



**Ochieng v Africa Mission Andernach & another (Cause E036 of 2025)
[2025] KEELRC 2857 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2857 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E036 OF 2025
JK GAKERI, J
OCTOBER 23, 2025**

BETWEEN

VICTOR ONYANGO OCHIENG CLAIMANT

AND

AFRICA MISSION ANDERNACH 1ST RESPONDENT

AIC HOUSE OF HOPE 2ND RESPONDENT

JUDGMENT

1. The claimant commenced the instant suit by a Memorandum of Claim dated 13th May, 2025 alleging that termination of his employment was unfair.
2. The claimant's case is that he was employed by the 1st respondent as a social worker from 1st January, 2024 at Kshs.30,000.00 per month which was renewed from 1st January, 2024 and was appointed Acting Manager of the Orphanage from 15th November, 2023 for a period of 3 years and the previous holder of the position was earning Kshs.300,000.00 per month.
3. That the parties had not agreed on his salary as Acting Manager and the respondents did not respond to the issue and the claimant was not paid the salary as a social worker and Acting Manager from date of appointment to 2nd April, 2024, when his employment was summarily terminated by the respondents.

The claimant prays for:

- a. Declaration that the respondents violated his rights to fair labour practices under Article 41 of *the constitution*.
- b. Declaration that the claimant had two distinct contracts over different periods of time and salaries.



- c. An Order of payment of salaries and arrears for the entire period of the contracts 3 years at Kshs.150,000.00 from December 2023 to November 2026 and 1 year at Kshs.30,000.00 from January 2024 to 31st December, 2024.
- d. Damages for illegal termination.
- e. Costs of the claim.
- f. Any other Orders that the court deems fit and just to grant.

Respondent's case

4. By their response to the memorandum of claim, the respondents denied that the claimant was their employee as he was recruited as a volunteer by the 2nd respondent and was paid a stipend/honoraria of Kshs.30,000.00 only . The denied having terminated the claimant's employment summarily and averred that they had reasons to do so including performance and breach of organizational policies among others.
5. The respondent denied having appointed the claimant as Acting Manager for 3 years as he was a social worker up to 2nd April, 2024 when his service was legally terminated.
6. It is the respondents' case that the previous holder of the Office of Manager of the Orphanage earned Kshs.300,000.00 per month.
7. The respondents maintained that they had a reason to terminate the claimant's volunteer services and prayed for dismissal of the claimant's suit.
8. On cross examination, the claimant testified that he was neither the author nor recipient of the letter dated 15th November, 2023 and there was no accompanying letter and the letter did not the payable salary.
9. Although the claimant alleged that he had an appointment letter, he provided no other letter as evidence of his appointment and the agreement dated 1st January, 2024 identified him as a social worker.
10. The witness confirmed that the position of Acting Manager had no agreed salary and the job description was verbal and no payment was made for the position and had no evidence of having raised the issue with the respondents.
11. The claimant admitted having been invited for a meeting on 4th April, 2024 but did not inquire about the reasons for termination of his engagement.
12. The claimant testified that he had a clean record and had no evidence of malice, vendetta or favouritism by the respondents.
13. Mr. Keving Krahn, RWI confirmed that the letter dated 2nd April, 2024 invited the claimant for a meeting with the Management Board and it was served at 9:41am for a meeting on 4th April, 2024 and the letter of termination was dated 2nd April, 2024. That the claimant had a chance to defend himself during termination.
14. The witness testified that he was a volunteer worker and was paid a stipend and was the former Manager of the House of Hope, with no bank account of his own and had no other job in Kenya since 2020 and had a family.
15. The witness admitted having written the letter dated 15th December, 2023 to the National Council for Children Services confirming that the claimant had been appointed Acting Manager of the Orphanage



not a volunteer and he authored the letter of appointment as it was a requirement for purposes of licensing of the Orphanage for which he previously was the Director and after the law changed in 2023 he became the Manager and the claimant Acting Manager.

16. That letter enabled the Orphanage obtain a license from May 2024 to May 2027 for 3 years and the Orphanage recruited a Manager in January 2024.

That the Manager supervised the Orphanage and social workers.

17. The witness denied that termination of the claimant's engagement was malicious.
18. The witness however refused to disclose the salary of the Manager of the Orphanage and denied earning a stipend of 2,000 Euros per month.
19. The witness confirmed that the claimant was the Acting manager of the Orphanage.

