



**Nyali Academy Services Limited v Wanjala (Cause E083 of 2022)
[2025] KEELRC 3050 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3050 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E083 OF 2022
K OCHARO, J
OCTOBER 30, 2025**

BETWEEN

NYALI ACADEMY SERVICES LIMITED CLAIMANT

AND

RAJAB WANJALA RESPONDENT

JUDGMENT

1. Through a Statement of Claim dated 17th May 2016 and further amended on the 24th October 2022, the Claimant instituted the instant suit against the Respondent, seeking the following reliefs:
 - a. A declaration that the Respondent wrongfully terminated his contract of employment.
 - b. Three months' salary in lieu of notice, KShs. 390,000.
 - c. Costs of the suit.
 - d. Interest on [a] and [b] above at court rates from the date of this claim till payment in full.
2. The Statement of Claim was filed alongside the Claimant's Witness Statement and the documents they intended to rely on as documentary evidence in support of the claim.
3. Upon being served with the summons to enter an appearance, the Respondent entered appearance and filed its Memorandum of reply on 21st November 2022, denying the Claimant's claim and entitlement to the reliefs sought, in toto. The Statement of Response was filed concurrently with his witness statement.
4. After hearing the parties on their respective cases, this Court directed them to file final written submissions. They obliged the directions. Their submissions are on record.



The Claimant's case

5. The Claimant first employed the Respondent as an Accounts and Business Studies teacher under a fixed-term contract of employment dated 9th March 2021, which commenced on 23rd March 2021 and was set to expire on 31st August 2021.
6. Subsequently, the parties entered into a further fixed-term employment contract dated 17th May 2021, which was to run from 1st September 2021 to 30th June 2022, thereby renewing the Respondent's engagement.
7. On 1st September 2021, the Respondent suddenly resigned without prior notice, blatantly breaching the employment contract. This caused financial loss and significant disruption to the Claimant's academic operations and schedule.

The Respondent's case

8. The Respondent contended that although he entered into the employment agreement dated 17th May 2021, he did so under undue influence and/or coercion, as the Claimant had made the signing a prerequisite for the receipt of his remuneration for July and August 2021. Consequently, he asserts that he is not bound by the terms and conditions stipulated therein.
9. The Respondent further argued that, despite having executed the contract, he was not legally bound by its terms, as the contractual period had not begun at the time he submitted his resignation.
10. Cross-examined by counsel for the claimant, the respondent testified that he executed the second contract although he did not agree with its terms. He sent the resignation email at 8:34 p.m. on 1st September 2021, by which time the contract period had commenced.
11. On 31st August 2024, he sent an email and a text message to the Deputy Head Master, seeking payment of his August 2024. He was subsequently paid the salary.
12. The Respondent admitted that he did not issue any termination notice for the 2nd Contract, for as far as he is concerned, he did not serve under it. The contract did not commence.
13. In his evidence under re-examination, he stated that he signed the contract under circumstances of coercion. He signed it to avoid forfeiture of his remuneration. By making the signing of the 2nd contract a precondition for receiving his salary, the Claimant effectively varied the terms of the 1st contract unilaterally, without consulting him.

The Claimant's Submissions.

14. The Claimant filed his submissions on 23rd March 2023, distilling two issues for determination, thus:
 - i. Whether the Respondent was coerced into signing the second contract.
 - ii. Whether the Respondent breached the renewed contract of employment.
15. On the first issue, the Claimant's counsel submitted that the Respondent's allegation that he was coerced into signing the second contract for him to secure his salary for July and August 2021. The assertion is clause 7[b] of the 2nd contract of employment. The clause not read in isolation of the other subclauses, and particularly 7[a] and [c], would reveal that the remuneration mentioned thereunder had nothing to do with the 1st contract.



