



**Murungi v Daini & F & B Limited t/a Funky Monkey Ventures and Salty Squid
(Cause 12 of 2023) [2025] KEELRC 2865 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2865 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 12 OF 2023
K OCHARO, J
OCTOBER 16, 2025**

BETWEEN

MOUREEN MURUNGI CLAIMANT

AND

**DAINI & F & B LIMITED T/A FUNKY MONKEY VENTURES AND SALTY
SQUID RESPONDENT**

JUDGMENT

Introduction.

1. Through a Memorandum of Claim dated the 23rd February 2023, the claimant instituted this claim against the Respondent seeking the following reliefs;
 - a. A declaration that the dismissal of the Claimant from employment by the Respondent to terminate his employment amounted to constructive dismissal, and or illegal, and or unfair.
 - b. One month’s salary in lieu of notice.....KShs. 190,000.
 - c. Relocation costs..... KShs. 190,000
 - d. Damages for unjustified termination six months’ salaryKShs. 1,140 000.
 - e. 12 months’ salary in compensation for unfair termination..... KShs. 2, 280, 000.
 - f. Damages for failure to provide a safe work environment.....KShs. 1,140,000.
 - g. Costs of the suit.
 - h. Interest on[a], [b], [c], [d], [e], and [f] at the rate of 12% per annum from the date of filing this suit and on [g] from the date of this Judgment, till full payment.



2. The Memorandum of the Claim was filed contemporaneously with his witness statement and the list of documents he intended to rely on as documentary evidence to support his case.
3. Upon being served with the summons to enter appearance, the Respondent entered appearance and filed its Defence to the Claimant's statement dated 5th October 2023. In the Defence, the Respondent denied the Claimant's cause of action and her entitlement to the reliefs sought.
4. Subsequently, the Claimant, in accordance with the rules of procedure, filed a Reply to the Statement of Defence, reiterating the contents of the Statement of Claim, and denying a number of facts as contained in the Statement of Defence.
5. At the hearing of the parties' respective cases, the witness statements that they had filed were adopted as part of their evidence in chief and the documents were admitted as their documentary evidence.

The Claimant's case.

6. The Claimant stated that she first came into the employment of the Respondent by virtue of a letter of offer dated 7th October 2021 as a General Manager. Her term of employment began on December 1, 2021.
7. The Claimant further stated that she was engaged to work in two facilities operated by the Respondent, namely Salty Squid and Funky Monkey.
8. Her starting salary was KShs—180,000 net of taxes. The salary was later increased to KShs—190,000 net of taxes as of the date of separation.
9. During her tenure, she diligently performed her duties and had no workplace disciplinary issues. At all material times, she received positive reviews from the Respondent's customers, which benefited the Respondent.
10. On or about 19th November 2022, a customer visited the Funky Monkey establishment for a meal. The customer demanded a discount. Although the Respondent had a discount policy, it was conditional. The customer needed to have a discount card and be present in the premises. The customer failed to produce the card, and therefore, he was not granted the discount.
11. Her attempts to explain to the customer that the grant of the discount was not possible, as the ETR had been issued and the bill closed, attracted hostility, aggression, and verbal assault from the customer's husband. Surprisingly, the Respondent asked her to apologise to the customer.
12. The Respondent failed to take any action to protect her, notwithstanding that her decision and action were informed by its own policy.
13. A meeting was scheduled to discuss the incident; however, the Respondent unilaterally cancelled the same without any notice to her. Thereafter, she was compelled to attend a disciplinary process. This action by the Respondent was an infringement of her dignity. It also caused her to lose the respect of her colleagues.
14. A few days after the incident, the Respondent made the work environment for her toxic and unbearable by harassing her with false accusations. This compelled her to submit her three-month resignation notice.
15. The Respondent proceeded to unlawfully and without justifiable cause dismiss her from employment by its letter dated 7th December 2022. The letter referred to a disciplinary meeting on 5th December



2022, which was not a proper disciplinary meeting in accordance with the prescripts of Section 41 of the *Employment Act*.

