



**Apidi v G4S Kenya Limited (Cause E224 of 2020)
[2025] KEELRC 3359 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3359 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E224 OF 2020
BOM MANANI, J
NOVEMBER 28, 2025**

BETWEEN

BENARD OMONDI APIDI CLAIMANT

AND

G4S KENYA LIMITED RESPONDENT

JUDGMENT

1. The dispute between the parties relates to whether the contract of service between them was legitimately terminated. Whilst the Claimant contends that the contract was not lawfully closed, the Respondent avers that it was.

Claimant's Case

2. The Claimant avers that the Respondent hired his services as a Security Officer from 16th July 2007. He contends that at the time his contract was terminated, he had risen through the ranks up to the position of Security Risk Manager.
3. The Claimant states that on 5th September 2019, there was a robbery incident within the Nairobi West area which affected the Respondent's cash in transit crew as they were going to replenish an Automated Teller Machine at the Standard Bank Nairobi West branch with cash. He contends that the Respondent lost Ksh. 74,483,000 in the incident.
4. The Claimant blames the incident on the failure by some of the Respondent's personnel to conduct proper security inspection of the cash transfer vehicles. It is his case that the inspection process was flawed.
5. The Claimant contends that the vehicles which were assigned to do the cash transfer at the time of the robbery incident had not been subjected to proper motor vehicle inspection by the requisite department. He contends that this omission contributed to the security gap that led to the robbery.



6. The Claimant contends that following the robbery incident, several individuals (both employees and non-employees of the Respondent) were arrested and arraigned in court. However, he contends that some employees of the Respondent were eventually released for lack of evidence.
7. The Claimant avers that on 15th October 2019, the Respondent subjected some employees from the operations department to disciplinary action on account of the robbery. He contends that the affected employees faced charges of breach of the Respondent's operational procedures which substantially contributed to the occurrence of the robbery.
8. The Claimant avers that he participated in the disciplinary proceedings against the aforesaid employees in his capacity as the Respondent's representative and investigator. He contends that after the disciplinary process, some employees were released from employment on account of having breached the Respondent's operational procedures.
9. The Claimant avers that on 15th November 2019, the Respondent summoned him to answer to accusations of having forced one Joseph Maweu to irregularly sign a vehicle inspection form. However, it is his case that the impugned form was a fabrication.
10. The Claimant avers that on 10th January 2020, the Respondent issued him with a notice to show cause letter over the impugned inspection form. He contends that although the accusations in the letter were false, he responded to them.
11. The Claimant contends that although the Respondent alleged that it had put him under a performance improvement plan, there was no evidence to suggest that his performance was wanting. According to him, his performance was satisfactory.
12. The Claimant avers that on 17th January 2020, the Respondent issued him with a notification for hearing of his case on 22nd January 2020. He contends that although the Respondent scheduled the case for 22nd January 2020, it did not share with him the investigation report on the incident.
13. The Claimant contends that notwithstanding the aforesaid omission, the disciplinary hearing proceeded as scheduled. He however points out that the Respondent declined to share with him the minutes of the session.
14. The Claimant maintains that the session of 22nd January 2020 was a disciplinary hearing. However, he avers that the Respondent later attempted to assert that the meeting was not a disciplinary session but an ordinary meeting.
15. The Claimant avers that following the meeting of 22nd January 2020, the Respondent cleared him of the accusations which had been leveled against him. As such, he avers that he considered the matter as closed.
16. The Claimant avers that on 29th January 2020, the Respondent sent him an email informing him that it had decided to conduct further investigations against him in respect of the events which led to the robbery. He contends that although the Respondent hinted at conducting the aforesaid investigations, it did not share with him information on or results of the proposed investigations.
17. The Claimant avers that on 25th February 2020, the Respondent invited him for another disciplinary hearing. He contends that he was issued with a new set of charges.
18. The Claimant avers that although the Respondent subjected him to the second disciplinary hearing, it did not notify him of the outcome of the process. Instead, he contends that on 6th March 2020, the



Respondent's Human Resource Manager and Finance Director notified him that the Respondent had decided to separate with him.