Claimant's submissions

20. Counsel submitted that the claimant earned a salary of Kshs.30,000.00 as a social worker and his employment was terminated by the respondent in contravention of the Employment Act as he was invited for a hearing after termination of employment and adduced no evidence of the reason(s) for the termination.
21. Counsel argued that the respondent terminated the claimant's employment because he insisted on being paid as the Acting Manager.
22. Reliance was placed on Magdalene M. Ngea v National Cereals & Produce Board [2015] eKLR which cited the sentiments in Anne Wino Misumi Gumbi v Youth Enterprises Development Fund Board [2018] eKLR on reasons for termination of employment as were those in Iyego Farmers' Co-operative Sacco v Kenya Union of Commercial Food and Allied Workers Civil Appeal No. 12 of 2015 and Elizabeth Washeke & 62 others v Airtel Networks Ltd [2013] eKLR and Standard Group Ltd v Jenny Lhesby [2018] eKLR on the mandatory nature of the procedure under Section 41 of the Employment Act.
23. Reliance was further placed on Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR on the essence of substantive justification and procedural fairness in termination of employment.
24. Relatedly, the decisions in Edah Cherono Maiywa v University of Nairobi Enterprises and Services [2020] eKLR and Silas Kaumbuthu Mbutura v Meru Central Diary Co-operative Union Ltd [2015] eKLR to urge that the claimant had acted as manager for a long time without confirmation.
25. Counsel also submitted on discrimination, which was not pleaded by the claimant.
26. On reliefs, counsel computed the claimant's entitlement as Kshs.210,000.00 for 8 months as social and Kshs.5,400,000 for 3 years as Acting Manager.

Respondent's submissions

27. As to whether there was an employment relationship between the parties, counsel submitted that the claimant was engaged as a volunteer and the agreement was unambiguous on that fact and was paid a monthly stipend.
28. Reliance was placed on Peter Mwangi v Board of Trustees Catholic Diocese of Nyeri [2020] eKLR, Peterson Ndungu & 5 others v Kenya Power & Lighting Co. Ltd 2014 eKLR on voluntary engagements as well as Kenya Union of voluntary and Charitable Organizations (KUEvACO) v



- Redeemed Gospel Church [2017] KEELRC 441(KLR), to urge that as confirmed by RWI all engagements were volunteer basis in accordance with the Organization's By Laws and it is a non-profit organization.
29. Concerning the claimant's appointment as Acting Manager, counsel submitted that the letters relied upon by the claimant dated 15th November, 2023, lacked the respondents signatures, had no remuneration and respondents were not privy to them. The respondent's witness admitting having authored the letters.
 30. Counsel urged that there was no written agreement for the appointment.
 31. It was further submitted that since the contract exceeded 3 months, it had to be in writing and the amount of Kshs.300,000.00 cited by the claimant was presumptive.
 32. Reliance was placed on Charles Mwangi Gitundu v Glorim Co. Ltd [2015] eKLR, where the court held that an appointment letter without remuneration details or signatures was not valid, as was the decision in Kwamboka v Symbio Health Care Ltd [2025] KEELRC 1721 (KLR), to urge the court to find that there was no contract for the claimant to act as Manager.
 33. On termination of the engagement, counsel submitted that it was lawful under the volunteer's contract terms which permitted termination for breaches such as poor performance and policy violations and the claimant was aware of the hearings on 1st and 2nd April, 2024 but failed to attend and dismissal followed and was paid Kshs.90.000 more than the 30 days notice.
 34. Counsel further submitted even if an employment relationship existed, the provisions of Section 45 of the *Employment Act* were complied with as the respondents had a reason(s) for termination of the claimant's employment and complied with the procedural requirements.
 35. Reliance was placed on Kenfreight (EA) Ltd v Benson K. Nguti (supra), Banking Insurance & Finance Union v Co-operative Bank of Kenya Ltd [2021] eKLR and Mary Wanjiku v Aga Khan University Hospital [2024] eKLR.
 36. Finally, on reliefs counsel submitted that none was merited for want of proof.

