that the 1<sup>st</sup> Respondent employed a new Regional Sales Manager, an Egyptian, from outside the Region, after dismissal of the Claimant.
69. He was issued a letter to show cause why. He was invited to disciplinary hearing. He was advised that he could bring along a colleague. The hearing notice was less than 24 hours. The decision was made on 21<sup>st</sup> July 2017.
70. He worked for 14 months. His absence was affecting the business adversely. There was no discrimination against him. His last phone and internet bill was questionably high. It was over 50% the previous bills. It was not attributable to increased business volumes in the Region. He used to make international calls. His gross salary at the time of termination was Kshs. 855,726, with a net of Kshs. 606,742 monthly.
71. Redirected, Bass told the Court that the Claimant wrote an e-mail to the Human Resource Manager, claiming communication allowance was for his private use, and that of his family. He alleged it was not for business. He did not request for postponement of the hearing. The 1<sup>st</sup> Respondent did not refuse to pay the bill submitted by the Claimant; it only sought details in support, which the Claimant failed to supply. He absented himself from important meetings, without reasonable ground.
72. The issues are: who employed the Claimant; whether his contract was terminated following a fair procedure; whether it was on account of valid reason; and whether he deserves the prayers sought.
73. The applicable procedural and substantive law, is the [Employment Act](#), 2007, principally Sections 41, 43,45, 47 and 49.

**The Court Finds: -**

74. Employer: The letter of offer dated 19<sup>th</sup> September 2015 is authored by Career Directions. The Claimant was told by Career Directions that he had been offered employment by Career Directions, to work as Regional Sales Manager seconded to United Technologies Corporation.
75. His remuneration and other terms and conditions of service, were determined by Career Directions. There is no merit in his claim, that Career Directions was just a platform. The letter of offer does not even mention the 1<sup>st</sup> Respondent.
76. He communicated with one Peter Ocholla, from Career Directions on 12<sup>th</sup> October 2015, who forwarded the draft contract to him.
77. He was availed a contract dated 13<sup>th</sup> October 2015. It was authored by Career Directions. He was advised that he had been employed by Career Directions. On this occasion, it was stated that the Claimant was employed as Regional Sales Manager, and seconded to Kidde-Fenwal Inc, the 1<sup>st</sup> Respondent herein.
78. The contract was for 2 years, 16<sup>th</sup> November 2015 to 15<sup>th</sup> November 2017. It was agreed that the 1<sup>st</sup> Respondent would provide the Claimant with his tools of work. The Claimant executed the contract, between him and Career Directions.
79. The employment by Career Directions however was short-lived. It appears to have been intended as a pathway to his direct employment with the Respondents. It was a preparatory contract, or part of a recruitment process.
80. He was invited to the USA by the Respondents, in December 2015-January 2016. He was given instructions on procurement of working tools, by the Respondents. On 13<sup>th</sup> November 2015, while



still contracted by Career Directions, the Respondents' Director of Sales International, wrote an e-mail to Respondents' staff asking them to help him "welcome the newest member of our team. His name is Dominic Kimemia. He is based in Kenya. He will help as capture a large portion of gaseous suppression segment in Africa." Other Employees of the Respondents, joined the Director, in welcoming the Claimant.

