



**Gichobi v Registered Trustees of Midhill Hospital (Cause E379 of 2021)  
[2025] KEELRC 2655 (KLR) (26 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2655 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E379 OF 2021  
JW KELI, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**HELLEN NYAMBURA GICHOBI ..... CLAIMANT**

**AND**

**REGISTERED TRUSTEES OF MIDHILL HOSPITAL ..... RESPONDENT**

**JUDGMENT**

1. Vide an amended memorandum of claim dated the 10<sup>th</sup> of March 2023, the claimant sued the respondent and sought the following Orders:-
  - a. The court finds that the reasons and procedure for termination of the contract was wrongful.
  - b. A declaration that the termination of the Claimant's contract was unfair as it did not comply with the [Employment Act](#).
  - c. The actions of the Respondent were unlawful and untenable.
  - d. A declaration that:
    - i. The termination of the Claimant's employment was unlawful and illegal.
    - ii. The Claimant's right to fair labour practices was breached.
    - iii. The Claimant's right to fair administrative action was breached.
    - iv. The Claimant's right to fair hearing was breached.
  - e. Payment as calculated below:
    - i. Damages for breach of her Constitutional rights to fair labour practices and administrative action.



- ii. 12 months compensation for unlawful termination (Kshs. 160,000/= per month x 12) Kshs. 1,920,000/=
  - iii. Outstanding (arrears) of salary Kshs. 800,000/=
  - iv. Payment of month's salary in lieu of notice Kshs. 160,000/=
  - v. Costs of the suit and interest on (i), (ii) and (iv) above.
- f. Any other relief that this Honourable Court may deem fit to grant.
2. The claimant in support of the claim filed her witness statement filed on 7<sup>th</sup> May 2021, list of documents dated 16<sup>th</sup> March 2021, witness statement dated 5<sup>th</sup> October 2022; list of witnesses of even date, and list of documents of even date with the bundle of documents attached.
3. The Respondent entered appearance through the law firm of Kimeto & Associates Advocates and filed a statement of defence dated 16<sup>th</sup> September 2021. In support of the said reply, the respondent filed a list of witnesses dated 16<sup>th</sup> September 2021, witness statement of Francis Gateri Kinuthia dated 10<sup>th</sup> November 2022, witness statement of Florence Mundia dated 10<sup>th</sup> November 2022, list and bundle of documents dated 16<sup>th</sup> September 2021, and further list and bundle of documents dated 14<sup>th</sup> November 2023.

### **Hearing and evidence**

4. The claimant's case was heard before Justice Ocharo Kebira on the 16<sup>th</sup> April 2024 where she testified on oath, adopted her witness statement dated 5<sup>th</sup> October 2022 as her evidence in chief. The claimant further produced her documents under list dated 5<sup>th</sup> October 2022 as Exhibits 1-7. She was cross-examined by counsel for the respondent. Ms. Kimeto.
5. The respondent's case was heard on the 20<sup>th</sup> June 2024 before Justice Ocharo Kebira when Francis Dateri Kinuthia testified on oath as RW1. He adopted his witness statement dated 10<sup>th</sup> November 2022 as his evidence in chief and produced as the respondent's evidence documents under lists dated 16<sup>th</sup> September 2021 and 14<sup>th</sup> November 2023, respectively. He was cross-examined by counsel for the claimant, Ms. Ndungu. RW2 testified on oath before me on the 17<sup>th</sup> July 2025, where he adopted his witness statement dated 10<sup>th</sup> November 2022 and relied on the produced respondent's documents as his evidence in chief. he was cross-examined by counsel for the claimant, Ms. Ndungu.