Analysis and determination

37. Save for the position of acting Manager of the Orphanage, the facts relating to the claimant's engagement as a Social Worker on a voluntary basis was largely uncontested and neither of the parties challenged the agreements on record effective 1st January, 2023.
38. Documentary evidence availed by the parties reveal that the claimant and the respondents entered into a volunteer Service Agreement for one (1) year from 1st January, 2023 to 31st December, 2023 which was subsequently renewed effective 1st January, 2024 and was slated to end on 31st December, 2024.
39. Under the first agreement the claimant's honoraria for services rendered was Kshs.29,700.00 per month subject to statutory deductions. Under the subsequent agreement, the monthly honoraria rose to Kshs.30,000.00. The agreements contained elaborate terms and conditions of engagement including termination of the engagement.
40. It is equally not in dispute that the respondents terminated the claimant's engagement vide letter dated 2nd April, 2024 allegedly for insults, threats and abuse of vulnerable children within the station, contrary to the respondent's policies and *Children Act*. That there were trust issues as well.
41. The termination of engagement was based on the voluntary Service Agreement and was immediate.



42. While the claimant pleaded and submitted that he was an employee of the respondents, the respondents pleaded and submitted that the claimant was a volunteer and no employment contract had been contemplated by the voluntary Service Agreements.
43. The 1st issue for determination is whether there was a contract of employment between the claimant and the respondents.
44. While the claimant pleaded and submitted that he was an employee of the respondents, the respondents maintained that there was a volunteer Service Agreement between the parties under which the claimant had agreed to render services to the respondents at a monthly honoraria or stipend.
45. Strangely, the claimant’s counsel did not explain or demonstrate how the voluntary Service Agreement constituted a contract of employment under Section 2 of the *Employment Act*, which defines a contract of service to mean:

“an agreement whether oral or in writing and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which part XI of the Act implies”.
46. Clearly for an employment relationship to exist the parties must have entered into an agreement under which the employer agrees to employ the employee who in turn agrees to serve as an employee.
47. Similarly, under Section 2 of the *Employment Act* employee means “a person employed for wages or a salary and includes an apprentice and indentured learner”.
48. This definition lays particular emphasis on the consideration that passes between the parties. There must be a salary or wage.
49. An employer on the other hand is defined as “any person public body, firm or corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager, or factor of such person, public body, firm, corporation or company.
50. These definitions are replicated in other legislation relating to employment.

Clearly, there must be a contract of service to employ an individual.
51. In the instant case, it is puzzling that the claimant claims to have been an employee of the respondents without disowning or discounting the volunteer Service Agreements he signed and were binding on him as well as the respondents.
52. The foregoing is fortified by the principles of common law which define a contract as a legally binding agreement made between two or more persons and one of the essential elements of a contract is intention to create a legal relationship. Both parties must manifest an intention to create a legally binding agreement failing which the purported agreement is not legally enforceable.
53. In this case, the parties entered into a volunteer Service Agreement and intended it to remain as such as neither party was adduced evidence to prove otherwise.
54. The respondent’s made an offer which the claimant accepted by appending his signature and there was consideration passing between them, the honoraria or stipend, both intended to enter into a legally binding agreement, had the requisite contractual capacity, the purpose for which the agreement was entered into was lawful and the parties reduced their agreement into writing. The volunteer Service Agreement was a legally enforceable contract.



55. The claimant agreed that he was not an employee of the organization and was free to terminate the engagement at any time he wished but could accord the respondents a 30 days notice for courtesy only.
56. For the forging reasons, it is the finding of the court that the voluntary Service Agreements dated 1st January, 2023 & 1st July, 2024 for one (1) year were not employment contracts.
57. Notably, the claimant adduced no evidence of having contested his position as a volunteer. Intention of the parties is the substratum of a contractual relationship.
58. Be that as it may, copies of documents availed by the claimant, which RWI acknowledged to have authored reveal that the claimant was appointed the Acting Manager of the AIC House of Hope effective 15th November, 2023. The letter from the 1st respondent under reference; Appointment of Mr. victor Onyango Ochieng ID No. 29997573, stated that the claimant had been appointed the Acting Manager of the Orphanage for a period of 3 years.
59. The copy of the letter filed in court was received by the National Council for Children Services on even date.
60. The 2nd letter also dated 15th November, 2023 addressed to the NSSF and National Council for Children Services which forwarded the appointment letter was in response to the council's letter reference NCCS/7/4 vOL LIv (201) dated 14th November, 2023. Both were delivered by the claimant, a fact RWI admitted on cross-examination.
61. Strangely, the claimant was not given an appointment letter and by design the respondents did not insert the claimant's remuneration as the Acting Manager.
62. Significantly, RWI Mr. Kevin Krahn confirmed, on cross-examination that by the letter dated 15th November, 2023, the claimant's appointment as Acting Manager for AIC House of Hope was not as volunteer.
63. Relatedly, the witness confirmed that the letter was necessary to facilitate the renewal of license of the Orphanage for the period May 2024 to May 2027, and it was granted after the claimant's employment had been terminated.
64. Evidently, the oral and documentary evidence on record reveals that the claimant's engagement metamorphosed from volunteership to employment effective 15th November, 2023, the fact that the letter of appointment had no remuneration notwithstanding and RWI did not deny that the claimant served as the 2nd respondent's Acting Manager from 15th November, 2023 to 2nd April, 2024 when his employment was terminated.
65. As regards the salary attached to the acting, it is discernible that the claimant was not aware of the same and according to him his request for payment as Acting Manager culminated in termination of his employment.
66. The sum of Kshs.300,000.00 allegedly paid to Mr. Kevin Krahn, the previous Manger of the 2nd respondent was not supported by any verifiable evidence or basis and was speculative for the court to rely on and RWI declined to disclose the salary of the new Manager the respondents engaged. He however, denied earning a stipend of 2,000 Euros per month and disclosed that he was a volunteer and all positions in the organization were on volunteership and those who served were paid a stipend.
67. Fortunately, the claimant retained his position of social worker while serving as Acting Manager under which he was earning a honoraria of Kshs.30,000.00 per month and as he was Acting Manager, he could not earn a salary based on the Managers salary.