81. On 1<sup>st</sup> January 2016, he was issued a draft contract by United Technologies, Building and Industrial Systems. The letter identified Kidde-Fenwal Inc, as a division of United Technologies. He would work in this division. The contract was signed by the Respondents' Human Resource Manager Kerri Legenza, but not by the Claimant.
82. It was not therefore a valid contract of employment, in terms of Section 9[3] of the [Employment Act](#), which requires an Employee to signify his consent to the contract by appending his signature, or thumbprint.
83. Displaying a high degree of adroitness at employment contract negotiation, the Claimant raised issues concerning his basic salary, bonus, school fees, pension, car allowance, medical insurance, job security and medical screening.
84. He was offered a revised contract dated 25<sup>th</sup> March 2016. This time, the Employer was indicated to be UTC Climate, Controls & Security [CCS]. The employing division- Kidde Fenwal Inc- remained the same.
85. He accepted and executed this contract. The effective date was back-dated to 1<sup>st</sup> January 2016, the day originally indicated in the earlier draft, which the Claimant did not sign.
86. It is clear therefore, that he was contracted by Career Directions Limited from 16<sup>th</sup> November 2015, until 1<sup>st</sup> January 2016. He was employed by UTC Climate, Controls & Security [CCS] and its subsidiary Kidde-Fenwal Inc. effective 1<sup>st</sup> January 2016.
87. His prayer for a proper certificate of service, showing that he was employed by the Respondents from November 2015, is without foundation and is declined.
88. His contract with Career Directions is not enforceable against the Respondents, and in any event, provided for arbitration in accordance with the [Arbitration Act](#), Kenya, as the mode of dispute resolution.
89. The identity of the 2<sup>nd</sup> Respondent and its capacity to be joined to the Claim, was the subject of a preliminary dispute, between the Parties. The 2<sup>nd</sup> Respondent was discharged from the proceedings, and returned to the proceedings. The Ruling of the Court dated 30<sup>th</sup> November 2023 explains why the 2<sup>nd</sup> Respondent, is a necessary Party.
90. Suffice to say, the 2<sup>nd</sup> Respondent is described in the draft contract of employment offered to the Claimant, as 'United Technologies [UTC] Building and Industries Systems [BIS]. The 1<sup>st</sup> Respondent is described as a division of UTC [BIS].
91. The 2<sup>nd</sup> contract which the Claimant executed, varies the description of UTC, replacing [BIS] with Climate Controls & Security [CCS]. The 1<sup>st</sup> Respondent remains a division of UTC [CCS].
92. The Claimant was an Employee of the Respondents, effective 1<sup>st</sup> January 2016.
93. Procedure: The Claimant failed to log in to revenue calls and was formally warned by the Respondent's Director, International Sales, on 17<sup>th</sup> March 2017. He failed to attend revenue call meeting again on 23<sup>rd</sup> March 2017, and received warning.



94. He was given the opportunity to explain his failure. He blamed it on disconnection of his phone and internet by the service provider, for non-payment of bills. He alternatively blamed his handset, which he claimed was of poor quality. He had taken it for repairs multiple time to no avail.
95. He explained that formal warning issued to him, was in the circumstances not fair.
96. The problem was not resolved. On 16<sup>th</sup> May 2017, the Respondents' Human Resource Manager, Maffei Kerri, wrote to the Claimant through e-mail, a letter to show cause why further disciplinary action, should not be taken against him.
97. The charges were: -
  - a. You continue to fail to attend your Manager's required staff meetings by phone. [please see attached to you, by your Manager on 4<sup>th</sup> February 2017].
  - b. You have not responded to your customer's requests by e-mail and this lack of response, has been escalated by the customer to your Manager.
  - c. You have not been replying to our contracts team about requests to supply customer information for our requirements.
  - d. You failed to supply a detailed phone bill to support the USD 9,000 phone expense that you submitted to your Manager for reimbursement.
  - e. Your Manager has heard from you only once, since 5<sup>th</sup> April 2017 and that was on 5<sup>th</sup> May 2017.
98. The Claimant wrote back on 23<sup>rd</sup> May 2017. He explained that his phone and internet bills for the months of February and March 2017 had not been paid. He did not have the means of accessing his mails and communicating with customers. He explained that he had submitted the bills to the Respondent who asked for details in support. He explained that he had repeatedly asked the service provider to supply a detailed statement of account, and that the service provider was not cooperative, suggesting to the Claimant that he was making unnecessary enquiries in order to justify his failure to pay. In short, he held that he had not been facilitated to attend the revenue meetings by the Respondents.
99. There was further communication between the Claimant and the Respondents' Human Resource Manager, where the Respondents suggested that the Claimant should have been utilizing his communication allowance for official business, while his position was that the allowance was a personal benefit.
100. The Respondents did not consider the Claimant to have discharged his burden, to show why he should not be disciplined.
101. On 12<sup>th</sup> July 2017, Maffei Kerri invited the Claimant to attend a disciplinary hearing the following day, at Otis Kenya Office. He was advised that the Respondents were contemplating terminating his contract for reasons stated in the letter to show cause.
102. He was advised to attend the meeting on 13<sup>th</sup> July 2017. He was told that if he planned to attend the meeting in the company of another Employee of UTC, he should notify Kerri, so that she would in turn notify Otis Kenya.
103. Technical Manager Otis Kenya, Rajkumar, would be at the office physically. Bill Goldstucker, Eryn Bass and Keri would be attending virtually. The Claimant was advised that if he had any queries, he should contact Kerri by phone.



