



Namaemba v Consolidated Human Resource Solutions Limited (Employment and Labour Relations Petition E012 of 2025) [2025] KEELRC 2631 (KLR) (30 September 2025) (Judgment)

Neutral citation: [2025] KEELRC 2631 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS PETITION E012 OF 2025
HS WASILWA, J
SEPTEMBER 30, 2025**

BETWEEN

ANNE WEKESA NAMAEMBA PETITIONER

AND

**CONSOLIDATED HUMAN RESOURCE SOLUTIONS
LIMITED RESPONDENT**

JUDGMENT

1. By a Petition dated 29th January 2025, the Petitioner sought for the following reliefs; -
 - a. A declaration that that the dismissal of the Petitioner from the Respondent's employment was wrongful, unlawful and unfair.
 - b. A declaration for the respondent to pay one-month notice shs.17,481.90/= plus allowance of kshs.4,561/= in accordance to LN. No 125 of 2022
 - c. A declaration that the respondent has violated the petitioner's constitutional rights guaranteed and protected under Articles 27, 28, 29, 41, and 47 of *the Constitution*, 2010.
 - d. Compensation equivalent to 12 months' salary given the cruel treatment that the Respondent subjected to and lost her livelihood (12 months x kshs.17,481.90/= in accordance to LN. No 125 of 2022)
 - e. A declaration that the Respondent pays damages for unlawful and unfair termination on account of known medical condition of Kshs.5,000,000/=
 - f. An order that the Respondent do pay to the Petitioner general damages for violating her rights.
 - g. Costs of this Petition.
 - h. Any other relief that this Honourable Court deems fit and just to grant.



Petitioner's Case

2. The Petitioner avers that the Respondent employed her as a cleaner on 1st September 2024, earning a monthly salary of Kshs. 15,000 without house allowance.
3. The Petitioner states that on 23rd October 2024, she experienced severe back pain and requested permission from the Respondent's Human Resource Officer, Mr. Gitau, to seek treatment at Mbagathi Hospital. After an x-ray, she was referred to the German Medical Centre for further evaluation on 22nd November 2024.
4. After the checkup, the Petitioner received treatments on 27th December 2024, and was put on daily medications with routine checkups. The doctor provided her with a medical recommendation letter to present to the Respondent, outlining the status of her health condition and the type of job she should pursue.
5. She presented the medical recommendation to the Respondent's management that day and was instructed to wait for the Senior Human Resource Manager, Mr. David Muthama, regarding possible reassignment to light duties.
6. She waited at the reception area, and thereafter, she saw Mr. Muthama at the gate in his vehicle, entering the compound to his office. She believed that he would invite her to continue on the way forward and then resume work on light duties. However, Petitioner was told to go back home and that Mr. Muthama had not reported to work that day, which was untrue.
7. The Petitioner avers that on 9th January 2025, she and her sister Matilda Wekesa proceeded to the Respondent's office to inquire about her employment status and medical report recommendations, but they were blocked from accessing Human Resource Manager Mr. David Muthama.
8. They were instructed to wait at the reception, and after waiting for long hours, Mr. Gitau was sent to ask the Petitioner to explain her health condition. The Respondent instructed her to hand over her medical treatment reports plus a recommendation letter and further stated that they would first consult with the management, then call her back and inform her sister as well. Since then, the Petitioner has not received any communications from the Respondent until now.
9. The Petitioner avers that she was blocked from work was on the ground of her health status and terminating her employment without notice was not only unfair, unlawful but also shows that the Respondent showed no empathy towards the Petitioner's health condition and violated her right to equality, dignity, fair labour practices, fair remuneration and reasonable working conditions guaranteed and protected by Articles 27, 28 and 41 of *the Constitution*.
10. It is the Petitioner's case that by failing to address her medical report recommendation to give her light duties and dodging to meet her; and blocking her at the gate and giving instructions to the security officers not to allow her into the premises to work, the Respondent violated her right to equality, dignity, fair labour practices, fair remuneration and reasonable working conditions guaranteed and protected by Articles 27, 28 and 41 of *the Constitution*.
11. The Petitioner asserts that the Respondent's action of dismissing her on the grounds of her health condition subjected her to degrading and inhuman treatment contrary to Article 27(4) of *the Constitution*. Additionally, dismissing her without any valid reason at all, and cannot access her economic and social rights guaranteed and protected by Article 43(1) of *the Constitution*.



