



**Imram v Eedi Kenya Limited (Cause E013 of 2024)  
[2025] KEELRC 2796 (KLR) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2796 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISII  
CAUSE E013 OF 2024  
NZIOKI WA MAKAU, J  
OCTOBER 15, 2025**

**BETWEEN**

**REHEMA ALI IMRAM ..... CLAIMANT**

**AND**

**EEDI KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant herein sued the Respondent vide a suit file don 19<sup>th</sup> September 2024. In the suit, the Claimant sought a declaration that the termination was wrongful, unfair and unlawful. She is equally praying for compensation for unfair termination, payment in lieu of leave, notice, gratuity, overtime worked, cost and interest of the suit.
2. The Respondent defended the suit and in its response dated 6<sup>th</sup> November 2024 the Respondent denied ever unlawfully terminating the Claimant. The Respondent averred that it employed the Claimant sometimes in February 2009. It was averred that she worked until 5<sup>th</sup> April 2023 when she failed to return to work and that on 8<sup>th</sup> April 2023 after failing to hear from the Claimant, the Respondent issued a termination notice through the Kisii County Labour Office. The Respondent thus urged the dismissal of the suit with costs.
3. The Claimant and the Respondent's 2 witnesses testified.
4. Thereafter, the parties filed written submissions pursuant to directions of the Court.

**Claimant's submissions**

5. The Claimant submits that she was an employee of the Respondent. She avers that she worked for the Respondent until 5<sup>th</sup> April 2023 when she was terminated from employment. The Claimant submitted that the issues for determination were:-



- a. Whether the claimant was employed by the Respondent and if so when
  - b. Whether the Respondent wrongfully and illegally terminated the claimant from employment
  - c. Whether the Respondent is entitled to the reliefs outlined in the claim
  - d. Who bears cost of this claim.
6. The Claimant submitted that as to whether she was employed by the Respondent, she asserts that she testified that she was employed by the Respondent in the year 2009 as an invoicing/data clerk. The Claimant submits the termination notice produced and an exhibit confirmed that indeed she was employed. She submits that both Defence witnesses did not controvert this evidence. The Claimant submitted that RW1 confirmed that at the time of joining the company in 2017, he found the Claimant working at the company. She submits that apart from mere denials, the Respondent did not adduce evidence as to the exact period of employment of the Claimant. The Claimant urged the Court to find that she was indeed an employee of the Respondent and worked from the year 2009 to 5<sup>th</sup> April 2023.
7. In support, the Claimant placed reliance on section 10(6) and (7) of the Employment Act which makes provision as to keeping of employee records and the period during which such records must be kept by the employer even after the termination of the employee.
8. As to whether the Respondent wrongfully and illegally terminated the Claimant from employment, she submits in the affirmative. The Claimant submitted that she had adduced a copy of the termination notice together with the letter dated 8<sup>th</sup> April 2023 addressed to the County Labour Officer. She submitted that in the two letters, it was alleged that the Claimant specifically absconded duty on 5<sup>th</sup> April 2023. The Claimant submitted that RW1 authored the letter addressed to the Labour Officer and in that letter, he categorically states that the Claimant was on duty on that particular day and later in the day left. On being cross examined, he could not state how exactly later in the day the Claimant left. The Claimant submitted that he was asked as to whether the company keeps record of attendance to which he affirmed. Nevertheless, he admitted that he did not file any evidence to affirm the Claimant absconded duty on 5<sup>th</sup>, 6<sup>th</sup> or 7<sup>th</sup> April 2023.
9. The Claimant submits that in a separate letter dated 11<sup>th</sup> July 2023 authored by RW1 entitled gross misconduct, he states in contradiction that the Claimant attended work on 5<sup>th</sup> April 2023 and never left the premises for the whole day. The Claimant submits that this is a clear indication that she was on duty on 5<sup>th</sup> April 2023 and never left the premises of the Respondent. The Claimant submits that the allegations that she resigned are therefore not based on any factual or legal basis for the sole reasons that the Respondent admitted to summarily dismissing the Claimant for absconding duty. The Claimant submits the Respondent did not adduce any evidence of having received an actual resignation notice and neither did they file a copy in Court. The Claimant submitted that section 45 of the Employment Act requires that in order for an employer to lawfully and fairly dismiss an employee's employment, the employer must have substantive justification and conduct the dismissal with procedural fairness.
10. The Claimant submits that it is worthy to note that although the Respondent terminated the claimant on the grounds of absconding duty and gross misconduct, that it is interesting to see from the letter dated 11<sup>th</sup> July 2023 there were several employees who were accused of gross misconduct but were later compensated by the Respondent as was evidenced by the letter dated 8<sup>th</sup> August 2023. The Claimant submits that this letter which was relied by the Respondent and adduced as an exhibit shows the employer compensated employees and posits the question why would an employer compensate employees who had purportedly absconded duty and caused the company losses a sum of Kshs. 800,000/-?