19. The Claimant avers that the two individuals told him that he had two options: to either negotiate his exit from employment or be summarily dismissed.
20. The Claimant contends that the Respondent's officers forced him to sign a mutual separation agreement. He avers that the officers used coercion and intimidation to procure his signature on the instrument.
21. The Claimant avers that the exit package which the Respondent paid him was forced on him. He denies that it was the product of a negotiated settlement. He contends that the package was far less than what he was entitled to.
22. The Claimant avers that investigations by the criminal investigation personnel did not find any blemish on him. As such, he contends that he was innocent of the accusations that were leveled against him.
23. The Claimant avers that the Respondent forced him into executing the mutual separation agreement without giving him the opportunity to reflect on it. He avers that the Respondent did not permit him to seek independent advice on the process.
24. The Claimant avers that the Respondent's actions violated the law and his rights to fair labour practices and fair administrative action. He contends that the actions were motivated by malice and the desire to victimize him. As such, he seeks various reliefs as set out in the Statement of Claim.

Respondent's Case

25. The Respondent is opposed to the claim. It has filed a Statement of Defense, witness statement and a bundle of documents to anchor its case.
26. The Respondent avers that the Claimant was indeed its employee as pleaded by him. It further avers that in discharging his duties, the Claimant was required to follow its policies as captured in the various instruments alluded to in the Statement of Defense.
27. The Respondent avers that its cash in transit employees were robbed of Ksh. 74,483,000 on the morning of 5th September 2019 within the Nairobi West area. It contends that it reported the incident to the police following which several people were arrested and charged in court. It avers that it also conducted separate investigations into the incident.
28. The Respondent avers that it received a report from one of its employees called Joseph Mwaeu that the Claimant had forced him to sign vehicle inspection forms for the vehicles which were affected by the robbery incident of 5th September 2019. It (the Respondent) avers that following this report, it resolved to take disciplinary action against the Claimant and other officers for failure to adhere to vehicle inspection procedures resulting in the breach that led to the robbery.
29. The Respondent avers that the Claimant was issued with a notice to show cause letter which notified him of the accusations against him. It contends that he responded to the aforesaid letter and was invited for a disciplinary hearing on 22nd January 2020.
30. The Respondent avers that although the disciplinary hearing commenced as scheduled, it was realized that there was need for further investigations into the case. As such, it avers that the hearing was adjourned to enable the further inquiry.



31. The Respondent avers that after further investigations in the matter, the Claimant was issued with a fresh notice to show cause. It contends that the Claimant was subsequently invited for a hearing on 31st January 2020.
32. The Respondent contends that after the hearing on 31st January 2020, the disciplinary panel identified gaps in the matter which required further investigations. As a result, it contends that the panel referred the case to management.
33. The Respondent contends that a further report on the matter which was prepared on 21st February 2020 contained adverse findings against the Claimant. It (the Respondent) contends that the report recommended disciplinary action against the Claimant.
34. The Respondent avers that following the findings in the aforesaid report, it issued the Claimant with a fresh notice to show cause letter dated 25th February 2020. It contends that after the Claimant responded to the letter, he was subjected to a disciplinary hearing on 4th March 2020.
35. The Respondent contends that before the verdict in respect of the proceedings of 4th March 2020 was communicated to the Claimant, the parties entered into a mutual separation agreement. It contends that the Claimant willingly executed the agreement and returned company property. It further avers that the Claimant was paid all his exit dues as agreed under the separation agreement.
36. The Respondent denies that it demoted the Claimant to a lesser position during the term of his contract. It further denies that it placed him on a performance improvement plan as asserted by him. As such, it prays that the suit be dismissed.

Issues for Determination

37. After analyzing the pleadings and evidence on record, the following issues present for determination in the suit:-
 - a. Whether the parties separated voluntarily and lawfully through a mutual separation agreement.
 - b. If the answer to the above is in the negative, whether the Claimant's employment was improperly terminated.
 - c. Whether the Claimant is entitled to the reliefs which he seeks through this action.

Analysis

38. The evidence on record shows that after the robbery incident on 5th September 2019, the Respondent took disciplinary action against a number of employees on account of their failure to adhere to its security protocols, a matter which the Respondent contends contributed to staging of the robbery. One of the employees who was targeted in the process was the Claimant.
39. According to the Respondent, the Claimant failed to oversee the process of routine inspection of its cash in transit vehicles thus weakening the security for cash in transit. As a result, it subjected the Claimant to a number of investigative and disciplinary processes with the last one taking place on 4th March 2020.
40. From the minutes of the session of 4th March 2020, the disciplinary panel found the Claimant guilty of negligent performance of his duties. However, the panel observed that the case against him had taken long to conclude.



