



Pere v Management Corporation Limited (Employment and Labour Relations Cause E046 of 2024) [2025] KEELRC 3355 (KLR) (28 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3355 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E046 OF 2024
AN MWAURE, J
NOVEMBER 28, 2025
BEFORE HON. LADY JUSTICE ANNA NGIBUINI MWAURE**

BETWEEN

PARMUAT OLE PERE CLAIMANT

AND

MANAGEMENT CORPORATION LIMITED RESPONDENT

JUDGMENT

1. The Claimant filed a Memorandum of Claim dated 24th July 2024 seeking the following reliefs:
 - a. Declaration that the Claimant’s services were unprocedurally, unlawfully and unfairly terminated, and under the circumstance, the Claimant is entitled to compensation of his terminal dues as outlined above;
 - b. The sum of Kshs.3,923,000 = to be compensated as follows:
 - i. One month’s notice Kshs.253,000 =
 - ii. Compensation for unfair termination Kshs.3,060,000 =
 - iii. Unpaid house allowance Kshs.396,000 =
 - iv. Leave due Kshs. 154,000 =
 - v. Service pay Kshs. 84,249 =
 - a. Certificate of service



- b. Cost of this suit and interest at the court rate from the time of filing the suit until payment in full, and
- c. Any other further and better relief the Honourable Court may deem just and fit to grant

Claimant's case

2. The Claimant avers that he was employed by the Respondent as a General Manager on a contract basis vide a contract dated 3rd November 2023, earning a salary of Kshs.220,000 =.
3. The Claimant avers that he worked diligently and loyally until 28th June 2024, when the Respondent terminated his services through an advocate's letter, without justification.
4. The Claimant avers that the termination was procedurally flawed, unlawful, and unfair, as he was not informed of the reasons for his dismissal, contrary to sections 41(c) and 43 of the *akn ke act 2007 11 Employment Act*.
5. The Claimant further avers that the Respondent acted unjustly and inequitably, breaching section 45 of the *akn ke act 2007 11 Employment Act*.
6. The Claimant avers that the termination also violated Article 41 of *akn ke act 2010 constitution the Constitution*, which guarantees the right to fair labour practices.
7. The Claimant further avers that he was denied his rightful terminal benefits following the unfair dismissal.

Respondent's Statement of Response

8. In opposition to the Memorandum of Claim, the Respondent filed a Statement of Response dated 28th October 2024.
9. The Respondent admits that the Claimant was employed as Manager at Mara Jambo Safari Lodge in November 2023 on a six-month probation contract, earning Kshs.155,855 = per month, but denies the validity of the alleged appointment letter dated 3rd November 2023, terming it a forgery due to lack of company letterhead, improper stamp, forged signature, and absence of the Claimant's acceptance.
10. The Respondent avers that by May 2024, it was dissatisfied with the Claimant's performance, including inviting personal acquaintances without approval, and informed him he would not be confirmed after probation.
11. The Respondent avers that the Claimant's employment was therefore fairly terminated after the probation lapsed on 31st May 2024, with formal notice issued through advocates on 28th June 2024, and one month's salary in lieu of notice duly paid.
12. The Respondent emphasizes that all dues were settled, housing was provided, and the nature of the tourism business requires seasonal contracts.
13. The Respondent denies receiving any demand letter before the suit and argues that the Claimant is not entitled to the reliefs sought, urging the court to dismiss the claim with costs.