### **The Claimant's case in summary**

6. The Claimant's case is that she was employed by the Respondent on 2<sup>nd</sup> September 2019 as a doctor working in the outpatient and inpatient department, and attending to theatre cases, at a monthly salary of Kshs. 160,000/-. On 24<sup>th</sup> June 2020, the Claimant applied for and proceeded on two days leave. After resuming, she applied for and proceeded on three (3) months maternity leave from 1<sup>st</sup> August 2020 to the end of October 2020. Upon resuming work as scheduled, the Claimant avers that she was verbally informed that the Hospital no longer required her services and that her position had been filled. She was not paid her salary for June 2020 to October 2020, totalling Kshs. 800,000/=. The Claimant complains that during the entire period of her employment, she received her salary intermittently and sometimes she was not paid at all.
7. The Claimant states that the reason for her verbal termination from employment was not explained to her, despite requesting an explanation through her letter dated 29<sup>th</sup> January 2021. Further, the Respondent did not follow the termination procedure set out in her contract of employment. For



the foregoing reasons, it is the Claimant's conclusion that she was unlawfully and unprocedurally terminated from employment.

### **Respondent's case in brief**

8. The Respondent's case is that it indeed employed the Claimant vide a probationary contract dated 2<sup>nd</sup> September 2019. The Claimant was employed in the capacity of a clinical officer based at the Respondent's facility, and was to remain on probation for 6 months.
9. The Respondent avers that the Claimant deserted her duties without warning or lawful excuse. They state that the Claimant was persistently absent from her work station due to illness and other reasons, and resisted all attempts by the Respondent to carry out a performance appraisal. She applied and was granted sick leave from 16<sup>th</sup> July 2020 for a period of 14 days after which she never returned to work but proceeded on maternity leave from 1<sup>st</sup> August 2020, following an application for the same vide a letter dated 30<sup>th</sup> June 2020. Upon the expiry of her maternity leave, the Claimant, again, failed to return to work on her reporting date of 1<sup>st</sup> November 2020 as expected.
10. On the issue of the Claimant's pregnancies, the Respondent indicates that they were aware that the Claimant conceived 3 months into her contract but suffered a miscarriage. she, again, got pregnant 5 months into her contract and was on sick off/bed rest for most of her pregnancy until she proceeded on maternity leave. The Respondent denies terminating the Claimant's employment.

### **Determination**

11. The claimant outlined the following issues for determination in the dispute-
  - i. Whether the Respondent was in breach of the contract of employment
  - ii. Whether the Claimant's termination of employment was unfair and unlawful
  - iii. Whether the Claimant is entitled to the payment as sought in paragraph (e) of the amended Memorandum of Claim.
12. Conversely, the respondent outlined the following issues for determination in the dispute-
  - i. Whether the Claimant is in breach of her contract of employment with the Respondent.
  - ii. Whether the Claimant's Contract of Employment has been terminated.
  - iii. How much is the Claimant entitled to in terms of salary for work done?
  - iv. Whether the claimant can be considered to have deserted her employment with the Respondent hospital.
13. The court having perused the pleadings by the parties and the proceedings was of the considered opinion that the issues for termination in the suit were-
  - i. Whether the Claimant's employment was terminated by the respondent
  - ii. Whether the termination, if any, was lawful and fair
  - iii. Whether the claimant was entitled to reliefs sought