11. Further, the Claimant submits that section 43 of the [Employment Act](#) provides in any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45. She submits that the Respondent has failed to tender valid reasons for the termination of employment. The Claimant therefore submits that Respondent failed to satisfactorily prove to this Court it had valid reasons to summarily dismiss her. The Claimant submits that equally, with respect to procedural fairness, section 41 of the [Employment Act](#) requires that an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation. She submits that further, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee make. The Claimant submits that in this case, the Respondent never issued the Claimant with a show cause letter laying down the allegations of gross misconduct thereby giving her a chance to respond to the allegations before reaching any adverse decision. The Claimant therefore submits that the Respondent failed to adhere to procedural fairness in breach of section 41 of the [Employment Act](#).
12. As to whether the Respondent is entitled to the reliefs outlined in the claim, the Claimant submitted that having proved on a balance of probability that the summary dismissal against her was illegal and unfair and owing to the fact that the Respondent did not produce any evidence to show that the Claimant was duly paid her dues, she urges the Court to award her the reliefs sought. She sought a declaration that her termination was wrongful, unfair and unlawful and that she is thus entitled to an order for payment of all terminal dues and benefits owed and full compensation for wrongful dismissal from employment. She claimed 12 month's compensation for unfair termination (Kshs. 90,000/- x 12) Kshs. 1,080,000/-.
13. The Claimant submitted that she was a senior employee at the time of her dismissal as she was in charge of sales and marketing and that her casual dismissal having worked for the Respondent for more than 12 years was extremely humiliating and demeaning. She submits that even the manner in which her dismissal was communicated through the Labour Office was extremely unfair and unprofessional. The Claimant thus urged the Court to exercise its discretion in her favour and relied on the case of *Yamo v Kenya Rural Roads Authority* (Cause E808 of 2021) [2023] KEELRC 1870 (KLR) (31 July 2023) (Judgment). The Claimant also cited the decision in *Moses Theuri Kainga v Prime Fuels [Kenya] Limited* [2014] KEELRC 358 (KLR) where the court awarded the claimant a maximum of 12 months compensation for unlawful termination. The Claimant also sought payment in lieu of leave (Kshs. 90,000/- x 3 yrs.) Kshs. 270,000/-. The Claimant relied on the case of *Hatari Security Guards Limited v Oduor* (Appeal E043 of 2024) [2025] KEELRC 1112 (KLR) (3 April 2025) (Judgment), where the court awarded a claim under this limb in a similar case and in doing so, held as follows:-

“The very first issue is rest days and the Appellant asserts the Respondent had 4 off days a month. It is asserted further that the Respondent's reliever was Mr. Micheal Ochola for the times the Respondent went off. Whereas the Appellant asserts the Respondent was given leave days, the Appellant as employer had the burden to avail employment records. The Appellant did not avail the record – OB which recorded the days the Respondent attended for duty. No duty roster was availed and the only record availed in respect of rest was the Appellant's leave approval for leave undertaken in 2020. The Appellant was the



employer and leave records are in the custody of an employer who complies with section 74 of the *Employment Act*. In the case before the Learned Magistrate, the Appellant did not avail any additional records. That would have dispelled any lingering doubts as to when the Respondent reported for work and the leave he took. In the absence of any contrary evidence and given the determination which was weighed and measured, I will not disturb the findings by the Learned Magistrate in relation to this aspect of the Appeal”

