

REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

CAUSE NO. E021 OF 2025

RACHEL GAKII KIBANGA 1ST CLAIMANT

CELESTINE LIYAI 2ND CLAIMANT

GLADYS KURIA 3RD CLAIMANT

VERSUS

KASHA TECHNOLOGIES LIMITED RESPONDENT

JUDGMENT

The three claimants filed suit on 17 February 2025. The 2nd claimant, Celestine Liyai has since withdrawn her claim upon a settlement out of court.

The 1st and 3rd claimants are adults. The respondent is a limited liability company.

The 1st claimant was employed by the respondent in February 2021 as a customer care senior manager at a salary of KSh. 575,000.

The 3rd claimant was employed in May 2021 as an enterprise sales officer earning KSh. 300,000 per month.

The claim is that on 25 October 2024, the respondent issued letters to the claimants terminating their employment due to redundancy. The respondent noted that due to reduced production capacity, there was a redundancy.

The claim is that there was no prior notice and that the respondent failed to comply with the provisions of section 40 of the Employment Act (the Act). The selection criteria were not shared with the claimants, contrary to section 40(1) (c) of the Act. The respondent failed to pay the claimants their terminal dues under sections (4) (1) (d), (e), (f), and (g) of the Act.

The claim is that this resulted in unlawful and unfair termination of employment.

The 1st claimant is seeking the following dues:

- a) One month's notice pay KSh. 575,000.
- b) Severance pay for 4 years KSh. 1,150,000.
- c) 12 months' compensation for unfair termination of employment, KSh. 6,900,000.
- d) Unpaid leave days.

The 3rd claimant is seeking the following terminal dues:

- a) Notice pay Ksh. 300,000.
- b) Severance pay for 4 years Ksh. 600,000.
- c) 12 months' compensation Ksh. 3,600,000.
- d) Unpaid leave days.

The claimants are also seeking payment of their costs.

The 1st claimant testified that upon employment by the respondent, she performed her duties diligently. In October 2024, there was a call meeting with the management team, during which she was informed that the company was experiencing financial distress and intended to lay off some employees by declaring redundancies. She expected the respondent to follow the due process for declaring redundancies, as required under section 40 of the Act. However, on 25 October 2024, she was issued with a notice explaining the reasons for her termination of employment and was directed not to disclose it to other employees. The process leading to such action was not shared.

The claimant testified that the respondent sent her a non-disparagement agreement with one month's notice pay and that she was required to sign it or forfeit her terminal dues. She felt aggrieved and filed her claim.

The claimant testified that her terminal dues have not been paid since. She did the clearance and handed over. She was required to sign a discharge voucher, but declined since the conditions were not acceptable. She was required to forfeit her right to make any claims, whereas her employment had been terminated unfairly.

The 3rd claimant testified that upon employment by the respondent in May 2021, she worked diligently until 25 October 2024, when the HR Business Partner set up a meeting for her on the calendar. She was informed that the respondent was experiencing financial distress and intended to terminate the contracts of some employees, including the claimant. The manager clarified that the termination of employment was not due to misconduct but to operational

reasons. She asked about the criteria used to identify the affected employees, but the respondent said that there were financial challenges.

Later, the claimant was served with the termination notice. However, the respondent has continued to hire more employees in higher-tier roles despite the implied financial constraints.

The claimant testified that, as part of the contingency plan in the event of redundancy, she had taken out an insurance policy with her bank, Stanbic, under which, should she be laid off due to redundancy, she would be entitled to 70% of her salary for 3 months. She had paid for the policy for two years, and to access the benefits, she needed supporting documents and evidence of a redundancy within the respondent or the notice sent to the labour officer, which did not issue. This has hindered her from benefiting from the bank policy. The respondent has also refused to pay her terminal dues.

In response, the respondent asserts that the contracts issued to the claimants contained a termination clause upon notice from either party, which the respondent invoked in this case. The claimants are not entitled to severance pay, as the same was not a term of their contracts, and termination of employment was not due to redundancy under section 40(1) (g) of the Act, as alleged.

The claimants are not entitled to compensation for the alleged unfair termination of employment. The respondent has been willing to pay terminal dues to the claimants upon compliance with the exit procedures.

The 2nd claimant has been settled.

In evidence, the respondent called Temitope Azeez, the vice-president, human resources operations, who testified that the 1st and 3rd claims were employees under written contracts. The 1st claimant was employed in March 2021, and the 3rd claimant was employed in September 2023.