16. After the separation and despite demands, the Respondent refused and or neglected to admit liability and compensate her.
17. Cross-examined by Counsel for the Respondent, the Claimant stated that her letter of offer was from Salty Squid and her employment contract from Diani F and B Limited. Therefore, she was employed by both companies.
18. Her tenure commenced on 1st December 2021. At that point, she started working at Salty Squid.
19. During the negotiation of employment terms, she proposed via her email dated 15th November 2021 that she be engaged as a consultant. However, they did not respond to her proposal. Ultimately, they did not engage her as a consultant.
20. She also proposed that they deduct withholding tax if they were to take her in as a consultant. They brought her on as an employee.
21. Per the certificate tendered in evidence issued by Salty Squid, they did withhold 5% tax. Her pay was not subject to any other statutory deductions.
22. She testified that via an email dated 6th December 2022, she resigned from her employment. After writing the email, the Respondent issued her a summary dismissal letter on 7th December 2022.
23. Before writing the resignation email, the Respondent had invited her to a meeting scheduled for 7th December 2022, to discuss an issue raised by a client. However, she resigned a day before the planned date.
24. She reiterated that she was forced to resign because the work environment was unfavourable. Her employer, the Respondent, failed to offer her protection. The issue of protection was not on the agenda for the meeting scheduled for 7th December 2022. The person whom she wanted protection against was the Respondent's supplier. He was not a member of the Respondent company.
25. She had promised to be at work on 7th December 2022. She had been invited to attend a disciplinary hearing that day through an invitation letter.
26. She offered her resignation, but the Respondent turned around and dismissed her.
27. In her evidence under re-examination, the Claimant testified that pursuant to the terms of the contract of employment, her contract of employment was in nature permanent and pensionable.
28. Referring to the WhatsApp excerpts, the other party suggested a meeting for 7th December 2022 and clearly stated that it would not be a disciplinary meeting. It was to address her email of resignation. She attended the meeting but was given a dismissal letter dated 7th December 2022.
29. The employment contract referred to her as an employee.
30. The Contract of employment listed Funky Monkey Ventures as the employer. The enterprises were sister companies. She worked for both of them. The people she reported to were the same.
31. Her resignation was never accepted. On 7th December 2022, she reported for work as scheduled in the morning. Around 9:00 a.m., the Director arrived, handed her a summary dismissal letter, and asked her to leave the premises.



32. At the time of receiving the letter of offer, she was residing in Nairobi. The employer company was operating in Diani. She was compelled to relocate to Diani with her family, which is why she claimed a relocation allowance.
33. Between September and December 2022, her work environment became toxic. The Director had promised to call the customer and his wife so that they could render an apology to her. Inexplicably, he went to talk to them alone without involving her. The meeting, which was scheduled for that purpose, was unilaterally cancelled. The meeting did not take place. Instead, later, it was demanded that she makes an apology.
34. Despite this, she called and requested for a meeting with the clients, but they said they were out of town.
35. Despite these circumstances, the Respondent proceeded to initiate disciplinary proceedings against her, which led her to decide to resign. She did not want to leave the Respondents abruptly, as it was a peak period for the hotel industry. This is why she gave a three months' notice.

The Respondent's case.