14. The Claimant also sought payment in lieu of notice (Kshs. 90,000/- x 3 months) Kshs. 270,000/-; gratuity at the rate of 30 days per year worked (Kshs. 90,000/- x 14 yrs) Kshs 1,260,000/-. The Claimant worked for the Respondent for a period of 14 years a fact which was not controverted. It was submitted that it was not clear why the Respondent would not want to pay the same arguing that the same was not provided for in the contract which was not existent in the first case. The Claimant thus urges the Court to exercise the discretion in her favour. The Claimant additionally sought overtime worked but not paid (a total of 104 Saturdays per year for 14 years and 9 holidays per year) i.e. 3,462 days x Kshs. 1,582/- per day - Kshs. 5,476,884/-.
15. The Claimant submits that on her part she filed copies of the P9 forms which clearly evidenced that none of the amounts claimed were paid. She thus urges the Court to award the same. As to who bears costs of the claim, the Claimant submitted that she has proved on a balance of probability that the dismissal was unfair and unlawful and consequently urged that the Respondent bears costs. The Claimant also seeks for the certificate of service.

### **Respondent’s submissions**

16. The Respondent submits that the following are issues for determination:
  - a. Whether or not the claimant was wrongfully and or unfairly terminated
  - b. Whether or not the claimant is entitled to the reliefs sought.
  - c. Who is entitled to the costs of the case
17. As to whether or not the Claimant was wrongfully and or unfairly terminated, the Respondent submitted that the Claimant’s evidence is that she worked for the Respondent in a position of sales manager earning a monthly salary of Kshs. 90,000/- until 9<sup>th</sup> April 2023 when she was called by the Kisii County Labour Office to collect her letter from the employer terminating her services. It is her evidence that she was at work on 5<sup>th</sup> April 2013 and never left until evening. The Respondent submits that curiously enough the claimant does not state in her evidence that she was at work on 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> April 2023 before she was called by the Labour Office to collect her letter from the employer. The Respondent submits that on the other hand it is the evidence from the two witnesses it brought to court that showed the Claimant worked until 5<sup>th</sup> April 2023 when together with other employees they staged a sit in and later left the work place and did not come back. It is the respondent’s case that the Claimant absconded work and that is why they did a letter terminating her services after they could not reach her. The Respondent submits that the Claimant produced the termination letter dated 8<sup>th</sup> April 2023 and letter to the Kisii County Labour Office which was received, informing the County Officer of the dissertation of work by the Claimant. The Respondent submits that the Claimant also produced a letter dated 11<sup>th</sup> July 2023 which shows that the Claimant was among other employees who reported to work on 5<sup>th</sup> April 2023 but later staged a sit in and left the work place and never came back. The Respondent thus submits that the Claimant indeed abandoned her work and therefore it was proper that she be terminated summarily for the absconding work. The Respondent submitted that the Claimant has not stated in her evidence that she was at work at the Respondent’s business on



6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> April 2023 thus confirming that she indeed absconded work. The Respondent submitted that Courts have held that the employer has got a right to dismiss an employee who has absconded work. It cited the case of *Milano Electronics Limited v Dickson Nyasi Muhaso* [2021] eKLR where Manani J. held as follows with regard to summary dismissal on grounds of absconding duties:-

“ 31. Indeed, my view is that the Appellant had an obligation, if it believed that the Respondent had absconded duty, to lawfully bring the contract of service to closure by invoking the provisions of section 44 of the *Employment Act*. The section permits an employer to terminate an employee who has absconded duty on ground of gross misconduct.

32. The law as currently designed does not appear to contemplate closure of employment contracts through unilateral abandonment of the parties’ obligations under a contract of service. The contract can only be brought to closure as a result of the eventualities contemplated in sections 40 and 41 of the *Employment Act* (redundancy, incompetence, physical incapacity or gross misconduct) or through resignation or mutual agreement with or without notice under sections 35 and 36 of the Act or upon the insolvency of the employer under section 66 and 67 of the Act.”

18. The Respondent submitted that it was able to avail evidence confirming that indeed the Claimant had resigned from the respondent’s employment. It referenced the letter dated 8<sup>th</sup> February 2024 which was written by Maosa & Company Advocates which the Respondent produced in court. The Respondent submits that the Advocates under instructions from the Claimant stated in paragraph 1 as follows:

“ that our client has been working as a sales administrator in your company for fourteen (14) years up to the time she resigned on the 5<sup>th</sup> day of April 2023”.