Claimant's evidence in court

14. The Claimant (CW1) testified that he began working for the Respondent on 3rd November 2023 and served for seven (7) months before his employment was terminated through a letter issued by Orere and Company Advocates.
15. CW1 stated that he explained that he was never issued with a Notice to Show Cause or any warning letter, but on 6th July 2024 he was served with a termination notice requiring him to vacate their premises immediately. He stated that he was instructed to prepare a handover report, which he submitted on 7th July 2024. CW1 further stated that he sent a demand letter through his advocate seeking payment of his dues, denied ever inviting acquaintances to the lodge or discussing its operations, and emphasized that he was not called to any disciplinary hearing prior to being served with the termination letter.
16. In cross-examination, CW1 stated that he had an appointment letter providing for a three-month probation, yet he worked for seven months. He confirmed that upon receiving his termination letter, he was paid his June 2024 salary but not notice pay, and had earlier received his May salary on 5th May 2024. He acknowledged being familiar with hotel communication processes, and he stated that although he was issued with an appointment letter, he never signed it, and claimed it was signed by the Operations Director, Emma. He further explained that he introduced and regularly signed a muster roll book, and that during his seven months of service he took 35 days of leave, including public holidays and Sundays. Lastly, he noted that he issued a demand letter through his advocates, which forms part of his filed documents.
17. In re-examination, CW1 clarified that the payment he received in June was his regular monthly salary and not compensation in lieu of notice. He further emphasized that although the termination letter was dated 28th June 2024, he was only served with it on 6th July 2024.

Respondent's evidence in court

18. RW1, Daniel Meingati, adopted his witness statement dated 23rd January 2025 as his evidence in chief.
19. RW1 stated that he has worked for the Respondent since 2013 and first met CW1 when he joined the hotel in November 2023. He confirmed that CW1's engagement was on probationary terms and that no appointment letter was issued. He further stated that the letter produced by the Claimant was not a standard document of the Respondent, noting that the company had no operations manager named Emma Lidan and that the stamp on the letter did not belong to the Respondent or Jambo Mara.
20. In cross-examination, RW1 stated that the hotel operates as Jambo Mara Safaris under Domino International Company Ltd. He explained that when he joined the Respondent, there were no formal interviews or appointment letters, and he simply began working and was paid through the bank without a written contract. He stated that CW1 joined in November 2023 as General Manager but was not subjected to an interview. RW1 further stated that at the time, the company's Operations Manager was a Chinese national, Toni Sangh, who had left in 2019. He added that he never attended any meeting concerning the Claimant but was informed that the Claimant had been bringing friends to the lodge without the Director's approval. RW1 confirmed that the Claimant was not issued with any warning letter or invited to a disciplinary hearing, and according to the muster roll, the Claimant signed for 35 days off, including leave days, himself.
21. Parties were directed to file their respective written submissions.



Respondent's submissions

22. The Respondent challenges the authenticity of the Claimant's alleged appointment letter dated 3rd November 2023, arguing that it was purportedly signed by "Emma Li Dan," a person who has never been employed by the company, and bore a stamp not belonging to the Respondent. Moreover, the Claimant himself never signed the document, contravening section 9(3) of the *akn ke act 2007 11 Employment Act*, which requires an employee's signature or thumbprint to signify consent to a written contract.
23. The Respondent contended that the only valid agreement was an oral probationary arrangement, to be reduced into writing upon successful completion of probation. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & Another* [2001] KECA 362 (KLR), where the Court of Appeal held that contracts cannot be rewritten by courts and parties are bound by their agreements unless coercion, fraud, or undue influence is proved. Also in *Fina Bank Limited V Spares & Industries Limited* [2000] KECA 292 (KLR), where the Court of Appeal emphasized that equity does not relieve parties from bad bargains except in special circumstances. Since the Claimant did not file a Reply to the Defence, the Respondent's assertion of forgery remains unchallenged, and the court is urged to treat the letter with suspicion as being made in bad faith.
24. The Respondent submitted that the Claimant was not confirmed after his six-month probation due to poor performance and gross misconduct, including inviting personal guests to the hotel without approval and disobeying lawful instructions. The Respondent relied on section 45(4) of the *akn ke act 2007 11 Employment Act* which provides as follows:

"Any of the following matters may amount to gross misconduct to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if—

- a. without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
- b. During working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
- c. an employee willfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which, from its nature, it was his duty, under his contract, to have performed carefully and properly;
- d. an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;
- e. an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;
- f. in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment



and is not, within fourteen days, either released on bail or on bond or otherwise lawfully set at liberty; or

- g. an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.”