Each employment contract contained a termination clause that allowed either party to give notice or pay in lieu thereof. The claimants voluntarily executed their contracts and were therefore bound by their terms and conditions.

On 25 October 2024, the respondent, in exercise of its contractual provisions, through its human resources department, informed each claimant of its decision to terminate

employment. Notices were issued on 25 October 2024 to each claimant with effect on 31 October 2024. The claims were to serve the one-month notice period, the last day being 30 November 2024. The notice indicated the accrued, unused leave days computed as part of the terminal dues.

The claims were issued with Discharge and Indemnity Vouchers and Non-Disparagement Agreements for execution before the release of their terminal dues. Despite several reminders, the claimants refused to sign and each time they have not been paid.

On 12 March 2025, the 2nd claimant withdrew her claim. She was paid Ksh. 115,109 less, which was deducted due to ongoing fraud investigations.

The Azeez testified that the respondent complied with the strict provisions of the written contracts.

At the close of the hearing, both parties filed written submissions.

The claimant's submissions are that on 25 October 2024, the respondent called them to inform them that there were financial constraints and that some employees, including them, would be declared redundant. There was no notice, due process, or any criterion applied before such decisions were issued—termination notices were issued on the same day.

The claimants submitted that the termination of their employment lacked justification and was therefore unlawful and unfair. In the case of **George Musamali v G4S Security Services Kenya Ltd [2016] eKLR**, the court held that before termination of employment, the employer should ensure procedural and substantive justice under sections 41, 43 and 45 of the Act. In the case of **Richarge Kibet Yegon v Aguventure Ltd [2018] eKLR**, the court held that the Act has created a shift in labour relations and before termination of employment, the due process of sections 41, 43 and 45 of the Act is mandatory.

The claimants submitted that their employment termination arose out of redundancy and that they are entitled to severance pay and compensation for unfair termination.

The respondent submitted that each claimant had a written contract with terms and conditions of employment. Each contained a termination clause. Each claimant was called to a meeting and informed of the termination of employment, given one month's notice to be served from 31 October 2024. In *Kenya Revenue Authority v Menginya Salim Murgani*, Civil Appeal No. 108 of 2010, the court held that contracts of service are mutually binding on the parties. In

Kosgei v Mvita Management Company Limited, Petition E022 of 2022, the court held that the written contract of employment binds the parties. The termination clause in this regard is binding on the parties.

The claimants were issued with notice and allowed to serve to the end. They have since refused to follow the exit procedures on which their terminal dues will be paid.

Determination

The employment relationship between the parties is admitted.

The 1st claimant was employed through a contract dated 10 February 2021. The 3rd claimant was employed through a contract dated 23 September 2023.

The claimants assert that on 25 October 2024, each was called to a meeting and informed that the respondent was facing financial challenges and would lay off some employees, and that they would be affected. Effectively, there was a redundancy, and their terminal dues have not been paid.

The respondent has denied such allegations and asserts that under each employment contract, there is a termination clause that they invoked. Each claimant was called and informed of the termination of the contract, and 30-day notice was issued. They have refused to clear their terminal dues.

Indeed, through notices dated 25 October 2024, the respondent told each claimant that, following a meeting earlier that day, the respondent had decided to terminate employment. A one-month notice was issued, effective 30 November 2024.

No particular reasons were assigned for the termination of employment.

There is no mention of any financial constraints to infer a redundancy or other operational reasons.

The assertion that the respondent invoked the termination clause of the employment contract concerning the 1st and 3rd claimants is correct. The one-month notice corroborates this assertion. The claimants were required to clear their duties and hand over within the one-month notice period.

For many years before 2007, when the Act was enacted, employer-employee relations were skewed in favour of employers. Upon notice, or payment in lieu of notice, employment would terminate at the instance of the employer.

The Constitution 2010 introduced a paradigm shift by entrenching fair labour practice and fair administrative action whilst making administrative decisions that affect employees, including those serving on written contract under public and private entities. Thus, by virtue of section 7 of the sixth schedule to the Constitution, the Act must be read with the necessary adjustments to fit into the current constitutional dispensation, as held in **Ibrahim v Reliance Hospital Limited (Employment and Labour Relations Cause E816 of 2021) [2023] KEELRC**.

This shift is more pronounced in how the employer addresses the employment termination process. It is no longer at the employer's will. The termination clause in a contract is now regulated in law.

In the case of **Njaramba v Mombasa Water Supply & Sanitation Co. Limited [2025] KEELRC 2360 (KLR)**, the court held that the Act has introduced a new paradigm in employment relations. An employer cannot enforce the employment contract at will. Recourse must be the Act as the bare minimum.