104. The Claimant e-mailed back the same day, confirming that he was aware about the locality of Otis Kenya, and would be attending the meeting.
105. He did not complain that the notice was too short, and did not ask Kerri for deferment.
106. The hearing went on as scheduled. There was no complaint by the Claimant about lack of adequate time to prepare. Although he did not sign the minutes, there is nothing in the exhibited minutes to suggest that hearing did not conform to the statutory minimum standards of fairness.
107. His contract was terminated on 21st July 2017.
108. Procedure was fair, in accordance with Sections 41 and 45 of the *Employment Act*.
109. Reasons: The Claimant was dismissed ostensibly on the ground that he failed to attend call revenue meetings. His explanation as discussed above, was that he was not facilitated. The Respondents failed to pay his phone and internet bills, hampering his communication with the Respondents, and customers.
110. The Claimant enquired from the outset, in the process of negotiating his contract, from where he would be working, in Kenya. "Where will my office be located?" he asked.
111. He also enquired what kind of tools of work he would be provided with. "Will I receive a computer/ laptop and other technical equipment?" he asked.
112. The Respondents did not answer these questions unequivocally. He was not told that he could work from Otis Kenya, where Kerri alleged during the disciplinary hearing, that the Claimant could work from, utilizing the internet facility there. There was no office allocated to the Claimant at Otis, and even when he was invited for disciplinary hearing there, the Respondents were concerned whether he was aware of its location.
113. He was intended to be and worked as a remote Employee. His most important tools of work were his phone and internet. Did the Respondents adequately facilitate remote working?
114. In the contract he executed with Career Directions, it was agreed that the 1<sup>st</sup> Respondent herein, would provide the Claimant his tools of work. Among the suggested tools, were phone, laptop and printer
115. The contract he concluded with the Respondents, dated 25<sup>th</sup> March 2016, did not make provision for tools of work, or indeed any physical office, connected to Wi-Fi, the Claimant was to work from, in Nairobi.
116. Preceding execution of the final contract, the issue of the phone and internet was discussed, between the Parties.
117. On 25<sup>th</sup> November 2015, the Claimant enquired from Director Sales International, Bill Goldstucker, if he would be availed a business phone. He was advised that he would need to roam inside Africa about 30% of his time, and make about 600 minutes of long distance calls to the USA, per month. He was given a go-ahead to engage Airtel Kenya, and advised that bills would be paid through expense reimbursement process. He was to submit the billing invoice, at the end of the billing cycle.
118. The communication allowance of Kshs. 20,000 was a personal benefit conferred on the Claimant under his contract. It cannot have been intended for official use. There would not have been instructions or policy, for reimbursement of phone and internet costs, if the communication allowance was intended for official use, suggested again by Kerri, at the disciplinary hearing.