Respondent's Case

12. In opposition to the petition, the Respondent filed a replying affidavit dated 1st April 2025, sworn by Stephen Gitau, the Respondent's Human Resource Officer, and a supplementary affidavit sworn by David Muthama, Kentainers Limited's Human Resource Manager.
13. The Respondent avers that this court lacks jurisdiction to hear and determine the petition due to the constitutional doctrine of exhaustion, as the petition does not disclose any constitutional issue with specificity and fails to disclose any cause of action as against the Respondent.
14. It is the Respondent's case that the Petitioner has failed to exhaust other available remedies provided in law, including lodging a claim under the Work Injury Benefits Act (WIBA) through the Directorate of Occupational Safety and Health Services (DOSHS) or by filing an employment claim in the Magistrates' court. It contends that the petition was instituted solely for the purpose of avoiding the necessity of applying the normal way for an appropriate judicial remedy, which involves no contravention of any human right or fundamental freedom.
15. The Respondent avers that it entered into a contract with Kentainers Limited on 1st September 2024 for the provision of casual/temporary labour. The Respondent was in charge of recruiting workers, administering work contracts, handling payroll, and supervising their work; however, its workers would only work in the Kentainers' production section of the factory on a casual basis.
16. The Respondent avers that previously, Kentainers was supplied with labour by Narua & Sons, and when the Respondent was onboarded, it inherited and retained Narua & Sons' existing workforce but administered fresh employment contracts; thus, the workers (including the Petitioner) became its employees.
17. The Respondent avers that it also inherited the payroll and the workers retained the roles and salaries they served under Narua & Sons.
18. It is the Respondent's case that it retained the Petitioner on a casual basis as a cleaner and on the terms she served previously under Narua & Sons, at a gross monthly salary of Kshs. 15,000. The Petitioner was issued with an initial 3-month contract running from 1st September 2024 to 30th November 2024, indicating the place of work as Kentainers Limited.
19. The Respondent submitted that in October 2024, the Petitioner started taking leave for medical checkups, but she would return and resume her duties at her workstation. She never raised any complaints about her role or work conditions. Her contract ended on 30th November 2024, and it was renewed for a further 3 months from 1st December 2024 to 28th February 2025.
20. It is the Respondent's case that on 30th December 2024, the Petitioner informed the Human Resource Officer that her doctor had recommended lighter duties, but she did not have the doctor's letter to back this position; she was asked to bring the letter the following day and was referred to her supervisor to explore options for any lighter duties.
21. Subsequently, the supervisor reported back that housekeeping was the lightest duty, and this was the Petitioner's role; thus, the supervisor requested her to return to work in housekeeping, but she declined and spent the day in the washrooms.
22. The Respondent avers that the Petitioner failed to bring the doctor's letter on 31st December 2024 and instead brought her medication. She stated that she had forgotten the letter and further explained that



- she did not report to her workstation the previous day as her case was complicated and could only be handled by Mr. Muthama, Kentainers' HR, who she said was privy to her previous medical history.
23. Additionally, she informed the Respondent that her back problems started way back in 2021 though her role was always in housekeeping. The Respondent informed her that she was its employee and not Kentainers', nevertheless, she was informed that Mr. Muthama was on leave and would return on 7th January 2025.
 24. The Respondent avers that the Petitioner stated that she would report to work every day but would not report to her workstation until Mr. Muthama returned to address her issues. The Respondent reiterated that she needed to submit the medical report and informed her that HR would sign her gate pass to leave the premises and fetch the medical report. However, the Petitioner said she would not leave; they use force; she left and resumed her position in the washroom, where she had spent the previous day.
 25. The Respondent avers that thereafter, two Kentainers workers' representatives sought to find out why the Petitioner was holed in the washrooms. The Respondent explained the situation, and they left to have a word with the Petitioner, and she agreed to leave. The Petitioner then took the gate pass, and the Respondent did not hear from her until 8th January 2025, when Mr. Stephen Gitau was called to the gate to attend to her, but by the time he reached the gate, she had left.
 26. The Respondent avers that on 9th January 2025, Mr. Gitau was called again to the gate and found the Petitioner in the company of a lady who introduced herself as her sister. The Petitioner's sister informed him that she had come to sort out her sister's employment issues, and they gave him the documents consisting of the medical report from Dr. Kemunto of Mbagathi Hospital and an MRI imaging report from German Medical Centre.
 27. It is the Respondent's case that the doctor recommended lighter duties, but on enquiring from the Petitioner's supervisor, there was no other light duty besides the housekeeping duty. The Petitioner had insisted to the supervisor that she could only work in the kitchen/cafeteria; however, the Respondent does not man the kitchen, thus, could not deploy her there.
 28. The Respondent avers that the Petitioner and her sister left the documents and after consulting the management, it was evident that there was no other role under the production section that consisted of light duties. Therefore, the Respondent's management decided to retain the Petitioner on the payroll until the end of her contract on 28th February 2025 and not assign her any more duties since no light duties were available and the Petitioner's salary for the months of January 2025 and February 2025.
 29. Thereafter, the Respondent never received any further communication from the Petitioner until her contract lapsed on 28th February 2025.

