



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwongera v Agenda (Cause 455 of 2019)  
[2025] KEELRC 3206 (KLR) (14 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3206 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 455 OF 2019  
SC RUTTO, J  
NOVEMBER 14, 2025**

**BETWEEN**

**SUSAN KARIUKI MWONGERA ..... CLAIMANT**

**AND**

**YOUTH AGENDA ..... RESPONDENT**

**JUDGMENT**

1. It is not in dispute that the Claimant was employed by the Respondent and that in September 2010, she was appointed to the position of Chief Executive Officer for a two-year term. Her contract of employment was thereafter renewed twice, in 2014 and again in 2016.
2. The Claimant states that as her contract of employment with the Respondent was due to expire in December 2018, she obtained an employment offer from UN Women and consequently tendered her resignation in July 2018 through a letter dated 2<sup>nd</sup> July 2018, which she presented to the Board during its meeting held on 12<sup>th</sup> July 2018. She further asserts that she duly communicated her resignation to the Respondent's Board Chair.
3. The Claimant contends that the Respondent has wrongfully and unlawfully withheld her terminal dues without any lawful justification. Accordingly, she prays that the Court awards her Kshs. 700,000/= being payment for two months' accrued leave days and maximum compensation for the alleged wrongful withholding of her dues. She also prays for the costs of the suit together with interest.
4. In response to the Memorandum of Claim, the Respondent filed a Response together with a Counterclaim. In its Response, the Respondent avers that the Claimant, in her resignation letter, expressly stated that her resignation was to take effect immediately to enable her to take up another employment opportunity.



5. The Respondent further avers that the Claimant had requested that the two months' notice period be waived in consideration of her accrued leave days for 2017 and 2018, which she had intended to utilize after the appointment of a new Chief Executive Officer.
6. The Respondent maintains that since the Claimant opted for an immediate resignation, she became liable to pay two months' salary in lieu of notice.
7. It is the Respondent's position that the Claimant had 21 unutilized leave days for 2017 and 10.5 leave days for 2018, as she did not serve the full year in 2018.
8. The Respondent further alleges that the Claimant accepted employment with UN Women without obtaining the requisite written consent from the Board and without making the mandatory disclosures required under the law and her contract of employment.
9. The Respondent further contends that the Claimant failed to facilitate a smooth transition despite being requested to do so.
10. In light of the foregoing, the Respondent has urged the Court to dismiss the Claimant's claim with costs.
11. With respect to the Counterclaim, the Respondent seeks payment of Kshs. 193,333/= from the Claimant, being two months' salary in lieu of notice, together with compensation for breach of contract, costs of the Counterclaim, and interest.
12. The matter proceeded to hearing on 9<sup>th</sup> July 2025, during which the Claimant testified in support of her case.

#### **Claimant's Case**

13. The Claimant, who testified as CW1, began by adopting her witness statement together with the list and bundle of documents filed on her behalf to constitute her evidence in chief.
14. She testified that on Saturday, 13<sup>th</sup> July 2018, the Respondent's Board Chairperson contacted her to convey the Board's decision to accept her resignation and requested that she facilitate the completion of any pending matters. Subsequently, on Monday, 16<sup>th</sup> July 2018, she received an official letter from the Board formally confirming the acceptance of her resignation.
15. The Claimant stated that upon the acceptance of her resignation, she complied with all the requirements imposed by the Respondent and by law to ensure a smooth transition. She handed over all necessary documents and items to the Respondent and assisted her successor in understanding the organization's operations and procedures.
16. Having discharged all her obligations, the Claimant wrote to the Respondent on several occasions requesting payment of two months' salary in lieu of notice against her accrued leave days. According to the Claimant, the Respondent allegedly responded on multiple occasions, assuring her that all dues would be paid in full.
17. The Claimant asserts that the Respondent has wrongfully and unlawfully withheld her dues without any lawful cause, an action she describes as malicious, spiteful, contrary to the principles of natural justice, and intended to embarrass her.
18. She further testified that she had served the Respondent faithfully and diligently since 2004, and could not comprehend why the Respondent had deliberately refused to pay her rightful entitlements.



## Respondent's Case

19. The Respondent opted not to adduce any oral evidence and instead chose to rely solely on its filed pleadings.

## Submissions

20. The Claimant submitted that the Respondent not only acquiesced to her not serving the two-month notice period but also expressly waived its right to insist on the same, and is therefore estopped from demanding it. In support of this position, reliance was placed on the decision in *Kenneth Onialo v Maljis Resort Lamu t/a Maljis Lamu Ltd* [2022] eKLR.
21. The Claimant further argued that the Respondent's withholding of her Certificate of Service and terminal dues for over six years was malicious, unfair, and unjustified, and that she is therefore entitled to maximum compensation for this unlawful withholding.
22. The Respondent, in turn, submitted that the Claimant did not demonstrate that she applied for leave in 2017, nor that she sought and obtained approval from the board for the same to be carried forward.
23. The Respondent further contended that the Claimant's failure and refusal to give notice amounted to a gross breach of contract, which caused significant difficulty, prejudice, and hardship to the organization, leaving it to manage its affairs without a Chief Executive Officer.
24. According to the Respondent, the Claimant was the author of her own misfortune by failing to give adequate notice, thereby leaving the Respondent unprepared and without a designated officer to whom she could hand over, resulting in delays.