41. Further, the panel observed that the charge against the Claimant had deficiencies which made it unsafe for it (the panel) to recommend for his dismissal from employment. Consequently, it (the panel) referred the matter to the Respondent's management for further action.
42. The evidence on record shows that before the Respondent's management gave directions on the aforesaid disciplinary process, the Respondent and Claimant entered into a separation agreement. Consequently and based on this agreement, the Claimant's contract of service was closed with effect from 9th April 2020.
43. However, the validity of the separation agreement is contested. Whilst the Respondent avers that it is valid, the Claimant disputes this fact.
44. According to the Claimant, the agreement is void for various reasons. First, he contends that the Respondent coerced him into signing it. Second, he asserts that the Respondent did not give him time to review and internalize the agreement before he was asked to append his signature on it.
45. The Claimant avers that the Respondent's management simply summoned him to a meeting at which he was given two documents: the mutual separation agreement; and a letter for summary dismissal from employment. He contends that the Respondent asked him to either sign the separation agreement or have his contract terminated through summary dismissal from employment.
46. Faced with this reality, the Claimant avers that he was left with little choice but to sign the separation agreement. As such, he contends that the agreement was procured through coercion. He denies that it was the product of his free will.
47. The Claimant avers that the fact that the parties did not date the agreement is proof of the fact that it was procured through undue pressure. He further contends that the exit package in the instrument was not agreed. As such, he avers that it does not reflect what he was to be paid.
48. Conversely, the Respondent contends that at the tail end of the disciplinary process against the Claimant, the parties agreed to mutually separate. As a result, it contends that they negotiated the terms of, drew up and signed the mutual separation agreement.
49. The Respondent avers that the separation was consensual. It further contends that it paid the Claimant all the agreed terminal dues. As such, it contends that this suit is an abuse of the court process.
50. During cross examination of the Claimant, he confirmed that the parties had a meeting on 6th March 2020 when the Respondent's management informed him that the Respondent was keen to sever their employment relationship through mutual separation. The Claimant stated that he asked for time to consider the matter. He further stated that the meeting was adjourned to 9th March 2020 following the request.
51. The Claimant stated that the Respondent's management gave him the draft separation agreement on 9th March 2020. However, he conceded that the parties had been in discussion about the separation before he was handed the draft separation agreement.
52. The Claimant asserts that the parties were to review and agree on the terms of their proposed separation on 9th March 2020. However, he contends that during the meeting, the Respondent's management pulled out a letter for his summary dismissal from employment. He avers that this forced him to sign the agreement.
53. He contends that although he had declined to sign the separation agreement, the letter for summary dismissal forced him to sign it. As such, he avers that he was coerced into signing the instrument.



54. The position in law is that parties to a contract are bound by the terms of the contract. They are not entitled to escape from their obligations under the contract merely because they consider them onerous or disadvantageous to them.
55. Courts of law are obligated to enforce the terms of a contract that has been concluded between parties without varying it (the contract). They (the courts) ought to give the contract its plain meaning.
56. Parties to a contract will not be allowed to escape from their obligations under the contract unless they are able to demonstrate that it (the contract) is vitiated. The factors which may vitiate a contract include: fraud; coercion and or duress; undue influence; misrepresentation; and mistake (Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] KECA 152 (KLR)).
57. The burden of proving the presence of these elements lies with the party who is asserting that the contract has been voided. And the standard of proof is higher than the one of balance of probabilities (Patel & another v MJC & another (Suing as the guardians of PJP) [2022] KECA 364 (KLR)).
58. In the instant case, the court is convinced that the parties entered into an enforceable mutual settlement agreement. The court has scrutinized the agreement which was tendered in evidence and is satisfied that the Respondent made an offer to the Claimant for the parties to separate. The court is further convinced that the offer was accompanied by consideration in the form of the proposed terminal benefits which the Claimant was to be paid if he accepted mutual separation. The court is also convinced that the Claimant signified his acceptance of the Respondent's offer by appending his signature on the contract. As a matter of fact, during cross examination of the Claimant, he confirmed that he signed the contract. By the parties satisfying the aforesaid ingredients for creation of a contract, they entered into a legally enforceable agreement.
59. It is generally acknowledged that parties to an employment relationship can mutually terminate the relationship at any time including during the continuance of disciplinary proceedings against the employee. Commenting on this in his book titled "Employment Law Guide for Employers" 2nd Edn (pg 401), George Ogembo observes as follows:-