36. The Respondent presented three witnesses, Hal McRitchie Pratt [RW1], Sharon Ayuma Anyona [RW2], and Karl Salzmann [RW3] to testify on its behalf in the defence against the Claimant's case.
37. RW 1, the Respondent's Director, adopted his witness statement dated 5th October as his evidence in chief. He testified that he is one of the Directors of Salty Squid Limited and Diani F&B Limited, trading as Funky Monkey Ventures.
38. He stated that at all material times to this suit, Salty Squid and Diani F&B Limited t/a Funky Monkey Ventures were two separate business entities owned by the same directors, namely Oliver Prett and himself. They operated separately.
39. The Claimant started working with Salty Squid Limited on 1st December 2021 vide the letter of appointment from them dated 7th October 2021 with a salary of KShs. 180,000, where after they could pay her withholding tax at a 5% rate, as per her own wishes, through her email dated 15th November 2021, requesting them to engage her as an independent consultant and pay her withholding tax.
40. The witness asserted that the Directors of the two companies informed the Claimant that they would offer her a job at Funky Monkey Limited, and that since the same was under construction, she would join Salty Squid on an interim basis to learn how their systems worked. Upon completion of construction, they would offer her the position of a manager at Funky Monkey Limited.
41. The Claimant accepted the offer, which culminated in the signing of the contract with Diani F&A t/a Funky Monkey Ventures on 1st June 2022, which saw her cease all her duties and responsibilities at Salty Squid Limited and move to Diani F&B Limited.
42. With the signing of the contract with Diani F&B Limited, the Claimant was entitled to a consultancy fee of KShs—190,000 and withholding tax calculated at the rate of 5%.
43. The witness further contended that, effective 1st June 2022, the Claimant never at any point went back to work at Salty Squid, nor did she work at both establishments at the same time.
44. The Respondents did not at any point commit to covering the Claimant's relocation costs. The Claimant, having successfully accepted a position at Salty Squid, requested a loan from the Company to facilitate her relocation, understanding that it would later be repaid by her, which she did.



45. He further stated that on different occasions, they received complaints from their patrons and staff about the Claimant's conduct and the act of bringing their business to disrepute. This saw the Claimant to be warned over the said conduct by the Directors.
46. When the incident of 19th November 2022 was brought to their attention, they sought to do internal investigations to establish where the problem was. The Claimant refused to attend work or a meeting to shed light on what had happened. Instead, she sent a resignation email through the Salty Squid Limited email address.
47. The email was dated 6th December 2022. She intimated that she would work until 6th March 2023 and proceeded to thank the Respondents for the opportunities they had granted her for professional and personal development.
48. He argued that if the Claimant was any honest in her sentiment of working in a toxic environment, she ought not have resigned of her own volition and or given three months' notice, but ought to have made a complaint about her working conditions. She never made any complaint, whether formal or otherwise.
49. The incident that occurred was between the Claimant and a 3rd Party. If she felt aggrieved by the actions of the third party, she ought to have preferred criminal charges against the third party.
50. Cross-examined by Counsel for the Claimant, the witness testified that the Claimant worked for both Companies but at different times.
51. The 2nd Respondent terminated her employment on account of gross misconduct. Her service was anchored on a contract of employment. Her monthly salary was KShs. 190,000. The Respondent was to pay the tax.
52. On termination of her employment, he gave her a letter of recommendation. The recommendation letter dated 13th December 2022 is on the letterhead of the two companies.
53. In his evidence during re-examination, he stated that they were paying withholding tax because what the Claimant was offering was a consultancy service. She was engaged as a Consulting Manager.
54. She was invited to a disciplinary hearing. She failed to turn up, but instead issued a resignation notice.
55. RW2 adopted her witness statement dated 24th December 2023 as her evidence in chief. She stated that prior to the Claimant's dismissal, she had worked with her for eight months as an assistant manager. The Claimant was directly answerable to Director, Alexander Dunlop.
56. To her knowledge, Karl Salzman and his wife Judith Chao owned WINE & MORE, the business neighbouring Diani F & B Limited t/a Funky Monkey.
57. On the 19th November 2022, the Claimant was on the morning shift, and she was on the afternoon shift. When she reported to work for her shift at around 2:00 pm, she found the Claimant working on her laptop next to two couples.
58. The Claimant later went to the table where Karl Salzman and his wife were seated. She sought to know how they were doing, but the lady did not respond, so the Claimant called her out to know what the matter was. It was then that the lady requested her bill, and the other couple did as well. The lady [wife to Karl] insisted on taking care of the two bills. She further requested that the bills be taken to their premises.