119. The Claimant would have been advised under his contract, or at the time he negotiated that contract, that communication allowance of Kshs. 20,000 monthly, was intended for official phone calls and internet.
120. He came from Safaricom plc, and was earning an airtime allowance while there, a fact that was made known to the Respondents. Communication allowance can only have been a personal allowance, intended to, for instance, help the Claimant in reaching his family, while roaming the breadth and width of Africa, marketing the Respondents' fire suppression products. Phone and internet bills were payable by the Respondents through its reimbursement system.
121. The failure by the Claimant was occasioned by the Respondents' failure to pay the phone and internet bills, which they felt, had become too high.
122. The Claimant submitted his expense report for February and March 2017, on 28<sup>th</sup> March 2017.
123. The report included an account summary prepared by Airtel Kenya, for the amount of Kshs. 898,324. The details of the charges were given in black and white by Airtel.
124. The Claimant bent backwards to explain to the Respondents that the bills were high in African countries, because there was lack of partnerships with other service providers.
125. Instead of making payment, or probably seeking the assistance of Otis Kenya in understanding the Airtel invoice, if the explanation by the Claimant was insufficient, the Respondents advised the Claimant to work from a coffee shop with internet service.
126. The Court does not think that this is the way it was intended to work. This was not the way to facilitate remote working. The Claimant was not intended to work from a coffee shop in the backstreets of Nairobi.
127. He had earlier submitted Airtel invoices, which had been paid. He submitted one due on 10<sup>th</sup> June 2016, for Kshs. 603, 434. In January 2017, he submitted an invoice for Kshs. 484,616. These were paid and there were no complaints, about invoice details, or about the Claimant failing to attend revenue call meetings. Whenever he was connected, he delivered his mandate. He was not told that he should log in from a coffee shop, or pay the Airtel bill himself, from his communication allowance.
128. The Respondents stonewalled in payment of the bill when it reached a sum of Kshs. 898,324, which was felt to be too high.
129. In his response to the letter to show cause, he restated that he no longer had the means to communicate with the Respondents and their customers. Airtel had him listed by the Credit Reference Bureau. He felt that his reputation had been damaged. He expected the Respondents to provide him with a phone registered in their names.
130. Surprisingly, Kerri insisted that the Claimant helps her understand why he was receiving communication allowance, and getting reimbursement for phone and internet expenses.
131. Eventually the, the Respondents opted not to pay their bills with Airtel, blaming the Claimant for a problem which was clearly their creation, and dismissed the Claimant, for failure to attend their revenue call meetings.
132. The Court is satisfied that the Respondents, failed to facilitate the Claimant in the performance of his remote work. There was no valid reason established, to justify termination, under Sections 43 and 45 of the *Employment Act*.



133. The contract dated 25<sup>th</sup> March 2016, identified the Labour Law of Kenya, as the applicable law. The Respondents did not establish valid reason, in accordance with the chosen applicable law.
134. Remedies: The Claimant was paid a net sum of Kshs. 1,043,015, comprising annual leave and pension. He accepted this as his full terminal benefits, but did not discharge the Respondent from further statutory claims.
135. He is not entitled to annual leave pay based of 42 days of unutilized leave, as prayed. The payment made to him, included annual leave, and he acknowledged payment as full payment of terminal benefits.
136. He conceded that he did not pay the phone and internet bill amounting to Kshs. 898,324, which the Respondents refused to pay. He is not entitled to be reimbursed what he has not paid to Airtel. This is best left for Airtel to pursue as a civil debt.
137. His prayer for medical cover at Kshs. 646,000, is similarly without foundation. He did not raise this with the Respondents, at the time he was paid and acknowledged payment of terminal dues.
138. The prayer for general damages for reputational damage, loss of employability and reference to CRB, at a staggering Kshs. 48,135,560 is not justified. It falls within a category of claims, which this Court characterized as a burgeoning cash-grab industry. [see *Prof. Dr. Dr. Moni Wekesa v. Mt. Kenya University, Petition 138 of 2016*, [2024] e-KLR]. Remedies for employment wrongs must remain proportionate to the degree of economic damage sustained by the Employee, as held in *Elizabeth Wakanyi Kibe v. Telkom Kenya Limited* [2014] e-KLR.
139. There is no evidence that the Claimant endured loss of employability. He works for Path International. The loss suffered by him, on account of unfair and unlawful termination, can adequately be remedied through compensation, under Section 49 of the *Employment Act*.
140. He was employed on 1<sup>st</sup> January 2016 by the Respondents. He was dismissed on 21<sup>st</sup> July 2017. He worked for the Respondents for about 1 year and 7 months. His contract was term-indeterminate. The period worked must be looked at, together with the expected period of service. He did not cause, or contribute to the circumstances leading to termination. He secured alternative job, with Path International. He was paid terminal benefits, in the sum of Kshs. 1,043,051.
141. His contract quotes the monthly salary at Kshs. 802,259. He is granted equivalent of 4 months' salary in compensation for unfair and unlawful termination at Kshs. 3,209,036.
142. Costs to the Claimant.
143. Interest granted at court rate, from the date of Judgment, till payment is made in full.  
In sum, it is ordered: -
  - a. It is declared that termination of the Claimants' contract, was unfair and unlawful.
  - b. The Respondents shall pay to the Claimant, equivalent of 4 months' salary in compensation for unfair and unlawful termination at Kshs. 3,209,036.
  - c. Costs to the Claimant.
  - d. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 27<sup>TH</sup> DAY OF AUGUST 2024.**



**JAMES RIKA**  
**JUDGE**