Petitioner's Submissions

30. The Petitioner submitted on three issues: whether termination of the Petitioner's employment was unfair and wrongful; whether the Petitioner's rights were violated by the Respondent; and whether the Petitioner is entitled to any relief.
31. On the first issue, the Petitioner submitted that the Respondent blocked her from work on account of her health status, which demanded light duties, without giving reasons. The Respondent terminated her employment without notice, which was not only unfair and unlawful but also shows that the Respondent showed no empathy towards her health condition.



32. It is the Petitioner's submission that the Respondent employed her under a fixed contract for three months subsequent to prior three-month contract. However, at the time of her unfair dismissal, the contract had not expired.
33. The Petitioner submitted that on substantive justification, the burden of proof on the reason for termination lies squarely on the employer by virtue of section 43(1) of the *Employment Act* which states that the employer shall prove the reason for the termination, and where the employer fails to do so, the termination shall be deemed to be unfair within the meaning of section 45 of the Act.
34. The Petitioner submitted that she was terminated for presenting medical documents that demanded she be reassigned lighter duties; instead, the Respondent blocked her from accessing its premises, thereby terminating her on account of her health status.
35. The Petitioner submitted that the Respondent has not produced any material before this court to show that the Senior Human Resource manager, Mr. David Muthama, was an employee of Kentainers Limited ("Kentainers") as alleged but not its employee. The allegation that Mr. David Muthama was not the Respondent's senior human resource is hearsay. The Petitioner contends that Mr. Muthama had all the opportunity to handle her case but instead chose to terminate her without giving reason upon seeing the medical report.
36. It was submitted for the Petitioner that they have established prima facie that the Petitioner was unfairly, unlawfully, maliciously and un-procedurally terminated after serving the Respondent.
37. On the second issue, the Petitioner submitted that this court has jurisdiction to handle the enforcement of any constitutional right and freedom or any constitutional provision in a statement of claim or other suit filed it as provided under Rule 10 of the Employment and Labour Relations Court (Procedure) Rules, Legal Notice 133 of 2024 on enforcement of constitutional rights.
38. On the third issue, the Petitioner submitted that the Respondent subjected her to short-term contracts, which was admitted by the Respondent in its replying affidavit by stating that the Petitioner was serving her second short contract after the first one ended. This type of practice undermines career development and the welfare of an employee and is discouraged by courts, as it amounts to unfair labour practice unless the same is dictated by the availability of work, and would in a case where there has been pleading in that respect, award damages.
39. The Petitioner submitted that by subjecting her to short-term employment for three months each, the Respondent subjected her to unfair labour practices which undermined her career development and welfare thereby violating her right to equality, dignity, fair labour practices, fair remuneration and reasonable working conditions guaranteed and protected by Articles 27, 28, and 41 of *the Constitution*. She relied in *Mutua v Bahari Forwarders Limited* [2025] KEELRC 1355 (KLR) wherein the court held:

“It is however evident that the Respondent did not treat the Claimant fairly by subjecting him to short term contracts in a period of about six (6) years. This is a practice that undermines career development and the welfare of an employee and is discouraged by this court. Indeed, the court has found this practice to constitute unfair labour practice unless same is dictated by availability of work and would in a case where there has been pleading in that respect award damages.”
40. The Petitioner submitted that the Respondent, upon being presented with the medical reports which required her to do light duties, failed to address the issue and instead dodged her, then blocked her



from accessing its premises, thereby terminating her on account of her status was in violation of her constitutional rights protected by Articles 27, 28 and 41.