19. The Respondent submits that in this letter where the Claimant was only seeking to be paid her dues for the 14 years she had worked was very clear that the Claimant had resigned from the Respondent’s employment on 5<sup>th</sup> April 2023. There was no allegation of unfair termination and equally there was no claim for compensation for unfair termination. Equally telling is that there was no claim for unpaid leave or overtime. The Respondent submits that the date the Claimant resigned clearly coincides with the date that the Respondent’s witnesses told the Court that the Claimant left work and never came back. The Respondent submits that Courts have held that resignation from employment by an employee terminates the employment contract at the instance of the employee as held by Rika J. in the case of *Kennedy Obala Oaga v Kenya Ports Authority* [2018] eKLR where the court stated in paragraphs 25 & 26 as follows:

“ 25. In a recent decision of this Court, *Edwin Beiti Kipchumba v National Bank of Kenya Limited* [2018] eKLR, it was held that resignation by an Employee from employment, is basically termination of employment at the instance of the Employee. It is a unilateral act. The *Employment Act* does not require the Employer to accept a notice of termination issued by the Employee, for that notice to take effect.

26. The *Employment Act* does not bar, or in any way limit an Employee, from terminating his/her contract of employment before, during or after, a disciplinary hearing.”



20. The Respondent cited the case of *Mutuku v Jocham Hospital (Cause E010 of 2022) [2023] KEELRC 2304 (KLR)* (28 September 2023) (Judgment) where Mbaru J. stated in paragraph 34 as follows:

“Resignation by an Employee from employment, is basically termination of employment at the instance of the Employee as held in *Edwin Beiti Kipchumba v National Bank of Kenya Limited [2018] eKLR*. The claimant resigned before investigations could conclude. He had just submitted his responses to the audit report and noted irregularities. No show cause notice had issued.”

21. The Respondent submits that the Claimant was not unlawfully terminated but she resigned. The Respondent submits that having resigned even the termination letter done by the Respondent on 8<sup>th</sup> April 2023 has no effect. As to whether the Claimant is entitled to the reliefs sought, the Respondent submits that apart from compensation for unlawful termination the Claimant also sought payment in lieu of leave for three years, gratuity, overtime worked and not paid. The Respondent submitted that the Claimant never adduced any evidence to show that she never went on leave, that she was an employee covered under NSSF and that there was no proof tendered on overtime. The Respondent submits the Claimant can collect her certificate of service and that the suit ought to be dismissed with costs.

### **Disposition**

22. The Claimant is said to have left employment on 5<sup>th</sup> April 2023 and never returned. The letter by the Respondent to the Kisii County Labour Officer says as much. The Claimant based her claim on the letter to assert dismissal. The Respondent counters by relying on her lawyers letter indicating that she resigned. Resignation is a unilateral act of the employee that does not require the acceptance in all instances by the employer. It is normally under the hand of the employee. Can an employee resign through a demand letter written on her behalf by an advocate? I think not. As such, the Court rejects the assertions by the Respondent that the employee resigned as per the letter of the Claimant’s lawyer. What is clear is that the employee ceased working for the Respondent circa 5<sup>th</sup> April 2023. The employer wrote a letter for the employee to collect. It was a termination letter and this is the evidence the Court will rely on to make findings herein.
23. The Claimant sought gratuity as well as overtime for years worked (14 years in total). As the Claimant knows, overtime was a continuing wrong relief whereof was to be sought within a year. In any event which days was the overtime performed? What hours constituted overtime on the days? Where was the record of the overtime worked? The Court finds there was no evidence adduced that the Claimant had any overtime due. In her demand letter there was no claim for overtime.
24. The only claim the Claimant could rightfully bring is on termination. It is clear there was no hearing prior to termination and there was no explanation offered prior to the termination as required under section 41 of the *Employment Act*. The Claimant did not get the safeguards under the law. As such it would be my finding that the Claimant was terminated without a hearing. Given the Respondent asserts the Claimant absconded work and there was no evidence by the Claimant she attended work on the days subsequent to 5<sup>th</sup> April 2023, the Claimant is only entitled to a nominal relief of 2 month’s salary as compensation which is Kshs. 180,000/-.
25. The Claimant had sought sums that cannot be payable as claims can only lie on the outer limit to 3 years from the date of termination of the contract of employment. The Court thus only awards her Kshs. 180,000/- for the unlawful termination of employment. As all the other claims fail each party is ordered to bear their own costs.



Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 15<sup>TH</sup> DAY OF OCTOBER 2025**

**NZIOKI WA MAKAU, MCIArb.**

**JUDGE**