59. The waiter in charge took the bills to their premises, where Karl's manager paid the bill. Soon after, the lady realised that their bill had not been discounted. She thereafter sent their manager to find out why the discount had not been factored into their bill. The waiter who had served them raised the issue with the Claimant, who later stormed out of the restaurant and went to Wine & More, where he started shouting.
60. She asserted that the customer did not disrespect the Claimant in any way to warrant the Claimant's behaviour.
61. Cross-examined by Counsel for the Claimant, the witness testified that at the material time, she was not the one serving the customers. She was not the cashier either. She was not at all involved in the billing.
62. The incident happened at Funkey Monkey and escalated to Wine and More premises. She didn't leave Funkey Monkey premises.
63. RW3 stated that by virtue of being immediate neighbours in their business ventures, his wife and he are frequent customers of the Respondent's restaurant. Furthermore, due to a longstanding good relationship with the Directors of Diani F&B, they were issued a discount card.
64. He contended that as a matter of practice, all the waiters and managers of the restaurant knew that daily, his wife and he would open a tab, whereby they would take their meals daily. Upon closing the tab, the waiter who served them last takes the discounted bill to their manager at their business premises to be settled.
65. It was customary for the bill to be discounted first before being handed over to their manager.
66. On 19th November 2022, his wife, he and two other friends had lunch at the restaurant after which they requested the waiter to drop the bill at their place for the manager to settle.
67. While still having coffee at the restaurant, the waiter delivered the bill to their premises, and their manager settled the same in full. Later, his wife realised that the bill had not been discounted. As a result, his wife asked the manager to go to the restaurant to follow up and establish whether the bill would be discounted.
68. Soon after, the Claimant went to the witness's premises and started shouting that it was not the waiter's fault that the bill had not been discounted. That it was their fault that it wasn't.
69. He asserted that she disrespected them by shouting in the presence of other customers and employees over a matter that they would have solved privately.
70. He called the Claimant into the restaurant, away from his customers and employees and sought to know why she was shouting. She responded to him rudely and walked off. As she was walking away, he informed her that if she didn't resolve the matter, he would bring it up with the director, Olive Prevett.
71. He immediately called the director and left him to deal.
72. Cross-examined by Counsel for the Claimant, the witness testified that when the Claimant was shouting, he and his wife were sitting at the Funky Monkey restaurant.
73. It is his wife who narrated to him what had happened.

Analysis and Determination

74. Having read the pleadings, evidence on record and the submissions by the counsels, the issues for determination are:



- a. What was the nature of the Claimant's engagement with the Respondent's?
- b. If it was a contract of service, was the summary dismissal of the Claimant fair?
- c. Is the Claimant entitled to the reliefs sought?

What was the nature of the Claimant's engagement with the Respondents?

75. Counsel for the Respondent argued that initially, the Claimant joined Funky Monkey as an employee in a managerial role. However, she voluntarily chose to abandon her employee status to be retained as a consultant, thereby becoming an independent contractor. She made this change through her email dated 15th November 2021. She preferred not to pay PAYE to the tax authorities; instead, the Respondent would handle withholding tax. As an independent contractor [Consultant], she could not legally claim unfair dismissal or seek related compensation.
76. The Claimant's Counsel submitted that, considering the material placed before this Court, the letter of offer dated 7th October 2021 by Salty Squid, and the letter of appointment dated 1st June 2022 by Diani F & B Limited, there is no suggestion that the Claimant was at any point engaged as a Consultant. All indications are that she was an employee on permanent and pensionable terms.
77. Undoubtedly, the Respondent bases their position on the Claimant's email dated 15th November 2021. The Claimant argued that the email contained nothing but her proposal during the negotiation process for the terms and conditions of her employment contract.
78. Indeed, when one keenly looks at the email discussions between the Claimant and Prevett, it is explicit that they were nothing but exchanges during a negotiation process. The email correspondence preceded the contract of employment dated 1st June 2022. Clause 1 of the contract addressed the tenure of employment, stating, "Your employment will be on a permanent basis, with effect from 1st June 2022." Apparently, the parties to the contract didn't settle on Consultancy as the nature of the Claimant's engagement with the Respondent. In light of this explicit stipulation of the contract, and considering that the contract post-dates the email correspondence, it is unreasonable for the Respondent to attempt to push the narrative that the Claimant abandoned her employment status as an employee to that of a consultant.
79. The concept of summary dismissal, which flows from the *Employment Act*, does not apply to independent contractors. The Respondent, having summarily dismissed the Claimant under a summary dismissal letter, which even mentions a disciplinary hearing, cannot turn around and assert that the Claimant was not an employee engaged under a contract of service.
80. I return that the Claimant was an employee engaged on a permanent basis, and as such, who at all material times would enjoy the rights and protections contemplated under the *Employment Act*.