41. It is the Petitioner's submission that the Respondent violated her constitutional rights by dismissing her employment without any valid reason, thus it was wrongful, prejudicial, unfair, and unprocedural, and the Respondent has violated her right to fair labour practices, fair remuneration, and reasonable working conditions guaranteed and protected by Article 41 of *the Constitution*.
42. The Petitioner submitted that the Respondent violated her constitutional rights by dismissing her without any valid reason at all and she cannot access her economic and social rights guaranteed and protected by Article 43(1) of *the Constitution*.
43. It is the Petitioner's submission that her employment was terminated on account of her health, which was discriminatory, unfair, and unlawful.
44. On the third issue, the Petitioner submitted that her employment was terminated before the second contract expired. Secondly, the termination was based on medical grounds when she presented her medical reports, and then she was blocked from accessing the Respondent's premises. The Respondent has failed to explain why the Petitioner was blocked from accessing her employment after presenting medical documents, thus she is entitled to an award for discrimination of Kshs. 5,000,000 based on the current economic hardship.
45. The Petitioner submitted that an employer has a right to terminate a contract of service without notice upon payment to the employee remuneration that he would have earned by that other party by virtue of Section 36 of the *Employment Act*. The Petitioner was not given a one-month notice as required under the law, thus she is entitled one month's notice Kshs. 17,481.90 plus allowance of Kshs. 4,561.
46. The Petitioner submitted that she has established a prima facie case of wrongful dismissal against her and as a result she is entitled to compensation for unfair dismissal at the rate of 12 months gross salary in terms of section 49(1)(c) of the *Employment Act*, being Kshs. 21,067.43 x 12 months = Kshs. 252,809.16.
47. On costs, the Petitioner submitted that while the award of costs is at the discretion of the court, the general rule is that costs follow the event. She cited the Supreme Court in *Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others* [2014] eKLR.
48. It is the Petitioner's submission that there is nothing to justify denying her costs and interest at 24% percent of this suit rate from the time the claim was filed in court. Additionally, there has been no evidence offered to rebut the special damages she prays for.

Respondent's Submissions

49. The Respondent submitted on three issues: whether the Petitioner was terminated; whether the Petitioner's rights were violated by the Respondent; and whether the Petitioner is entitled to any relief.
50. On the first issue, the Respondent submitted that it employed the Petitioner on a three-month fixed-term contract, with the salary paid bi-monthly. The Petitioner was employed as a cleaner (housekeeping) on 1st September 2024. At the lapse of the initial contract, she was issued with a new fixed-term contract for another three months from 1st December 2024 to 28th February 2025.
51. The Respondent submitted that from the month of October 2024, the Petitioner started taking leave for medical checkups, but she would return and resume her duties at her workstation. She never once raised any complaints about her role or work conditions.



52. The Respondent submitted that at no single time could the Petitioner have been directed to Kentainers' Human Resource manager as alleged, as it is not her employer. Her issues could only be addressed by her employer, the Respondent. The Petitioner is deliberately misinforming the court that she visited Kentainers' premises on 27th December 2024 or that she was asked to see Kentainers' HR Manager.
53. The Respondent submitted that on 30th December 2024, the Petitioner went to the Respondent's Human Resource officer based at Kentainers (Mr. Gitau) office and informed him that her doctor had recommended lighter duties. However, she did not have the doctor's letter to support her position. She was requested by Mr. Gitau to take the letter the following day and was referred to her supervisor to explore any options for lighter duties. The supervisor reported to Mr. Gitau that housekeeping (which was the Petitioner's role) was the lightest role available in the Production Department.
54. The Respondent submitted that the supervisor requested the Petitioner to return to her housekeeping role, but she declined and spent the day in the washrooms. This is a clear illustration of the Petitioner's attitude not only to her role but also to her employer. Additionally, prior to 30th December 2024, she had never complained of her role or working conditions despite taking medical leaves from October 2024.
55. The Respondent submitted that on 9th January 2025, the Petitioner brought her sister, who informed Mr. Gitau that she had come to sort out her sister's employment. The Petitioner's contract with the Respondent was personal to her, and not to her kin, which again shows the Petitioner's attitude towards her employer.
56. It is the Respondent's submission that the Petitioner finally submitted the doctor's recommendation. The Respondent's Human Resource Manager then engaged her supervisor, whereby it was noted that there were no lighter duties besides the housekeeping role. However, the Petitioner insisted that she could only work in the kitchen/cafeteria. The Respondent's contract with Kentainers was limited to the Production Department and did not extend to the kitchen, thus the Petitioner could not be deployed there. Therefore, the Respondent contends that from the sequence of events, it is evident that the Petitioner had a different motive.
57. The Respondent submitted that the management decided to retain the Petitioner on the payroll until the lapse of her contract on 28th February 2025 and not assign her any more duties since no light duties were available. Additionally, the Petitioner was fully paid her salary for the months of January and February 2025, yet she filed her Petition on 29th January 2025.
58. It is the Respondent's submission that it did not terminate the Petitioner's contract despite not assigning her to any duty. Furthermore, the Respondent discharged her salary; the pay slips were produced before this court.
59. It is the Respondent's submission that the Petitioner's employment was not terminated but it lapsed by effluxion of time; besides, there were no light duties that could be assigned to the Petitioner. The Petitioner's contract was for a fixed term of three months, which she read and signed, meaning she conceded to its terms. Section 10(3) (c) of the *Employment Act* defines a fixed contract as "where the employment is not intended to continue for a definite period of time and whose last date is indicated."
60. On the second issue, the Respondent submitted that all interactions with the Petitioner were very professional and respectful, thus she was subjected to any degrading and inhumane treatment contrary to 28 and 29 of *the Constitution*.
61. It is the Respondent's submission that the Petitioner deliberately went and sat in the washrooms when she was informed to resume her role by the supervisor. Additionally, she informed Mr. Gitau that she