16. It was further argued that the Respondent's claim that payment of his salary for July and August 2021 depended on signing the second contract is unjustified. Clause 7[b] of the second contract explicitly refers to the payment of salary for July and August 2022, not 2021, and only after the renewal of the second contract. Consequently, the allegation of coercion is unfounded.
17. The contents of the Respondent's email dated 1st September 2021, which led to the termination of the 2nd contract, dispel the allegation that he signed the contract under coercion. He explicitly stated in the email that he was withdrawing from the contract due to challenging family issues and his parents' health. Because of this, he was persuaded to remain upcountry.
18. Furthermore, in the same email, the Respondent proceeds to suggest his university classmate as a replacement. Such conduct is inconsistent with that of an individual who claims to be coerced or aggrieved.
19. By reason of these premises, it becomes clear that the 2nd contract was entered into voluntarily. The terms and obligations therein bound the parties. This Court can only give effect to the terms of the contract. To support this point, Counsel placed reliance on the case of Coastal Bottlers Limited v Kimathi Mithika [2018] KECA 523 [KLR].
20. On whether the Respondent breached the terms of the renewed contract of employment, Counsel submitted that clause[6[ii] of the contract provided;

“ Either party may terminate the contract without the necessity of explanation by giving a term's written notice to the other party commencing on the first day of any term or giving three months' salary in lieu of noticeTermination of the contract should coincide with the end of a term.”
21. Undeniably, the Respondent unilaterally terminated the 2nd contract without issuing the contractual notice or making payment in lieu thereof. This constituted a fundamental breach of the contract, and therefore, the Claimant is entitled to all the reliefs sought in the statement of claim. To support these submissions, Counsel cited the case of Mtana v Sopa Lodge [2024] KEELRC 1125 [KLR], which quoted with approval the South African Labour Appeal Court in the case of Wyeth SA [Pty] Ltd v Manqele and others [JA 50/03] [2005] ZALAC1.
22. The Claimant further placed reliance on the case of Nyali Academic Services Limited v Caroline Opondo [2019] eKLR

The Respondent's Submissions.

23. The Respondent's Counsel filed the written submissions on the 9th of May 2025, identifying three issues for determination, thus;
 - i. Whether an employer can unilaterally impose contracts or unilaterally vary employment terms.
 - ii. Whether the second contract was valid or enforceable.
 - iii. Whether the Claimant is entitled to damages or any remedy.
24. The Respondent's Counsel argued that the Claimant unilaterally imposed a new contract on the Respondent. He did not participate in negotiating the terms of the new contract. He did not freely consent to those terms. The unilateral imposition of the new contract and the coercion involved constituted unfair labour practices under Article 41 of *the Constitution*. To support this, Counsel cited the case of Gatumu v Kenya Breweries & 3 others [2024] KESC 52[KLR].



25. On the second issue, Counsel submitted that the Claimant's acts of compelling the Respondent to sign a new contract on 17th May 2021, while he was under a valid fixed-term contract, amounted to coercion. By tying the payment of his salary to the signing of the new contract, the Claimant breached the stipulations of Article 41 of *the Constitution* of Kenya, 2010. Counsel cited the case of Housing Finance Co. of Kenya v Gilbert Kibe Njuguna [HCCC NO. 1601 OF 1999].
26. The Claimant's unilateral imposition and threat to withhold wages rendered the contract voidable under Section 10[1] of the *Employment Act*.
27. On the third issue, Counsel submitted that the Respondent's employment was entirely governed by the fixed-term contract that ran from 23rd March 2021 to August 2021. Upon the contract's expiry, he was duly discharged from all obligations under it. He was not required to issue any notice. To support this point, he relied on the case of Samuel Chacha Mwita v Kenya Medical Research Institute [2014] eKLR.
28. The Claimant's demand for KShs. 390,000 is an attempt to enrich itself through an unconscionable contract unjustly. Relying on the case of David Wanjau Muhoro v Ol Pejeta Ranching Limited [2014] eKLR, Counsel submitted that an employer cannot benefit from exploiting an employee's vulnerability or disregarding protections under the *Employment Act*. Allowing the instant claim would be tantamount to rewarding unfair labour practices.
29. The Respondent did not breach any contractual obligations. Consequently, the reliefs sought by the Claimant are not available to them.

