



**Simokaitis & another v Chula (Appeal E118 of 2025)
[2025] KEELRC 2969 (KLR) (30 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2969 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
APPEAL E118 OF 2025
M MBARÚ, J
OCTOBER 30, 2025**

BETWEEN

BILL SIMOKAITIS 1ST APPELLANT

CARLA SIMOKAITIS 2ND APPELLANT

AND

JONATHAN KENGA CHULA RESPONDENT

*(Being an appeal from the judgment of Hon. Noelyne Reuben
delivered on 6 April 2025 in Mombasa CMLRC No. 1083 of 2019)*

JUDGMENT

1. The appeal arises from the judgment delivered on 6 April 2025 in Mombasa CMLRC No. 1083 of 2019. The appellant is seeking that the judgment be set aside and its counterclaim against the respondent be allowed with costs.
2. The grounds of appeal are that the learned magistrate failed to give a reasoned judgment and failed to apply the factual evidence submitted by the appellants. The findings that the appellants did not have a reason leading to the termination of the respondent's employment were in error and ignored the evidence submitted under oath.
3. Other grounds are that the award of house allowance for 8 years was without justification, despite the court awarding compensation for 12 months. The circumstances leading to the termination of employment through summary dismissal were not addressed. The award of 12 months was excessive and not justified. The award of interest on the award, applied from the date of filing the suit, was in error.
4. The counterclaim by the appellants was not addressed, and there is no finding on it.



5. The background of the appeal is a claim filed by the respondent against the appellant. His case was that he was employed as a manager at BCL Health Care Support (BCL Medical Unit), where the appellants served as directors. His wage was Ksh.44, 500 per month. There was no contract of employment issued, and the wage was paid in cash through vouchers. The claimant also became the chairman of the community-based organization following the formation of the BCL Medical Unit. He was however not provided with a house allowance or transport.
6. The respondent's claim against the applicants was that he noticed that the appellants were misappropriating funds meant for the organization. When he asked, the applicants did not take this well. He asked to inspect the books of accounts, which the appellants concealed. He asked about the profit share as agreed during the formation, but was cut off from any communication. On 5 May 2017, the applicants wrote two letters of warning against the respondent. They indicated that he had unsatisfactory performance of his duties. There was no notice or hearing for the respondent to address such accusations. On 7 March 2017, the appellant terminated his employment on reasons different from the allegations in the warning letters. The appellants accused the respondent that he had falsified being trained as a VCT counselor. This resulted in unfair termination of his employment without the due process. The appellants threatened him with prosecution unless he made a written commitment not to talk about the BCL medical unit, return all properties in his possession, and have no claims against the respondent. These conditions were illegal, and he decided to pursue his employment dues.
7. The respondent claimed that the appellant caused him to be charged in Shanzu Criminal Case No. 660 of 2017 – Republic v Jonathan Kenga Chula. This was as a result of seeking justice. The police investigated the matter and established that the respondent was being harassed because of claiming his terminal dues from the appellants. Later the charges were withdrawn under section 87A of the Criminal Procedure Code.
8. The respondent filed his claim against the appellant seeking the following:
 - a. 12 months compensation for unfair termination Ksh. 534,000.
 - b. Severance pay for 8 years Ksh. 53,400.
 - c. House allowance for 8 years Ksh. 640,800.
 - d. Payment for March Ksh. 44,500.
 - e. Notice pay Ksh. 44,500.
 - f. Leave pay for 8 years Ksh. 356,000.
 - g. Legal expenses incurred Ksh. 120,000.
 - h. Certificate of service,
 - i. General and aggravated damages for defamation occasioned by false allegations and forgery.
 - j. General damages for malicious prosecution.
 - k. Interests on amounts awarded from the date of filing suit.
 - l. Costs of the claim.
9. In reply, the appellants denied the claims and made a counterclaim against the respondent. The case was that they established BCL with their pension funds and aid from other Christian missionaries from the United States of America. BCL was registered in Kenya in 2012 for community outreach



with Kenyan women in sex work and people living with HIV/AIDS. The respondent started helping as a volunteer and forming groups to help the appellants with preaching and distribution of supplies. In 2012, they employed the respondent as the project facilitator/manager to assist with operations and issued a contract of employment on a consolidated wage. He also acted as the chair of BCL since the respondents were not in Kenya.