Was the Summary dismissal of the Claimant unfair?

81. By a letter dated 7th December 2022, on the letterhead of Funky Monkey but signed by Hal McRitchie Pratt and Oliver Prevatt as directors of Diani F& B Limited, the Claimant was summarily dismissed from her employment. In the letter, it was stated that the Claimant was being dismissed due to gross misconduct, which included conduct that brought the business into disrepute and insubordination.
82. For a summary dismissal against an employee to pass the fairness test, it must be shown by the employer that the process leading to the decision to dismiss the employee summarily was procedurally fair, and the decision substantively justified. In a dispute regarding the termination of an employee's employment or summary dismissal of an employee, the duty lies on the employer to prove both



procedural and substantive fairness. See also [Pius Machafu Isindu vs- Lavington Security Guards Limited](#) [2017] eKLR.

83. Section 41 of the [Employment Act](#) sets out a procedure that an employer contemplating terminating an employee's employment for misconduct, poor performance, or physical incapacity must adhere to. The procedure comprises three components: notification, hearing, and consideration. The employer must notify the affected employee in a language they understand, the intention and the grounds thereof. The employer shall provide the employee with an adequate opportunity to prepare and make a representation on the grounds. Conjoined with this right to a hearing is the right of accompaniment. The employee should be allowed to be accompanied to the hearing by a colleague of his own choice or a trade union representative [if he or she is a member of a trade union]. Lastly, before making a final decision on the matter, the employer must consider the representations made by the employee and the accompanying person.
84. It is trite law now that fairness in disciplinary processes against employees is a Constitutional imperative. The tenets of fair administrative action, as espoused in Article 47 of the [Constitution](#), and the right to a fair hearing, as outlined in Article 50, must be adhered to.
85. The Claimant contended that the Respondent terminated her employment without adherence to the tenets of procedural fairness. The Respondent purported to unfairly base the summary dismissal on alleged disciplinary proceedings held on 5th December 2022, yet she was never invited to such a meeting, and no such meeting took place.
86. True, in the summary dismissal letter, the Respondent stated;

“..... On Monday, a disciplinary invitation letter was issued -you left mid-shift and refused to return to work if the disciplinary meeting was to go ahead.”
87. The Respondent did not place forth in evidence the invitation letter.
88. I note that the Respondent's Counsel submits that there was a disciplinary meeting scheduled for 7th December 2022, which the Claimant refused to attend. From the WhatsApp excerpts presented as evidence by the Claimant, and which I hold were not challenged or denied by the Respondents, it is clear that her resignation email sparked a conversation between her and the Respondent.
89. Out of the conversation, it is clear that there was a meeting of the mind that she was to serve the notice period of three months, and that she was to report to work the following day. At one point, Hal Salty Squid wrote,

“Let's still meet at the time stated tomorrow. Not as a disciplinary. Will read through your resignation with.....”

The Claimant then responded, “Cool, I will be there”
90. In my view, there can be no doubt that no disciplinary hearing was scheduled for 7th December 2022. It was procedurally unfair for the Respondent to summarily dismiss the Claimant without first notifying her of their intention to take adverse action, giving her an opportunity to defend herself, and considering her defence before deciding to dismiss her summarily. Furthermore, the manner of the summary dismissal contravened the principles of natural justice, fair administrative action as outlined under Article 47 of the [Constitution](#), and the provisions of the [Fair Administrative Action Act](#), as well as the right to a fair hearing under Article 50 of the [Constitution](#).