- shall be reporting to work every day but would not report to her workstation with deliberate intentions to spend her day at the washrooms, and the involvement of her kin to resolve her work-related matters speaks volumes.
62. On discrimination, the Respondent submitted that there was no lighter duty in the Production Section, save for the housekeeping role, which was the Petitioner's assignment. The Petitioner desired to work in the kitchen/cafeteria, which was not under the control of the Respondent. The Respondent asserts that the Petitioner did not need light duties but had a different motive as she insisted on working in the kitchen despite being informed that it is not under the Respondent's control.
 63. The Respondent submitted that it did not at any time block and direct its security to deny the Petitioner access to the premises, as her contract was still effective and she could access the premises like any other employee thus the Petitioner misinformed this court. Besides, the Respondent's role is limited to the Production Section and does not main the gate, which is in control of Kentainers.
 64. The Respondent further submitted that the Petitioner was not denied access to its Human Resource manager, as she went to Mr. Gitau and discussed her condition. Mr. Gitau was the Respondent's Human Resource Manager who employed the Petitioner thus, the allegations are unfounded.
 65. It is the Respondent's submission that the Petitioner was not subjected to discrimination as alleged. There were no lighter duties other than housekeeping within the Respondent's control; therefore, it let the Petitioner's contract run its course and retained her in the payroll in the course of her contract.
 66. On reliefs, the Respondent submitted that the Petitioner was employed under a non-renewable fixed contract for a period of three months; therefore, it did not terminate the contract but was patient until the lapse of the contract despite the Petitioner not having been assigned to any duty. Additionally, the due salary was discharged to the Petitioner. The Petitioner's contract provided under Clause 6 (iv) that the contract would terminate after expiry of the fixed term.
 67. The Respondent submitted that the claim for payment in lieu of notice does not apply as the contract was a fixed-term contract which naturally lapsed. Further, the claim for Kshs. 4,561 allowance under minimum wages has not been supported by the Petitioner's contract and should be dismissed.
 68. It is the Respondent's submission that the claim for compensation equivalent to 12 months' salary on account of unfair dismissal is unfounded. The Petitioner was on a fixed 3-month contract and was paid till the end of the contract despite her not working for 2 months prior to the lapse of her contract.
 69. The Respondent submitted that the Petitioner has failed to establish her case on a balance of probabilities. The Petitioner was on a fixed contract which lasted for three months. Further, the Petitioner was not subjected to any form of discrimination, and that no constitutional rights were violated. Therefore, she is not entitled to costs.
 70. I have examined all the evidence and submissions of the parties herein. The respondents have in their evidence admitted employing the claimant herein who was a casual employee as a cleaner earning a gross pay of kshs 15,000. They aver that they issued her with a 3 months contract running from 1/9/2024 to 30/11/2024.
 71. The respondents aver that this contract was renewed again for a further 3 months from 1st December 2024 to 25th February 2025. They contest that in December 2024, the petitioner indicated that she be issued with light duties following her doctor's recommendation. She was already on light duties and when asked to continue on this she declined and also failed to submit the doctors letters.



72. The doctor's documents were however submitted later but the petitioner left the respondents premises and never came back until her contract expired on 28/2/2025. The contracts the respondents referred to were never submitted before court and neither was there any evidence of the nature of the contract between the petitioner and respondent save for the payslips which shows that she was paid a gross salary of kshs 15,500/- as per her November 2024 payslip. She however produced evidence that she had been unwell.
73. The respondents have averred that the petitioner's contract was never terminated but expired by effluxion of time. It is true that the claimant worked for respondent as indicated above. The only evidence of their engagement before court are the payslips for September, October and November 2024 supplied by the petitioner.
74. The petitioner having averred an employment relationship has the duty and obligation to prove the same. The respondents aver that the petitioner was on a term contract which expired and which has not been exhibited before court.
75. In the absence of any evidence as to the nature of the contract between the petitioner and respondent and how it ended, I find the petition is not proved as per law and must therefore fail. There will be no order of costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