## Whether the Claimant's employment was terminated by the respondent

14. The claimant's case was that on 24<sup>th</sup> June 2020, the Claimant applied for and proceeded on two days' leave. After resuming, she applied for and proceeded on three (3) months maternity leave from 1<sup>st</sup> August 2020 to the end of October 2020. Upon resuming work as scheduled, the Claimant avers that she was verbally informed that the Hospital no longer required her services and that her position had been filled.
15. Conversely, the position of the respondent was that the claimant applied and was granted sick leave from 16<sup>th</sup> July 2020 for a period of 14 days, after which she never returned to work but proceeded on maternity leave from 1<sup>st</sup> August 2020, following an application for the same vide a letter dated 30<sup>th</sup> June 2020. Upon the expiry of her maternity leave, the Claimant again failed to return to work on her reporting date of 1<sup>st</sup> November 2020 as expected. The Respondent denies terminating the Claimant's employment.
16. The existence of the termination of employment is at the core of the claim of unfair termination. The burden of prove in claim of unfair termination is as stated in section 47 (5) of the [Employment Act](#) to wit-'47(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.'" It was thus the burden of the claimant at the first instance to prove that there was a termination of employment.
17. During cross-examination of the claimant, she told the court that the termination was verbal. That was when she tried to meet the employer, she was met with hostility. Further when she was on maternity leave, she discovered that the employer had employed another doctor in her place. That she took all that to amount to termination. The claimant told the court that she did not write a resignation letter as the employer had her salary arrears. That she had commenced maternity leave on 29<sup>th</sup> July 2020 and did not resume work thereafter. The claimant said she wrote a demand letter on 29<sup>th</sup> January 2021 on salary payment. On re-examination the claimant told the court that she did not resume work after maternity leave.
18. The claimant further contended that two weeks after delivery of her baby she had sent text to one Mr. Gateri to pick forms, albeit for maternity leave, and did not find anyone waiting for her. That she kept calling and got no response thus assumed her employment had been terminated. That she was told that they had employed a sister doctor permanently in her place. She further stated that she never received letter of absconding duty. The claimant said she recalled the hospital administrator had come to her office and told her to resign. She said the employer approved all her annual leave days. The claimant told the court that she was no longer an employee of the respondent.
19. RW1 was the said Mr. Materi who told the court he was a director of the respondent. he denied termination of the employment of the claimant or having called her for disciplinary process. RW1 stated that the claimant started her maternity leave on the 1<sup>st</sup> August 2020 but left on 2<sup>nd</sup> July 2020 on account of bed rest recommendation by her doctor. That the claimant was on sick leave from 16<sup>th</sup> July 2020 and that was the last time she worked. That the claimant had applied for maternity leave on the 30<sup>th</sup> June 2020. That the claimant was to resume duty on 1<sup>st</sup> November 2020, but did not, but they paid her salary up to December, and received a letter from her lawyer in January 2021 and stopped paying her. On cross-examination by advocate for the claimant, RW1 admitted to salary delays. RW1 admitted they received her letter on maternity and were not sure if the application was approved. That after maternity she never resumed work. Not action was taken against her as they treated her humanely



taking into account what she had gone through. That they did not write her to express concern on why she had not reported back. RW1 told the court there was no record in the hospital of the claimant had come to see him or that she was refused to see him. That as at December 2020 they considered her as their employee hence why they paid her salary. On re-examination RW1 told the court that the claimant did not complete the maternity leave forms with HR department but wrote a letter. That they did not get opportunity to exercise the termination as per her appointment letter the action was post three months of having failed to report back after the sick leave.