25. The Respondent maintains that such conduct amounts to grounds for summary dismissal, and under section 43(2) of the *akn ke act 2007 11 Employment Act*, provides that termination is lawful if the employer genuinely believes valid reasons exist. The Respondent relied on the case of Joseph Mwaniki Nganga V United Millers Ltd [2022] eKLR, which cited the case of British Leyland UK Ltd V Swift (1981)I.R.L 91, where Lord Denning described the test of reasonableness as follows: ,

“The correct test is: was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”

26. The Respondent further submitted that poor performance and misconduct are valid grounds for termination under section 41 of the *akn ke act 2007 11 Employment Act*, and specifically that the Claimant's actions contravened section 45(4)(c) and (e) of the *akn ke act 2007 11 Employment Act*. On the Claimant's demand for housing allowance and leave, the Respondent submitted that this is misleading since he was accommodated at the lodge and had already taken 35 leave days during probation, exceeding the statutory entitlement.

27. Finally, the Respondent emphasizes that the probationary contract had lapsed under section 42(2) & (3) of the *akn ke act 2007 11 Employment Act*, which provides as follows:

A probationary period shall not be more than six months, but it may be extended for a further period of not more than six months with the agreement of the employee.

No employer shall employ an employee under a probationary contract for more than the aggregate period provided under subsection (2).”

28. The Respondent submitted that since the Claimant failed to produce valid documents beyond a forged appointment letter, his case is unproven and should be dismissed.

29. The Respondent submitted that the Claimant was not issued a demand letter before filing suit, and during cross-examination, it was confirmed that no such letter formed part of his documents. In the case of Catherine Ngore Obare V Stephen Mulanya Kula & 4 Others [2014] eKLR, the Respondent notes that failure to serve a demand letter can justify denial of costs, since prior notice might have avoided litigation. Also, in the cases of Reid, Hewitt & Co V Joseph 1918 CAL 717 and Myres V Defries (1880) 5 EX 180, where the House of Lords held that costs generally follow the event, but may be distributed depending on issues.

30. The Respondent emphasizes that costs are discretionary under section 27(1) of the *akn ke act 1924 3 Civil Procedure Act*, as affirmed in the case of Morgan Air Cargo Ltd V Evrest Enterprises Ltd [2014] eKLR, which stressed that circumstances differ case by case. Finally, the Respondent invokes the case



of *Jasbir Singh Rai & Others V Tarlochan Rai & Others* [2014] eKLR, which clarified that costs are meant to reimburse the successful party.

31. The Respondent urged the court to dismiss the claim with costs.
32. At the time of writing this judgment, the Claimant did not file their respective written submissions but they clarified they would not file submissions and would rely on their pleadings.

Analysis and determination

33. The court has considered the pleadings together with the rival submissions by the counsels. The issues for determination are as follows:

- a. Whether the Claimant was unfairly dismissed by the Respondent;
- b. If (a) above is in the affirmative, whether the Claimant is entitled to the reliefs sought; and
- c. Who should bear the costs of the suit.

34. Sections 41 and 43 of the *Kenya Employment Act 2007* provide for procedural fairness and substantive justification when it comes to termination of employment. In the case of *Walter Ogal Anuro V Teachers Service Commission* [2013] KEELRC 386 (KLR), the court held as follows:

..... for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.

35. In *Beatrice Nyambune Mosiria V Judicial Service Commission* [2019] eKLR, the court held that: -

“In employment matters, the employer has to prove both a valid reason and fair procedure.”
Also in *Pamela Nelima Lutta V Mumias Sugar Co. Ltd* [2017] KEELRC 577 (KLR) it was held that: -

“What constitutes fair termination is a matter that is now well settled by the wealth of Jurisprudence of this court and the Court of Appeal. There are two elements that must be satisfied by the employer, fair procedure and valid reason.”

36. In this case, the Claimant stated that his termination was unfair as he was neither issued with a notice to show cause letter nor invited to a disciplinary hearing. Conversely, the Respondent acknowledges that the Claimant was its employee from 6th November 2023 but maintains that he was summarily dismissed for poor performance and misconduct, specifically for inviting friends to the lodge without authorization. The Respondent further contends that the appointment letter relied upon by the Claimant was a forgery and therefore invalid. His employment was formally terminated through the Respondent’s advocates by a letter dated 28th June 2024. The matter of a forged letter is neither here nor there as the Respondent should have investigated that further since forgery is a serious criminal offence.
37. It is now mandatory law as provided in Sections 41, 43 and 45 of the *Kenya Employment Act 2007* that to terminate the employment of an employee, the employer must prove valid reasons for such termination and must follow the right procedure.