68. Typically, a person in an acting position qualifies to hold the position he/she is acting in but is only paid an acting allowance for the acting at 25% of the officer's current salary unless the organization's Human Resource Policies and Procedures dictate otherwise. The foregoing applies in the Public Service generally. The claimant availed no evidence of his entitlement in that position.
69. In the spirit of fairness and equity, the court is enjoined to ground its decisions and awards on the facts and law as opposed to speculative figures with no sound factual basis. The claimant's gross salary inclusive of acting allowance of 25% would be 37,500.
70. Significantly, an individual acting in a position in an organization is not deemed to hold two jobs as he/she has one substantive appointment on which the acting is grounded.
71. This is simply because the acting appointment is temporary and the employee retains the previous position held where the employee would revert to if they are not appointed as the substantive holder of the office.
72. In sum, the claimant had only one position but acting in another and only qualified for acting allowance.
73. Concerning, termination of the claimant's employment, documents on record show that he was summarily dismissed on 2nd April, 2024 allegedly "due to continued, reported and confirmed cases of insults threats and abuses of vulnerable children within the station which is against the Child Act and also our code of conduct. In addition to your conduct, there have been trust issues".
74. The claimant was paid the sum of Kshs.90,000.00 as three (3) month's notice out of courtesy.
75. As confirmed by RWI, on cross-examination, the claimant's engagement was no longer volunteering effective 15th November, 2023 to 2nd April, 2024. He became an employee of the respondents and ought to have been treated as such.
76. It is trite that law for a termination of employment to pass the fairness test, the employer is required to demonstrate that it had a valid and fair reason to terminate the employee's employment and conducted the termination in accordance with a fair procedure.
77. Put differently, there must have been a substantive justification for the termination of the employee's employment and procedural fairness, as aptly captured by Ndolo J in *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR and by the Court of Appeal in *Naima Khamis v Oxford University Press (EA) Ltd* [2017] eKLR.
78. In the instant case, the letter of termination of employment accused the claimant for several major infractions which implicated the claimant's character as a leader.
79. However, as RWI confirmed in court that these allegations had not been placed before the claimant in writing for his response. The witness stated that the claimant was accorded a chance during the termination of employment but had no evidence of the alleged opportunity and how to play out.
80. Significantly, the accusations against the claimant are too generalized and unpackaged and because the letter stated that they were reported and confirmed, particulars ought to have been provided for the claimant's rebuttal.
81. As framed, none of the allegations was established by the respondents as there was neither oral nor documentary evidence in support of any of the allegations.