9. The appellant's case was that the allegations made by the respondent in his claim were based on falsehoods and malice. As a faith-based organization, BCL relied on the respondent to update term while away in America. He instigated falsehoods to tarnish the good image of the respondents. His dismissal from employment was due to gross misconduct.
10. The applicants moved to Kenya in 2015 to focus on running BCL. The respondent abused their trust and became hostile to intimidate them from exposing him. In 2012 and 2018, the respondent breached his contract by being hostile to the appellants and other employees. This made operations very difficult. He mistreated clients and visitors, he became harsh and openly discussed their HIV/AIDS status with third parties in breach of the code of conduct, on various occasions he misappropriated funds meant to benefit women's groups. He falsified loan records and advanced a client a loan of Ksh. 30,000 against the BCL policy and exceeded the set limit of Ksh. 5,000 used to assist women living with HIV/AIDS. He falsified loan records to advance himself money using the name of a client. He failed to keep proper books of account, particularly for petty cash, and conducted personal business with clients who visited the BCL, violating the code of ethics. On 8 July 2014, the respondent misappropriated Ksh. 2,500 for the alleged registration of the organization, whereas it was already registered in 2012 for a fee of Ksh. 1,000. He falsely claimed to be a founder member, which was not correct. The respondent allegedly paid Pastor Christopher while not retained for any services and without proper documentation. He paid his salary at high dollar exchange rates, and it kept fluctuating. In 2015, the appellants found the office in shackles, and the respondent alleged that they were not sending enough money to run it, which was not correct.
11. The appellant's case was that in 2014, the respondent lied that he had paid ksh.10,000 for HIV/AIDS test kits which they established were issued free of charge by the government. He forged a certificate from Kenya Association of Professional Counsellors and masqueraded as a VCT counsellor. He proceeded to use the forged document to test HIV/AIDS patients. He also forged *the constitution* of BCL as included himself as a founder and added a clause that he would be paid a sum of money as the organization grew big. He misrepresented that he had hired a security guard over the office which was not true and instead pocketed the money. He proceeded to conduct personal business at the premises which was contrary to set policy. Despite oral warnings on his conduct, the respondent failed to take heed.
12. Upon the appellants finding the respondent's performance to be poor, warning letters were issued. A disciplinary meeting was held and the misconduct was intolerable leading to dismissal. The finding that the respondent was masquerading as a VCT counsellor had put the organization into danger and risk of deregistration and the health of clients at great danger. On 7 March 2018, the appellants held a meeting with the respondent and he admitted to the forged VCT certificate and apologized. However, the appellants could not trust him and hence issued him a letter terminating his employment. This was based on his admission of wrongdoing. The summary dismissal was lawful and justified.
13. On 8 March 2018, the appellants reported the forgery to the Mtwapa Police Station. After harassment by the police and demands for a bribe, the applicants reported the matter to the CD, which conducted an investigation and arrested the respondent. The matter was later withdrawn under Section 87A of the Criminal Procedure Code. The claim for unlawful termination of employment is unfounded.



14. In the counterclaim, the appellants' case was that the respondent's case should be dismissed and they should be awarded general damages for fraud and misrepresentation. Special damages being refund of the fraudulently obtained funds at ksh.60, 734;
 - a. False registration fees ksh.2, 500.
 - b. Alleged purchase of HIV/AIDS kits for Ksh. 10,000.
 - c. Alleged salary for Pastor Christopher Ksh. 16,234.
 - d. Payment of ghost security guard for 4 months Ksh.32, 000.
 - e. costs
15. The learned magistrate heard the parties and, in judgment, held that the appellant's termination of employment without due process was hence unlawful and unfair. The court awarded 12 months' compensation, 8 years' house allowance, and costs with interest from the date of filing suit.
16. On the appeal, the appellant submitted that the trial court failed to consider the evidence before it in analyzing the claim and findings were in error. Following employment, the parties entered into a written contract on a consolidated wage of Ksh.44, 500 per month. The award of 12 months compensation and house allowance was in error and excessive.
17. There was a substantive justification for the termination of employment, which the trial court failed to take into account. The appellants had issued the respondent with warnings over his conduct. Upon being invited to a meeting to discuss his forged VTC counselling certificate, he admitted it. He admitted to forging the BCL registration certificate. He changed the organization's constitution to make himself a co-founder and benefit as the organization grew.
18. Due to the acts of gross misconduct, termination of employment was justified. Due to the forgeries committed, the respondent was charged in Criminal Case No. 660 of 2017 (Shanzu). Under section 44(4) (g) of the *Employment Act* (the Act), the appellant had a proper foundation leading to summary dismissal. In the case of *Mritaugu v New Kenya Co-operative Creameries Ltd* [2025] eKLR, the court held that where the employer has substantive justification for the termination of employment, summary dismissal is allowed.
19. The respondent submitted that the findings by the trial court were proper and the appeal should be dismissed. On 7 March 2017, he was issued a warning letter, but no show case notice was issued before the termination of his employment. He was denied the opportunity to attend and defend himself from the allegations. Upon demand for payment of his terminal dues, the applicant opted to instigate criminal proceedings leading to arrest and being charged in Shanzu Criminal Case No. 660 of 2017. This was done with malice.

