

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
APPEAL NO. E246 OF 2023

(Before D.K.N. Marete)

SUSAN WAIRIMU CHEGE.....APPELLANT
VERSUS
MULTIMEDIA UNIVERSITY OF KENYA.....RESPONDENT

JUDGMENT

This matter was originated by way of Memorandum of Appeal dated 29th November, 2023. It is grounded as follows;

- The trial court erred and was wrong in holding that the Appellant was a temporary or casual employee in clear view of the provisions of section 37 as read with section 35(1)(c) of the Employment Act, 2007.
- That the Appellant's employment be deemed permanent in accordance with sections section 35(1)(c) of the Employment Act, 2007.
- That for lack of process and reasons for termination, the trial court erred in not awarding redress to the Appellant in accordance with section 49(c) of the Employment Act, 2007.

The Appellant in their written submissions dated 24th February, 2025 submits that she was employed by the Respondent as a Reservation Customer Relations Officer on 1st March, 2015 to 15th May, 2015, initially on a three months renewable contract. When this ended, she did not apply for renewal but was retained in employment till March, 2020 when the wild Covid 19 pandemic struck. She was verbally requested to stay away from duty with a promise that she would be recalled when the pandemic subsided. This was never to be and therefore her claim for unfair termination of employment.

The Appellant further submits that in the lower court, the Respondent admitted that she was its employee from 2013 to 2020 as a casual employee but absconded duty or that her services were lawfully terminated. This ended up as the determination of court and therefore this appeal.

The Appellant's other submission is that the bone of contention in this context is whether the Appellant could have been a casual employee for four (4) years and nine(9) months. She wishes to rely on the authority of section 37(1)(b) of the Employment Act, 2007 which provides that a casual employee who performs work that cannot reasonably be expected to be completed within a period or a number of working days amounting in aggregates to the equivalent of three months or more, the contract of service of casual employee shall be deemed to be one where wages are paid monthly and section 35(1) shall apply to such contract of service. This is buttressed by the authority of **Humprey Nyaga Thomas & 25 Others vs Kenyatta University [2021] eKLR** where the court upheld the effects of section 37 above.

The Appellant further complained that her termination of employment was not procedural and therefore her entitlement to compensation. This is in accordance with sections 45(1) (c) and 45(3) of the Employment Act, 2007, the latter of which provides thus;

An employee who has been continuously employed for a period not less than 13 months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.

Again, she submits against absconding duty and insists that if this was the case, the Respondent should have made enquiries and taken appropriate action.

The Respondent in their written submission dated 25th April, 2025 opposes the appeal and submits against the application of section 37(1) of the Employment Act, 2007 in the circumstances of this case. This is for reasons that the Appellant employment does not comply with strict requirement of section 37(1) of the Employment Act, 2007 in that she did not perform work amounting to not less than one

month or even equivalent to three months or more. It is their case that Appellant wilfully agreed to be employed on a temporary basis on condition that she would be required to apply for further temporary engagement.

The Respondent tabulates the periods of engagement in support of casual employment but all this fails in dethroning the Appellant's case on her terms and periods of employment. The balance of probability in the circumstance tilts in favour of the Appellant's case as a case of evasion by the Respondent is visible in the background.

I am therefore inclined to allow the appeal and order relief as follows;

- (i) One (1) month salary in lieu of noticeKshs.20,000.00
- (ii) Compensation for 105 untaken leave daysKshs.80,800.00
- (iii) Overtime for 480 days at double the hourly rate....20,000.00/26x480/8x2.....Kshs92,307.00
- (iv) Underpaid salary for sixty months at Kshs10,000.00.....Kshs.600,000.00
- (v) Ten (10) compensationKshs200,000.00
- Total of awardKshs.993,107.00**
- (vi) The Respondent be and is hereby ordered to issue a Certificate of Service to the Appellant in thirty (30) days of this judgment of court.
- (vii) The costs of this appeal and the trial court shall be borne by the Respondent.
- (viii) Interest of court rates from the date of this judgment of court till payment in full

Delivered, dated and signed this 19th day of November 2025.

D. K. Njagi Marete

JUDGE

Appearances:

1. Mr. Keyonzo instructed by S. M. Keyonzo Advocates for the Appellant.
2. Miss Kamau holding brief for Muturi instructed by ABM Advocates LLP for the Respondent.