20. RW2 testimony supported RW1. RW2 told the court they approved all sick leave and annual leave for the claimant but she did not complete form for maternity with HR department. RW2 admitted the claimant was unwell due to maternity. She confirmed the claimant never returned after maternity but not notice to show cause was issued.
21. The court on analysis of the testimonies of the parties finds that it was undisputed that as per the employment relationship, the claimant was last at work on 16<sup>th</sup> July 2020 when she proceeded on approved sick leave (bed rest). The claimant's documents were not paginated and being the same as the respondent's which were paginated the court relied on the Respondent's bundle. The sick sheet dated 16<sup>th</sup> July 2020 gave the claimant 14 days sick leave for bed rest (page 17 of the respondent's documents). On 24<sup>th</sup> July 2020 the claimant further applied for another sick off for 14 days. (page 18 of the respondent's documents). The claimant vide letter dated 30<sup>th</sup> June 2020 had applied for maternity leave to start 1<sup>st</sup> August 2020 and the same was received by the hospital on 2<sup>nd</sup> July 2020. (page 23 of the respondent's documents). The court finds that the claimant did not dispute she applied for maternity leave and proceeded on the same for 90 days. She further did not deny that her last day of work was 16<sup>th</sup> July 2020 when she proceeded on sick leave and then maternity.
22. The court finds that the employment relationship between the parties was cordial as at the last day of appearance of work on 16<sup>th</sup> July 2020 and hence the issue of salary payment was not a factor on the termination. The claimant admitted she did not resume work after maternity. The claimant said having learned another doctor had been engaged in her position assumed her employment had been terminated. The court finds on prima facie basis the claimant was not candid on her testimony. She had parted in good terms with the employer to proceed on sick leave which fell into the maternity period and hence there was no basis for the court to find the salary arrears amounted to constructive dismissal. The salary arrears were due way before the sick leave granted generously by the employer. The engagement of another doctor was a reasonable position as the respondent is an hospital and the claimant was away for along period. The hospital had to continue serving patients. The claimant did not report back after expiry of maternity (in her demand letter dated 20<sup>th</sup> January 2022 she admitted she was on maternity leave) hence her contention that she assumed termination was unfounded. The alleged visit to the hospital after birth was also not proved. The foregoing position is further confirmed in the demand letter which was only about salary arrears for months of June, July, august and the maternity period(page 24 of the Response). The claimant was in breach of contract for failing to resume work after maternity and never resigned on basis of the alleged grounds of unpaid salary. The Respondent's position was firm that they treated her as an employee and humanely taking into account her sickness and further said t her contract of employment gave three months unpaid leave for sickness before any process of termination could begin (page 26 of the respondent's documents was the clause on sick leave to that effect). The respondent said that they could not act after receipt of the demand letter of January 2021. In the upshot the court concluded that the claim of termination of employment by the claimant was thus an afterthought and unfounded.



### **Whether the termination (if it existed) was lawful and fair**

23. The court found there was no prove of termination of employment. Consequently, the issue of fairness of the termination does not arise.

### **Whether the claimant was entitled to reliefs sought**

24. The claimant sought for various reliefs, namely-

- g. The court finds that the reasons and procedure for termination of the contract was wrongful.
  - h. A declaration that the termination of the Claimant's contract was unfair as it did not comply with the Employment Act.
  - i. The actions of the Respondent were unlawful and untenable.
  - j. A declaration that:
  - v. The termination of the Claimant's employment was unlawful and illegal.
  - vi. The Claimant's right to fair labour practices was breached.
  - vii. The Claimant's right to fair administrative action was breached.
  - viii. The Claimant's right to fair hearing was breached.
  - k. Payment as calculated below:
    - vi. Damages for breach of her Constitutional rights to fair labour practices and administrative action.
    - vii. 12 months compensation for unlawful termination (Kshs. 160,000/= per month x 12) Kshs. 1,920,000/=
    - viii. Outstanding (arrears) of salary Kshs. 800,000/=
    - ix. Payment of month's salary in lieu of notice Kshs. 160,000/=
    - x. Costs of the suit and interest on (i), (ii) and (iv) above.
  - l. Any other relief that this Honourable Court may deem fit to grant.
25. The court having found there was no prove of termination of employment and that the claimant breached contract by failing to resume work without reasons and did not resign, the only relief for consideration is outstanding salary arrears also stated in the demand letter.
26. The payment of salary is a right of the employee after work. The failure to pay salary is an unfair labour practice. The unfairness can be compensated by costs and interest which the court will consider. The claimant sought salary arrears for the months of June, July, August and September beginning June 2020. Her contract salary was Kshs. 160,000. She sought for salary arrears or the total sum of Kshs 800,000. The court will get back to the payable amount for the said months later in the judgment. The Respondent did a tabulation of outstanding salary up to August for the total sum of Kshs. 645,223/- (page 7 of the respondent's documents). There was no evidence of payment of salary sought by the claimant for the month of September. The Claimant adopted her witness statement dated 5<sup>th</sup> October 2022 which indicated that she was employed as a Medical Practitioner where she was earning a gross salary of Kshs 160,000 /=. She worked for the Respondent from 2<sup>nd</sup> September 2019 to 31<sup>st</sup>



July 2020, when she proceeded for maternity leave for three months which was ending on October 2020. During her employment, the Claimant stated was also subjected to unjustified delay of her salary since she had not been paid for the month of June 2020, July 2020, July 2020, August 2020, September 2020 and October 2020. The claimant further asserted that during her employment period, the Respondent used to pay the Claimant's salary intermittently or not being paid at all which action was not communicated to the Claimant.