## Analysis and determination

25. Upon considering the parties' pleadings, the evidence presented, and their respective submissions, it is evident that the issues for determination before the Court are as follows: –
  - a. Whether the Claimant is entitled to the reliefs sought; and
  - b. Whether the Respondent's Counterclaim is merited.

## Reliefs sought by the Claimant

26. The Claimant seeks payment of Kshs. 700,000/=, representing two months' accrued leave days. The Respondent, however, contends that the Claimant had 21 unutilized leave days for 2017 and 10.5 leave days for 2018, totaling 31.5 leave days.
27. In support of its position, the Respondent attached to its Response an annual leave spreadsheet showing the Claimant's leave record for 2017 as indicating 21 outstanding leave days.
28. It is noteworthy that clause 12 of the Claimant's contract of employment provides that any leave not taken during the leave year shall be forfeited unless the Board grants written authorization to carry it forward.
29. It is worth pointing out that clause 12 of the said contract of employment is inconsistent with Section 28(4) of the *Employment Act*, which stipulates as follows:

“The uninterrupted part of the annual leave with pay referred to in subsection (3) shall be granted and taken during the twelve consecutive months of service referred to in subsection



(1)(a), and the remainder of the annual leave with pay shall be taken not later than eighteen months from the end of the leave-earning period referred to in subsection (1)(a), being the period in respect of which the leave entitlement arose.”

30. It is evident from the foregoing statutory provision that forfeiture of accrued leave days cannot arise so long as the leave is taken within the 18-month period prescribed under Section 28(4) of the [Employment Act](#). It therefore follows that the question of whether the Claimant applied for the said leave is immaterial.
31. Consequently, the Court finds that the Claimant is entitled to 21 leave days for the year 2017.
32. With regard to 2018, the Court agrees with the Respondent that the Claimant’s leave entitlement should be prorated up to July 2018, when she tendered her resignation. Accordingly, the Claimant is entitled to 10.5 leave days with respect to 2018. This brings the Claimant’s total accrued leave entitlement to 31.5 days.

### **Counterclaim?**

33. In its Counterclaim, the Respondent accuses the Claimant of breaching her contract of employment by resigning with immediate effect without issuing the required two months’ notice. Consequently, in the tabulation constituting the Claimant’s terminal dues, the Respondent deducted Kshs. 700,000/=, being the equivalent of two months’ salary in lieu of notice.
34. The Claimant exhibited a copy of her resignation letter dated 2<sup>nd</sup> July 2018, in which she formally notified the Respondent of her resignation. In the said letter, she requested a waiver of the two-month notice period, citing her accrued leave days for 2017 and 2018, which she had planned to take after the appointment of a new CEO.
35. During cross-examination, the Claimant confirmed that she exited the Respondent’s organization in July 2018.
36. A review of the Claimant’s contract of employment reveals that under clause 20, either party could terminate the contract by giving the other two months’ written notice or by paying salary equivalent to two months in lieu of such notice.
37. It therefore follows that the Claimant was contractually obligated to provide the Respondent with two months’ notice or, alternatively, pay an amount equivalent to two months’ salary in lieu of notice.
38. Since the Claimant did not serve the two-month notice period as required under clause 20 of her contract of employment, the same may be offset against her accrued leave entitlement, as she had proposed in her letter of resignation.
39. In the same vein, it is worth noting that the Discharge and Release Agreement on which the Claimant seeks to rely on, purportedly indicating that the Respondent had agreed to pay her two months’ salary in lieu of notice, was never signed and therefore carries no legal effect.
40. Accordingly, the Court finds that the Respondent is entitled to recover from the Claimant’s accrued leave days an amount equivalent to two months’ salary in lieu of notice.

### **Orders**

41. In the final analysis, the Court makes the following final orders:
  - a. The Claimant is awarded Kshs. 367,500.00, representing accrued leave for 31.5 days.



- b. The Respondent's Counterclaim succeeds in the sum of Kshs. 700,000.00, being equivalent to two months' salary in lieu of notice.
- c. Following set-off, the net amount payable to the Respondent under its Counterclaim is Kshs. 332,500.00.
- d. The Respondent shall issue the Claimant with a certificate of service within 7 days hereof.
- e. Each party shall bear its own costs, having had partial success on both the Claim and the Counterclaim.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14<sup>TH</sup> DAY OF NOVEMBER 2025.**

.....

**STELLA RUTTO**

**JUDGE**

In the presence of:

For Claimant No appearance

For the Respondent Mr. Kasirye

Court assistant Elijoy

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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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 had 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.