The employee must be presented with the charges against him and must be given an opportunity to defend himself in the presence of a witness of his choice. This is provided in Section 41(1) of the *Kenya Employment Act 2007* which provides:-



Subject to section 42 (1), an employer shall,

before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

38. As well Section 45(1) & (2) of the *Kenya Employment Act 2007* stipulates as follows:-

No employer shall terminate the employment of an employee unfairly.

A termination of employment by an employer is unfair if the employer fails to prove—

- (a) that the reason for the termination is valid;
- (b) that the reason for the termination is a fair reason—
 - (i) related to the employees conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.

39. There are also numerous case laws that provide that for an employee to be terminated there must be proof of fair procedure and valid reason. In the case of *Beatrice Nyambune Mosiria -Vs- Judicial Service Commission (Supra)* the court held that the employer has to prove both a valid reason and fair procedure.

40. In the instant case, there is no evidence of the reasons presented to the Claimant to justify his summary dismissal. There is no notice to show cause served on him in order to defend himself. Infact there was no evidence of disciplinary hearing that was held in the presence of the Claimant and a witness of his choice.

41. The Claimant was issued a letter by the Respondent's advocate Rodi Orege & Company dated 28th June 2024 informing him that his services had been terminated with effect from 28th June 2024 (the same day). It is evident the Respondent failed to follow substantive justification and procedural fairness as stipulated in the aforementioned portions of *Kenya Employment Act 2007* being Sections 41, 43 and 45. Also Sections 107, 108 and 109 of *Kenya Evidence Act 1963* provide that he who alleges must prove. The Respondent failed to prove the allegations that justified his summary dismissal.

42. Having considered the respective pleadings of the parties and the Respondents submissions, the court firmly finds the claimant was unfairly and unprocedurally terminated. Judgment is therefore entered in his favour.

43. For the reliefs, the Claimant is awarded one month's salary in lieu of notice in accordance with section 35(1)(c) of the *Kenya Employment Act 2007*, which provides as follows:

“A contract of service, not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—



- (c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.”

Since there is no proof that the Respondent paid the Claimant, the court will allow this prayer.

44. For Compensation for unfair termination, the court relies on section 49(1)(c) of the *Kenya Employment Act 2007*, which provides as follows:

“Where, in the opinion of a labour officer, summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee

- (c) the equivalent of a number of months’ wages or salary not exceeding twelve months, based on the gross monthly wage or salary of the employee at the time of dismissal.”

The Claimant had worked for the Respondent for 7 months, and the court deems it fit that compensation for 2 months will be sufficient. In the case of *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga* [2015] KECA 394 (KLR), the Court of Appeal awarded 3 months’ compensation for unfair termination.

45. The court will NOT award the house allowance as the letter of appointment produced by the Claimant in court refer to Gross salary which include allowances.
46. The Prayer for service pay is not justified as it appears to be severance pay. This was not a case of redundancy. The same is declined.
47. The certificate of service is to be issued in accordance with section 51 of the *Kenya Employment Act 2007*.
48. Leave allowance is awarded at Kshs.154,000 =for pro-rata period worked.
49. Flowing from the foregoing, the court enters judgment in favour of the Claimant against the Respondent as follows:
- a. One month’s salary in lieu of notice - Kshs.220,000 =
 - b. Compensation for unfair termination for 2 months - Kshs.440,000 =
 - c. Leave due - Kshs.154,000 =
Total - Kshs.814,000 =
 - d. The Respondent to issue a certificate of service to the Claimant accordance with Section 51 of the *Kenya Employment Act 2007* within 14 days.
50. The Claimant will have the costs of this suit and interest at the court rate of 14% per annum from the delivery of this judgment until payment in full.

Orders accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF NOVEMBER, 2025.

ANNA NGIBUINI MWAURE

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 *akn ke act 2010 constitution 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 *akn ke act 2010 constitution 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