Determination

20. This being a first appeal, the court is mandated to review the record, reassess the findings and make its conclusion; however, it considers that the trial court had the chance to see and hear the witnesses.
21. Before the trial court, the respondent asserted that he was never issued with an employment contract. However upon reply, the appellants attached the employment contract where he was employed as the manager of BCL t a monthly wage of Ksh. 44,500. The contract is attached at page 83 of the Record of Appeal.



22. The respondent did not challenge this record. He was employed based on the written contract dated 16 February 2012. His role was project coordinator (manager). The wage was Ksh.24, 300 which is overwritten at ksh.25, 300 and that it would increase by Ksh. 4,000 from a June 2013, written by hand.
23. In reply, the appellants have admitted that the wage due was ksh.44, 500. This is taken as the correct wage based on the payment vouchers filed by the respondent.
24. Through a notice dated 7 March 2017, the appellant terminated the respondent's employment on the grounds of falsification of being trained as a VCT, which is a criminal offence.
25. The applicants also offered the respondent that to avoid prosecution, he had to commit not to spread lies about BCL, return all the properties of BC and make no claims against the organization.
26. The appellants responded that upon the warnings issued to the respondent, he admitted that he had falsified documents and lied that he had a VCT trading certificate. The letter of admission is not filed.

There is no record of any admission of guilt.

27. An employee who falsifies work records commits a criminal offence, is in breach of the employment contract, and is liable to summary dismissal under the provisions of section 44(3) and 44(4) (g) of the Act. However, despite such gross misconduct, the employer should accord the employee the due process of the law under section 41(2) of the Act. The employee is entitled to receive a notice and to attend a disciplinary hearing in the presence of another employee of his choice.
28. Where there is an admission of wrongdoing, this should be recorded and applied in place of the mandatory procedures under section 41(2) of the Act. In the case of *Agingu v Advtech Kenya Limited t/a Crawford International School & another* [2025] KEELRC 2762 (KLR), the court held that summary dismissal should follow upon due process. This position is reiterated in the case of *Kahasu v Odinga* [2025] KEELRC 2766 (KLR), where the employee commits acts described under section 44 of the Act, upon disciplinary hearing, he is liable to summary dismissal.

The notice and hearing of the employee is mandatory.

29. Even where the employer has a good basis to terminate employment, such as the employee forging, falsifying, or committing a crime, the employer must comply with the due process requirements under section 41(2) of the Act.
30. In this case, without the appellants adhering to the law and without proof of assigning due process under the Act, the respondent's employment was terminated unlawfully and unfairly.
31. He is entitled to compensation and notice pay plus an analysis of his terminal dues.

The respondent was earning ksh. 44,500, which is due in notice pay.

32. In assessing the compensation claim, the trial court held that the respondent had worked for 8 years. Hence, I was awarded the maximum 12 months' salary. However, in awarding compensation, the court should be guided by section 45(5) of the Act. The conduct, culpability and practice of the employer are imperative to apply.
33. In this case, the respondent had been issued with two warnings for gross misconduct. He does not deny that he had falsified the VCT certificate. That he had falsified other records of the BCL registration, lied that he had hired a security guard, and continued to receive a salary for 4 months. These records are not challenged in any material way.