82. The provisions of Section 45(2)(a) of the *Employment Act* are clear that the reason for termination of employment must be valid.
- Black's Law Dictionary 10th Edition defines 'valid' as
- “Legally sufficient binding”.
83. The term valid literally means having a sound basis in logic or fact, reasonable or cogent.
84. In the court's view, although under Section 43(2) of the *Employment Act* the reason(s) for termination of employment
- “are the reasons employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee” a test that is partly subjective as held by the Court of Appeal in *Kenya Revenue Authority v Ruelwel Waithaka Gitahi & 2 others* [2019] eKLR, in the instant case the respondents made no attempt to evidentiary demonstrate that any of the accusations had a factual basis.
85. For the foregoing reasons, it is the finding of the court that the respondent has failed to prove that it had a valid and fair reason to terminate the claimant's employment.
86. On procedural fairness, it is trite law that provisions of Section 41 of the *Employment Act* are mandatory as held by the Court of Appeal in *Pius Machafu Isindu v Lavington Security Guards Ltd* [2017] eKLR and *Mbaru J. in Jane Samba Mukala v Ol Tukai Lodge Ltd* [2013] eKLR.
87. The salient elements of Section 41 of the *Employment Act* are the reasons for which the employer was considering termination of employment, explanation of the grounds of termination a language understood by the employee in the presence of a shopfloor representative or colleague employee of his/her choice and hearing and considering any representation made by the employee and/or the person chosen by the employee.
88. In the instant case, the respondent did not issue the claimant with a notice to show cause for a response and was thus unaware of the allegations he was supposed to confront and surprisingly, he was invited for a meeting slated for 4th April, 2024 vide a notice dated 2nd April, 2024 when his employment was terminated.
89. The purpose of the meeting, according to the letter, was to accord the claimant an opportunity to defend himself against the allegations made against him and the list of the allegations would be availed at the meeting.
90. It is unclear as to whether the meeting took place as the respondent's did not avail evidence by way of minutes.
91. Intriguingly, RWI confirmed on cross-examination that indeed the hearing was scheduled to take place after termination of employment.
92. From the evidence on record, it is patently clear that the respondents did not comply with the essentials of Section 41 of the *Employment Act* to guarantee the claimant a fair termination of employment.
93. Flowing from the foregoing analysis, the inescapable finding of this court is that the respondent has failed to prove that termination of the claimant's employment on 2nd April, 2024 was substantively justifiable or procedurally fair. Thus, the termination of the claimant's employment was unfair within



the meaning of Section 45 of the [Employment Act](#) and the claimant qualifies for reliefs under the provisions of Section 49 of the [Employment Act](#).

Appropriate relief

i. Declaration

94. Having found that termination of the claimant's employment by the respondent was unfair, a declaration to that effect was merited.

ii. Declaration

95. As adverted to elsewhere in this judgment, an acting appointment is not a substantive appointment.

96. It is the conferment of responsibilities of a higher office pending recruitment of a substantive holder and the employee acting holds a substantive position other, than the one he/she was acting and only qualifies for an acting allowance.

97. In this case, the claimant qualified for acting allowance from 16th November, 2023 to 2nd April, 2024 about 41/2 months only.

98. He did not have two distinct contracts.

The declaration is declined.

iii. Salary and arrears

99. As captured elsewhere, the figure of Kshs.300,000.00 or Kshs.150,000 touted by the claimant lacked any verifiable factual basis and was speculative for a court of law to ground a decision on it.

100. Notwithstanding the fact that the respondents took advantage of the claimant's position to secure renewal of license by relying on his credentials, the sums relied upon had no basis in law or fact and the loss, if any, is compensable under Section 49(1)(c) of the [Employment Act](#).

101. Relatedly, salary and wages are only payable for services rendered or work done under Section 17(1) of the [Employment Act](#).

102. Similarly, there was no guarantee that the claimant would have remained an employee of the respondent until December, 2024 or November 2026.

103. The claimant is however entitled to compensation for the unfair termination of employment by the respondents by dint of Section 49(1)(c) of the [Employment Act](#).

104. In determining the quantum of compensation, the court has considered that:

- i. the claimant had no previously recorded incident of wrong-doing;
- ii. the claimant nominally contributed to the termination of his employment;
- iii. the claimant did not express his wish to remain in the employment of the respondent or appeal the decision of the respondents or apply for reinstatement; and
- iv. the claimant had served the respondents for a fairly short time.

In the circumstances the court is satisfied that the equivalent of five (5) months salary is fair, Kshs.187,500.00.

- iv. Damages for illegal termination



105. The *Employment Act* does not recognise the remedy of damages for termination of a contract of employment.

The claim is dismissed.

106. In conclusion, Judgment is entered in favour of the claimant against the respondents as follows:

- a. Declaration that termination of employment was unfair.
- b. Equivalent of 5 month's gross salary Kshs.187,500.00 with interest from date hereof till payment in full.
- c. Costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 23RD DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COvID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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