"Whether or not there exists an employment dispute, the parties thereto may prefer to end the employment relationship in mutually acceptable and peaceful terms without resort to litigation or extensive disciplinary or grievance procedures. The mutual termination or settlement agreement is formed upon a party accepting the other's offer to terminate the employment contract by mutual expression of will regardless of the actual reasons for the action.....The aspect of settlement agreement in employment jurisprudence is hinged on the fact that it is open for the parties to terminate an employment contract legally and fairly by way of mutual agreement for any reason and at any time within the duration of the employment even amidst disciplinary processes."
60. The Claimant has attacked the validity of the settlement on the ground that the separation agreement does not state the date on which it was signed. I do not agree that failure to state the date when a contract was signed can vitiate it. What is important in my view is that the parties had consensus ad idem when they signed the contract and that there was offer, consideration and acceptance which elements I have found existed in the instant contract.
61. Although the Claimant asserts that the agreement was vitiated by coercion, I do not see evidence of coercion in the process that resulted in signing of the instrument. The typed excerpts from the audio recordings demonstrate that all that the parties did during their meetings was to negotiate the terms of the separation agreement.



62. The Respondent is indicated to have informed the Claimant that if he did not agree to mutual separation, the alternative was to be dismissal from employment in view of the evidence which it (the Respondent) had gathered against him. The Respondent is said to have told him that dismissal from employment was to likely be without notice pay. However, it (the Respondent) is indicated to have stated that if the parties agreed on mutual separation, it (the Respondent) was to consider paying the Claimant notice pay and in addition three months' salary.
63. The typed excerpts from the audio recording show that the Claimant was unhappy with the offer and proposed payment of twelve months' salary. However, this appears not to have been accepted by the Respondent eventually resulting in what was paid under the agreement.
64. This conversation does not suggest the use of coercion against the Claimant as asserted by him. The fact that the Respondent's management informed him that if he did not agree to a mutual separation, he was likely to be summarily dismissed from employment does not necessarily imply coercion against the Claimant.
65. The Respondent's communication ought to be contextualized. The Respondent was simply giving the Claimant the options that were available to the parties considering the evidence it (the Respondent) allegedly had against him on the alleged malpractice.
66. The Respondent was simply informing the Claimant that it believed it had sufficient evidence to summarily terminate his contract of service. However, it was willing to avoid this course by entering into a mutual separation.
67. The Claimant was under no obligation to accept the separation. If he believed that he had a credible defense against the allegations of negligence against him, it was open to him to refuse to sign the separation agreement and challenge the regularity of any separation on appeal or through court as indeed the law entitles him. As such, he cannot legitimately contend that he signed the mutual separation agreement allegedly because he had no options open to him at the time.
68. Although the Claimant contends that the Respondent did not give him time to think through the proposed mutual separation, the evidence on record demonstrates otherwise. First, during cross examination of the Claimant, he conceded that he was informed of the proposed separation in the meeting of 6th March 2020. He further conceded that the parties adjourned the meeting of 6th March 2020 to 9th March 2020 in order for them to consider the proposal. Second, in the typed excerpts from the audio recordings, the Claimant is recorded as asking the Respondent's management for four (4) minutes to consult his family and acquaintances on the draft agreement, a request which was not denied. As such, the evidence on record suggests that the Respondent allowed the Claimant the opportunity to consider the terms of the separation agreement.
69. The record further shows that the Claimant was paid terminal benefits of Ksh. 1,164,300 based on the mutual separation agreement. During cross examination, he confirmed that the amount was paid less the applicable statutory and loan deductions. He pointed out that the Respondent used most of the money to settle his loan account at Nyati Sacco as per the terms of the loan contract between him and Nyati Sacco.
70. The fact that the Claimant accepted the aforesaid terminal benefits based on the separation agreement (irrespective of how the money was applied) fortifies the Respondent's assertion that the agreement was consensual. Why did the Claimant give the agreement a stamp of approval by accepting a benefit under it if his position is that it was procured through coercion?



71. In law, one is not entitled to approbate and reprobate in respect of the same instrument (Royal Ngao Holdings Limited v N K Brothers Limited & another (Civil Case 156 of 2019) [2021] KEHC 275 (KLR) (Commercial and Tax) (17 November 2021) (Ruling)). A person cannot draw a benefit from an instrument and simultaneously renounce it.
72. Having found that the mutual separation agreement between the parties was valid, it follows that their separation was lawful. As such, the Claimant's contention that his employment was unfairly terminated is unmerited. It is so held.

Determination

73. The upshot is that the court arrives at the conclusion that the employment relationship between the parties was lawfully closed through mutual separation.
74. Consequently, the instant suit lacks merit.
75. As such, the matter is dismissed.
76. Each party to bear own costs.

DATED, SIGNED AND DELIVERED ON THE 28TH DAY OF NOVEMBER, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

