



**Kabura v Wil Developers and Construction Limited (Cause
1018 of 2017) [2025] KEELRC 2752 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2752 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1018 OF 2017
L NDOLO, J
OCTOBER 9, 2025**

BETWEEN

GRACE RUGURU KABURA CLAIMANT

AND

WIL DEVELOPERS AND CONSTRUCTION LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant brought this claim by a Statement of Claim dated 29th May 2017, complaining that the Respondent had terminated her employment unlawfully. The Respondent denies the claim by a Response dated 6th September 2017.
2. The matter went to full trial where the Claimant testified on her own behalf and the Respondent called its Executive Chairman, Johnson Wambua.

The Claimant's Case

3. The Claimant states that she was employed by the Respondent as a Personal Assistant to the Executive Chairman, earning a monthly salary of Kshs. 25,000. The Claimant worked for the Respondent until 11th November 2016, when her employment was terminated, by a mobile phone text message.
4. The Claimant was subsequently issued with a termination letter dated 14th November 2016. She complains that she was not paid her terminal dues and further accuses the Respondent of making unlawful deductions from her salary. In addition, the Claimant states that the Respondent did not remit her statutory dues to the relevant bodies.



5. The Claimant lays a claim of unlawful termination of employment and now seeks the following remedies:
 - a. Kshs. 56,007 in terminal dues;
 - b. Kshs. 27,060 being cumulative unremitted statutory deductions;
 - c. Kshs. 300,000 being 12 months' salary in compensation;
 - d. Exemplary damages;
 - e. Costs plus interest.

The Respondent's Case

6. In its Response dated 6th September 2017, the Respondent concedes having employed the Claimant on 5th May 2016, in the position of Personal Assistant, earning a monthly salary of Kshs. 25,000.
7. The Respondent states that the Claimant's employment was subject to a three (3) months' probation period. According to the Respondent, the Claimant did not prove herself as a worthy employee and her probation was consequently extended by a further three months.
8. The Respondent lists the following as areas of concern, leading to extension of the Claimant's probation:
 - a. Time keeping-reporting time;
 - b. Adherence to work related activities while in the office;
 - c. Disengaging from internet activities not related to work;
 - d. Improving on team work;
 - e. Completing out of office tasks in a timely manner and returning to the office;
 - f. Need to change attitude towards work, peers and directors.
9. The Respondent claims to have issued the Claimant with a warning letter on 13th October 2016, citing habitual lateness. The Respondent adds that the warning letter was preceded by two verbal warnings on the same complaint.
10. The Respondent avers that the Claimant was summarily dismissed for insubordination and gross misconduct.
11. Regarding the issue of statutory deductions, the Respondent states that the Claimant had been issued with an internal memo, advising her to visit the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF) for purposes of registration or if already registered to submit copies of her membership cards. According to the Respondent, the Claimant did not comply with these instructions.
12. The Respondent's Executive Chairman, Johnson Wambua claims to have lost a Huawei P6 phone valued at Kshs. 69,000 and a Sony power bank valued at Kshs. 5,200 from the office, which was under the care of the Claimant. A report of this loss together with official documents is said to have been made to the police with OB No. 19/18/11/2016 being issued.
13. The Respondent avers that on 9th November 2016, the Claimant was assigned to deliver a payment voucher at Kenya Technical Teachers College, which voucher was never delivered.



14. The Respondent further avers that on 11th November 2016, the Claimant maliciously locked the Executive Chairman in the office from 5.30 pm to 7.30 pm.
15. The Respondent's case is that the termination of the Claimant's employment was neither un-procedural nor unlawful.
16. The Respondent asserts that the Claimant was paid her terminal dues in full and was also issued with a certificate of service.

Findings and Determination

17. There are two (2) issues for determination in this case:
 - a. Whether the Claimant's dismissal was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Dismissal

18. On 14th November 2016, the Respondent wrote to the Claimant as follows:

“Dear Madam,

RE: Summary Dismissal

You are aware that on 11/11/16, you were given Lawful instructions to

- a. Go pick files at 4 pm from the company's Advocate, Mageni and Co. Advocates from Westland's and deliver them to the office.
- b. You had earlier on 9/11/16 been advice (sic) that for the next 3 days i.e. 10th, 11th and 12th you would be called upon to work late on matters before the court for filing on 14/11/16. Under your Terms of Employment, this is clearly spelled out under clause 4.