34. Ultimately, the fact of the respondent being charged in Shanzu Criminal Case No. 660 of 2017 is not denied. That arose from criminal conduct while the respondent was employed.
35. This cumulatively dented his employment record. This should have been taken into account in assessing the compensation due. To award under this head would be to reward gross misconduct as held in *Lilian W. Mbogo-Omollo v Cabinet Secretary, Ministry of Public Service & Gender & another* [2020] KEELRC 53 (KLR). Despite finding no due process, the employee was awarded Ksh. 10 in compensation under section 49 of the *Employment Act*. In the case of *Lele v Mwaura t/a Gongoni Market* [2025] KEELRC 1076 (KLR), the court granted zero compensation to an employee whose employment had been unfairly terminated, given that his work record was tainted by gross misconduct. In this case, an award of zero (0) compensation is appropriate.
36. On the claim for severance pay, this only arises in a case of redundancy under section 40 of the Act.
37. On the claim for house allowance, the respondent was under a written contract. He had a consolidated wage of Ksh.44, 500. This was above the minimum wage, and claiming a house allowance is unjust enrichment.
38. In the claim for payment for March, the year of the claim is not pleaded. The letter terminating employment was issued on 7 March 2017. The applications have not submitted the March 2017 payment statement. For the 7 days of employment, a wage of Ksh. 10,383.30 is due.
39. On the claim for annual leave, the respondent had a provision of 28 leave days. Under section 28 of the Act, annual leave is a right. The appellants filed records to show the respondent took his yearly leave when due. These records are not challenged.
40. On the claim for legal expenses incurred in the criminal case, this is a matter different and separate from proceedings herein. Costs therefrom should be addressed separately.
41. Certificate of service is due at the end of employment under section 51 of the Act. This should issue upon clearance.
42. On the claim for general damages for defamation following the criminal proceedings, the respondent asserts that this was driven by malice. However, as held in *John Ward v Standard Limited* [2006] eKLR, for a defamation claim to succeed, the particulars of the actual statement complained of must be clear. The Claimant failed to achieve this standard, and the claims thereon fail and are disallowed.
43. On the claim for damages for malicious prosecution, the appellants made a report to the police, who arrested the respondent. The appellant applied their civic duty. The respondent was charged by the constitutional office, which allowed the Director of Public Prosecutions to undertake such a mandate. The appellants carry no liability in the given circumstances.
44. On the award of costs and interests, unlike commercial disputes, the award of costs in employment claims should be addressed in the context of section 12(4) of the *Employment and Labour Relations Court Act*. Costs should be awarded sparingly once the employee's terminal dues are assessed and properly applied. Reasons for the award of costs, where necessary, should be given. Costs do not follow the cause in employment disputes.
45. In this case, the appeal addressed as above, each party should bear its costs.



Counterclaim

46. On the counterclaim, the trial court did not address it at all. All parties must be heard fairly, openly and on the merits.
47. The appellants claim that the respondent engaged in forgery and falsification of records, resulting in a loss of KSh. 60,734. These are criminal acts that resulted in a police report and the respondent's arrest, who was charged in Shanzu Criminal Case No. 660 of 2017. There are statements indicating that he falsified the registration fees by KSh. 2,500. He lied to have purchased HIV/IADS kits for Ksh. 10,000. He is alleged to have paid Pastor Christopher Ksh. 16,234. And he paid a ghost security guard for 4 months Ksh.32, 000.
48. Under section 44(4) (g) of the Act, these are criminal acts that allow for summary dismissal. These acts caused the appellant's loss of property. The quantified loss is deductible from the terminal dues of the respondent under section 19(1) (b) and (d) of the Act for the loss incurred by the employee while negligently undertaking his dues:
- (b) A reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee;
 - (c) ...
 - (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically for his being entrusted with the receipt, custody and payment of money;
- On this basis, the counterclaim is with merit and is allowed.
- On costs, each party shall bear its costs.
49. Accordingly, the appeal analyzed, the following orders are issued:
- a. The employment of the respondent was terminated unfairly.
 - b. Compensation zero (0).
 - c. Notice pay Ksh. 44,500.
 - d. Pay for 7 days in March 2017, Ksh. 10,383.30.
 - e. No orders on costs.
- And
50. The counterclaim is allowed at Ksh. 60,743. The awards shall be offset accordingly. Each party to bear its costs.

DELIVERED IN OPEN COURT AT MOMBASA, THIS 30TH DAY OF OCTOBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