27. The claimant submitted that the Letter of Appointment dated 2<sup>nd</sup> September 2019 produced as CEXH1 indicated the Claimant was entitled to a monthly salary of Kshs. 160,000/= and she was also entitled to compensation on emergency surgeries and NHIF C-Sections done off the official hours at Kshs 10,000 /=.The Claimant produced her bank statement from Equity Bank, produced as CEXH7, which shows that the Claimant was subjected to unjustifiable salary delays, which was a breach of the contract. The salary delays were highlighted as follows;
- i. Page 28 of the Claimant's bundle of documents shows that the Claimant's January 2020 salary was paid on 11th March 2020. The claimant was only paid Kshs 85,000/=
  - ii. Page 30 of the Claimant's bundle of documents shows that the Claimant's February 2020 Salary was paid on 22nd May 2020. She was only paid Kshs 90,000/=
  - iii. Page 31 of the Claimant's bundle of documents shows that the Claimant's February and March 2020 Salary was paid on 7th July 2020. She was only paid Kshs 22,500 for the March 2020 salary and Kshs 66,000/= for the February 2020 Salary.
  - iv. Her last payment as per her produced statement was paid on 21st September 2020 which was her April 2020 salary. The Claimant also testified that she was not paid when she proceeded for her maternity leave for the month of June, July, August and September 2020.
28. Conversely, the respondent submitted that on how much is the Claimant entitled to in terms of salary for work done. DW2 states in her testimony that the claimant worked intermittently for the 9 month period of her probation from 2nd September, 2019 to 1st August, 2020. Between January, 2020 and July, 2020, the claimant had taken a cumulative total of 60 days sick leave on various dates. According to her contract of employment, the claimant is only entitled to 7 days sick leave on full pay and 3 days sick leave on half pay per year. This amounts to a total of Kshs. 320,000/- which has been deducted from her salary during the period under review. When you look at the tabulation provided by DW1 in his testimony at pages 7 and 8 of the Respondent Further Bundle of Documents dated 14th November, 2023, the actual amount due to the claimant is: Total outstanding amount- Kshs. 645,223/- Less unpaid sick leave Kshs. 320,000/- Total due- Kshs. 325,223/-
29. The court finds that the alleged deductions on sick leave are an afterthought as the same were not reflected in the approval of the sick leave. In the sick leave form at page 21 of the respondent's documents, the leave ending 27th July 2020 indicated pending days as zero as at 31<sup>st</sup> July 2020. The claimant began her maternity leave on 1<sup>st</sup> august 2020. The deduction of the sick leave days pay is thus not supported by the employers records. The demand letter was for Kshs. 800,000. The tabulated amount as at end august was Kshs. 645,223/-. The claimant sought for salary for September when she was in maternity. The salary for September is not reflected in the tabulation by the respondent. This makes a total of Kshs. 805000 (645223 plus monthly salary of Kshs. 160000). The court finds that the claim of salary arrears of Ksh. 800000 is proved on a balance of probabilities and is thus awarded as claimed with interest at court rates from the date of filing the suit. The interest from date of filing suit is to compensation to the claimant for the unfair labour practice of non- payment of salary



## **Conclusion**

30. The court enters judgment for the claimant against the respondent as follows-

Salary arrears award for the sum of Kshs. 800,000 with interest at the court rate from the date of filing the suit until payment in full.

The Respondent to pay the claimant costs.

31. Stay of execution of 30 days granted.

32. 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: Mrs. Makworo

Respondent: Ms. Kimetto