Analysis and determination.

30. I have carefully considered the pleadings, evidence and submissions by the parties herein, and the following issues emerge for determination;
 - a. Was the contract of employment dated 17th May 2021, freely entered into by the parties, and enforceable?
 - b. Was the Respondent under an obligation to issue a termination notice, or make payment in lieu, to the Claimant?
 - c. Is the Claimant entitled to the reliefs sought?
31. There is no dispute that, while the contract dated 9th March 2021, which commenced on 23rd March 2021 and expired on 31st August 2021, was in effect, the Claimant and the Respondent executed an additional employment contract, dated 17th May 2021. This subsequent contract specified a commencement date of 1st September 2021 and an expiration date of 30th June 2022. Clearly, this second contract pertained to a future period and was not related to the timeframe covered by the initial employment contract.
32. I have carefully reviewed the particulars outlined in the second employment contract. They align with those specified in section 10 of the *Employment Act*. Nothing within it explicitly or implicitly affected the contractual terms under which the Respondent was serving at that time.
33. The reason for the preparation and execution of the second contract, despite the first contract having nearly two and a half months before expiration, was explained by the Respondent's witness as a standard practice within international schools. In my opinion, given that school management must ensure the orderly operation of the institution and the continuous provision of services to students, it is logical to prioritise the certainty of available human resources at all times.



34. The fact that the 2nd contract was prepared and executed at the time it was, was, in my view, neither contractually nor legally, offensive. The Respondent's assertion that it was, is totally unfounded.
35. The Respondent asserted that the second contract, which he does not deny signing, had the effect of unilaterally impacting the first contract to his disadvantage. I would not approach the matter in this manner. The assertion stems from a deliberate misinterpretation and selective reading of clause 7 of the second contract. The clause read;

“Renewal of Contract

- a. Renewal or extension of this contract beyond the Term shall be at the sole and absolute discretion of the Company, and the Company shall not be under any obligation to give reasons for the exercise of such discretion, nor shall the Company be required to give any notice to the Employee in the event that the Company decides not to renew or extend this contract.
 - b. Should the contract be renewed, you will be paid your salary for July and August 2022 at the current rate.
 - c. The terms of service for the next contract, when renewed, will be effective from the commencement of the Academic year on 1st September 2022.”
36. Any individual analysing the clause in its entirety would recognise that the clause is entirely related to the second contract and a third contract, if the second contract were to be renewed upon its expiration. Subclause [b] refers to months outside the period of the first contract. Undoubtedly, this subclause made a gratuitous promise to the Respondent. It guaranteed uninterrupted remuneration during the interface period between the lapse of the second contract and the third contract, if the Claimant exercised their discretion to renew the second one.
37. To the extent that the Respondent deliberately misapprehended and partially read the stipulations, thereby gaining unwarranted confidence and comfort to raise a defence of false coercion and unilateral modifications to the terms of the initial contract, I find his assertion, reliance on section 10[1] of the *Employment Act*, the cited authorities, and submissions to be irrelevant. The parties executed the second contract voluntarily, and it is enforceable.
38. Having established that the contract was enforceable, the incontrovertible conclusion is that the Respondent was subject to the termination clause [6] of the contract. It is unequivocal that he resigned after the second contract had become effective; at all material times, he was obligated to provide three months' notice or make payment in lieu thereof. The parties are bound by the terms of the contract they executed. This Court is not empowered to amend or rewrite the contract on their behalf.
39. By reason of the foregoing, I find the Respondent liable under the second contract to pay three months' salary in lieu of notice.
40. Noting the reasons given in the resignation email, which the Claimant did not discount, and the fact that the Respondent resigned on the commencement date of the agreement, I hereby consider these exceptional circumstances and direct that each party shall bear its own costs. Interest on the awarded sum shall accrue from the date of this Judgment till full payment.

READ, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

OCHARO KEBIRA



JUDGE.