Instead when the writer of this letter called you to his office to guide you on what to do, your started grumbling and reported to him that you were not ready to work late, and that by the time you pick them you would be late.

This amounts to insubordination and gross misconduct you cannot, challenge and guide your Employer on what and how to instruct you. It is for the above reasons that the company has decided to terminate your services forth with effect from 11/11/16.

You are expected to hand over pending work in your custody point out files documents that were in your possession, password for computers, KRA etc. to the writer not later than 14/11/16.

It has come to light while preparing this letter that your personal file is missing. The belated explanation that you transferred all your documents to the general staff file is unacceptable. All files in the office have been in your custody. It has been concluded that you plucked off the same with ulterior motives. You were in current employment and the excuse given that there were no other files is unacceptable. If this was so urgent there are other closed files for staff who left the company which you should have used. This depicts you as an untrustworthy worker. The company further takes liberty to invoke clause 11 of your letter of offer. However, notwithstanding the above your terminal dues will be settled as follows:



- a. Salary for the month of October 2016 Ksh 25,000
 - b. Salary for the 11 days worked in November 2015 Ksh 9,166
Total (a+b) Ksh 34,166
 - c. Less advances given to you towards USIU Ksh 25,000
School Fees Via M-pesa (which you are aware)
 - d. Less advances paid to you towards your contract Ksh 6,000
Via M-pesa (which you are aware)
Sub Total deduction(c+d) Ksh 31,000
 - e. A+b-c+d above diff Ksh 3,167
 - f. Leave accumulation for 6 months with effect 15 days
From 2/5/16 to 11/11/16 @ 2.5 days per month
 - g. Less leave taken for graduation 6 days
 - h. Balance (9 days @ 834) Ksh 7,500
Total due (e+h) Ksh 10,666
- This money will be sent to you via M-pesa as full and final payment.
- Lastly please find attached

- a. Certificate of service
- b. 1st warning letter, your copy which you never collected instead you filed.
We wish you well in your future endeavours.
Yours faithfully,
(signed)
Johnson M. Wambua,
Executive Chairman”

19. This letter accuses the Claimant of gross misconduct and the procedure for handling such cases is codified in Section 41 of the *Employment Act*, which provides as follows:
- a. Subject to section 42(1), 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.
 - b. Notwithstanding any other provision of this Part, 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 within subsection (1), make.



20. In her final submissions dated 25th July 2025, the Claimant relied on the decision in *George Musamali v G4S Security Services Kenya Ltd* [2016] eKLR where it was held that:

“A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employer’s human resource manual or as set out in the *Employment Act* or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be.”

21. The Respondent’s Executive Chairman told the Court that the Claimant was not issued with a notice to show cause nor was she subjected to a disciplinary hearing. I do not need to say more; having failed to notify the Claimant of the charges facing her, the Respondent failed in its basic duty of establishing a valid reason for termination of employment, at the shop floor.

22. The Claimant’s dismissal was therefore substantively and procedurally unfair and she is entitled to compensation.

Remedies

23. Pursuant to the foregoing, I award the Claimant six (6) months’ salary in compensation. In arriving at this award, I have considered the Claimant’s short stint in employment but also the Respondent’s failure to allow her an opportunity to be heard.

24. I further award the Claimant one (1) month’s salary in lieu of notice.

25. No evidence was led to support the claims for terminal benefits and exemplary damages, which therefore fail and are dismissed.

26. Any unremitted statutory dues are payable to the respective bodies and not to the Claimant.

27. Finally, I enter judgment in favour of the Claimant as follows:

a. 6 months’ salary in compensation.....Kshs.150,000

b. 1 month’s salary in lieu of notice.....25,000

Total.....175,000

28. This amount will attract interest at court rates from the date of judgment until payment in full.

29. The Claimant will have the costs of the case.

30. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF OCTOBER 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Madowo for the Claimant



Mr. Kinyua for the Respondent