This is appreciated in the case of **Kenfreight (E.A.) Limited v Benson K.Nguti [2016] eKLR**, the Supreme Court held:

The Employment Act, for example, introduced and prescribed minimum terms which the parties must consider as they contract. It established the concept of fair hearing and placed a duty on an employer to give reasons before dismissing or terminating the services of an employee. These developments are a stark departure from the traditional power of the employer to terminate or dismiss at will as demonstrated in the earlier decisions of the courts.

This position is reiterated in the case of **International Planned Parenthood Federation v Pamela Ebot Arrey Effiom [2016] KECA 429 (KLR)**, where the court held that under sections 43 and 45 of the Act, there is a significant change from the previous statutory regime, including the employer's power to terminate employment at will. The employee must

be provided with reasons for the termination of employment. These reasons must be genuine, valid, and reasonable. Furthermore, the due process of notice and hearing must be observed under section 41 of the Act.

Termination of employment is therefore unfair if there is no substantive justice or procedural fairness, or if the reasons given are based on invalid grounds, or if either the reason itself or the process of termination of employment is not fair. In the case of **Gateway Marine Services Limited v Muia (Employment and Labour Relations Appeal E010 of 2023) [2023] KEELRC** and the case of **Ibrahim v Reliance Hospital Limited [2023] KEELRC 2539 (KLR)**, the courts have held that the Act has introduced a paradigm shift towards the realm of fairness. Before termination of employment, even where the written contract allows for termination and payment in lieu of notice, procedural and substantive fairness remain mandatory.

The Constitution entrenched this shift under Article 41. Fair labour practice and fair administrative action are part of the Bill of Rights, making administrative decisions that affect employees, including those serving private entities such as the respondent, bound.

In **Agatha Bugosi Said v Vegpro Kenya Limited [2014] KEELRC 1154 (KLR)**, the court emphasised that sections 41, 43, and 45 of the Act are couched in mandatory terms. The employer cannot purport to rely on an employment contract outside the law.

In this case, the simple reliance on the termination clause of the employment contract for the 1st and 3rd claimants was devoid of any lawful or justified grounds. Such reliance is empty in the context of the Act, which protects workplace rights.

Effectively, employment was terminated unlawfully and unfairly.

There was no redundancy but a skewed application of contract terms without the due process that is mandatory under sections 41, 43 and 45 of the Act.

The 1st claimant testified that after her exit, the respondent hired other persons at a higher tier. This meant that her position was still available, and the respondent just wanted her out.

The 3rd claimant testified that, as a diligent employee, she secured her future by taking out a policy with her bank in the event of redundancy. She cannot benefit. This was not to be, because the respondent took the easy route and invoked the termination clause without complying with the mandatory provisions of sections 41, 43, and 45 of the Act.

Since employment has been terminated unfairly, the claims have merit. However, severance pay is not due as there was no redundancy.

The 1st claimant worked from 10 February 2021 to 30 November 2024. This is a period of 4 complete years. She would have continued in her employment had it not been for the respondent's unlawful conduct. There is no record produced that she was not performing her duties.

The court finds that an award of 10 months' gross salary is appropriate in this case. Total dues Ksh.575, 000 x 10 = Ksh. 5,750,000.

The 3rd claimant was employed from 23 September 2023 until 30 November 2024. She worked for a year and 2 months. She had done everything a diligent employee should to secure her future through a policy. Her employment was frustrated by the employer's unlawful conduct. No poor record has been submitted against the claimant.

The court finds that an award of 5 months' gross salary is an appropriate remedy in this case. Total due Ksh. 300,000 x 5 = Ksh.1, 500,000.

The claim for notice pay is addressed through the notices issued to the claimant on 25 October 2024.

The claim for leave days was equally addressed in the termination notice.

On the claim for costs, this is one unnecessary case, and the respondent applied fair labour practices. The needless invocation of the termination clause is a sheer abuse of fair labour practices. In this regard, the claimants are awarded costs.

Accordingly, judgment is hereby entered for the 1st and 3rd claimants against the respondent in the following terms;

- a) Employment terminated unfairly;**
- b) 1st claimant awarded compensation Ksh. 5,750,000.**
- c) 3rd claimant awarded compensation Ksh. 1,500,000.**
- d) Claimants are awarded costs.**

Delivered in open court at Mombasa, this 30th day of October 2025.

M. MBARŪ
JUDGE

In the presence of:

Court Assistant: Japhet

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