91. I am convinced that the Claimant was at the place of work on 7th December 2022, to open the business as had been agreed via the WhatsApp conversation on 6th December 2022. I find that the Respondents were not candid on this matter.
92. I now consider whether the summary dismissal was substantively justified. In a dispute over the summary dismissal of an employee, as in this case, the law requires the employer to prove the reasons for the termination [section 43 of the *Employment Act*] and also that the termination was based on a valid and fair reason [section 45[2]]. These provisions relate to substantive justification. The Respondent claimed that the Claimant was dismissed due to gross misconduct and referred to the incident of 19th November 2022.
93. I have carefully examined the evidence of the three witnesses who testified in the Respondent's case. I hold a clear view that their testimonies are materially contradictory regarding how the alleged incident occurred and where. This renders their evidence, in the view of this Court, untrustworthy.
94. Considering the material presented before this Court regarding how the incident occurred, I am convinced that the Claimant was not aggressive towards anyone; she did not disrespect any customer. She angered a customer simply by insisting on following her employer's operational practice. To dismiss her summarily without giving her a hearing, in the circumstances, cannot be considered fair or just or said to be based on a valid or fair reason. Therefore, I find that the dismissal was substantively unfair.
95. Before I conclude this issue, it is essential to answer this question. Can an employer fairly dismiss an employee who is serving their notice period? In my view, an employee who has issued a termination notice and is serving the notice period remains an employee until the end of that period and is subject to the employer's managerial prerogative. Their employment can be fairly terminated during the notice period as long as procedural and substantive fairness are adhered to.
96. I note that the Claimant pleaded, in the alternative, that she was compelled to issue a resignation letter due to the conduct of the Respondent, and that such conduct amounted to constructive dismissal. Constructive dismissal occurs when an employee resigns or terminates the contract because the workplace environment becomes unbearable. In my view, issuing a three months' notice, as the Claimant did, is incompatible with the standard of intolerability required for a claim of constructive dismissal. This undermines the claim, suggesting that the environment was tolerable or that the employee acquiesced. Had the Claimant not pleaded constructive dismissal as an alternative to the claim of unfair termination for lack of procedural and substantive fairness, his claim could have wholly failed on this ground.

Of the Reliefs

97. The Claimant sought, among other reliefs, a compensatory award under section 49[1] of the *Employment Act*, equivalent to twelve months' gross salary. It is important to emphasise that the authority to grant this relief is discretionary. It is exercised based on the circumstances of each case. I have carefully considered how the Claimant was summarily dismissed, which did not conform to the principles of substantive fairness, procedural fairness, and fair administrative action, as well as her length of service and her offer to serve a three-month notice period, and conclude that she is entitled to the relief, to an extent of seven months' gross salary.
98. I see no basis for awarding damages under the heading "failure to provide safe work environment". The Claimant has not presented sufficient evidence to support the claim.



99. I also decline to grant the relief sought as “Damages for unjustified termination-6 months’ salary.” In my view, it has no basis in law. It is, in fact, a duplication of the relief sought under section 49[1] [c] of the *Employment Act*, which I have granted hereinabove.
100. Clause 9 of the employment contract stipulated a one-month notice period for termination. Clearly, the notice was not given. Having established that the summary dismissal was unfair, I see no reason to deny the Claimant notice pay equivalent to one month’s salary in lieu of notice.
101. In the upshot, Judgment is hereby entered against the Respondent Diani F&B Limited for the Claimant in the following terms;
- a. A declaration that the summary dismissal against the Claimant was both procedurally and substantively unfair and wrongful.
 - b. Compensation pursuant to section 49[1][c] of the *Employment Act*, KShs. 1,330,000.
 - c. One month’s salary in lieu of notice, KShs. 190,000.
 - d. Interest on the sums awarded above at court rates from the date of this judgment till full payment.
 - e. Costs of this suit.

READ, SIGNED AND DELIVERED THIS 16TH OCTOBER 2025.

OCHARO KEBIRA

JUDGE

