



**Kamau v Charleson Media Group (Cause E720 of 2023)
[2025] KEELRC 3393 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3393 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E720 OF 2023
BOM MANANI, J
NOVEMBER 28, 2025**

BETWEEN

JANE WAMBUI KAMAU CLAIMANT

AND

CHARLESON MEDIA GROUP RESPONDENT

JUDGMENT

Background

1. The Claimant instituted the instant proceedings to challenge the legality of the Respondent's decision to terminate the employment relationship between the parties. She contends that the decision was against the law.
2. The Claimant contends that the Respondent hired her services as an Accounts Director with effect from 5th May 2023. She contends that she was engaged as a full time employee and that her salary was agreed at Ksh. 120,000.00 per month. She further asserts that she was entitled to annual leave for 21 days.
3. The Claimant avers that the initial contract between the parties was intended to have been for two years and had a probationary period. She contends that her Job Description was spelt out in clause 3 of the 1st draft contract dated 5th May 2023.
4. The Claimant avers that she did not sign the draft contract dated 5th May 2023 because the parties did not agree on all aspects of their engagement. She however avers that despite the failure to sign the agreement, she continued to execute her duties.
5. The Claimant avers that although the Respondent was to pay her salary of Ksh. 120,000.00 per month under the aforesaid contract, it did not do so. She avers that the Respondent cited liquidity challenges as the reason why it did not keep its part of the bargain in this respect.



6. The Claimant avers that on 2nd June 2023, she had a meeting with the Respondent's representatives when the parties agreed to deploy her to the position of Marketing Strategist. She contends that the parties discussed and agreed on the terms of engagement under the new assignment and that her salary was reviewed upwards to Ksh. 150,000.00 per month with airtime allowance of Ksh. 2,500.00 per month. The Claimant further avers that the parties agreed to adopt a hybrid mode of working whereby she was to be on site for two days and work remotely for three days.
7. The Claimant contends that she lawfully and dutifully discharged her duties under the new position despite the fact that the parties did not execute/sign the 2nd draft contract. It is her case that despite the failure to sign formal employment contracts between the parties an implied employment relationship existed between them.
8. To support her position, she contends that the Respondent assigned her work despite the fact that they had not signed the formal employment contracts. She further contends that the Respondent used to pay her airtime allowance to facilitate her work and allowed her to work based on the hybrid work system signifying the fact that it acknowledged her as its employee.
9. The Claimant avers that to her utter shock, the Respondent sent her an email on 13th June 2023 terminating her services with immediate effect. She avers that the reasons given by the Respondent for the impugned decision were her alleged poor performance in the three days that preceded the date of the email and her refusal to sign the contracts of employment.
10. The Claimant avers that the Respondent terminated her services without notice and without offering her a chance to be heard. As such, she contends that the decision was unlawful.
11. The Claimant accuses the Respondent of withholding her salary for May 2023 and for the days she worked in June 2023. She further accuses the Respondent of not allowing her to utilize her leave days.
12. The Claimant further contends that the Respondent did not provide her with valid reasons to justify its decision. She also avers that the Respondent failed to pay her terminal dues.
13. The Claimant alleges that the Respondent subjected her to humiliation and suffering. As such, she claims the various reliefs that are set out in the Memorandum of Claim.
14. The Respondent disputes the claim. It has filed a Statement of Defense and a witness statement by one Stephen Muchiri to anchor its response to the claim.
15. The Respondent avers that although it offered the Claimant employment vide the two contracts which she has alluded to in her claim, she refused to sign the contracts. As such, it contends that no valid employment relationship was created between the parties.
16. The Respondent further contends that in any event, the draft contracts which the Claimant refused to sign show that she was to work on probation in the first instance. As such, it contends that it was entitled to terminate her services without affording her the protection that is provided under section 41 of the *Employment Act* to wit: providing her with a justification for its decision; and affording her a hearing.
17. The Respondent further avers that despite the foregoing, there is no evidence that the Claimant was a diligent worker, if at all. It contends that it moved the Claimant from the position of Accounts Director to Marketing Strategist because she was unable to deliver in the Accounts Director position.



Issues for Determination

18. After analyzing the pleadings, evidence and submissions by the parties, the following issues fall for determination in the cause:-
 - a. Whether the parties had an employment relationship.
 - b. If the answer to the first issue is in the affirmative, whether the employment relationship was subject to a probationary term.
 - c. If the parties had an employment relationship, whether the Respondent terminated it lawfully.
 - d. Whether the Claimant is entitled to the reliefs which she claims in the cause.

Analysis

19. The Statement of Defense on record discloses that the Respondent has adopted two contradictory stances to fight the claim. First, it contends that because the Claimant did not sign the two draft contracts of service, no employment relationship was created between the parties. As such, it contends that her claim should fail for this reason.
20. Second, it contends that the Claimant was initially engaged on a probationary term and did not deliver as required. As such, it avers that it was entitled to and did terminate her services without notice and without hearing her because it did so during the probationary period.
21. It is impermissible for a party to advance two contradictory defenses in a cause. He must elect to pursue one.
22. In the instant case, the Respondent cannot assert that there was no employment relationship between the parties because the Claimant did not sign the impugned contracts of service and at the same time assert that the engagement between them was still under probation and was terminated without hearing the Claimant on this account. Such contradictory defenses only serve to embarrass the process of fair trial.
23. The Respondent avers that because the Claimant refused to sign the contracts of service whilst she was still under probation, it terminated her services without further ado owing to her inability to perform to its standards. The Respondent argues that it was entitled to terminate the Claimant's employment without notice or a hearing in terms of section 41 of the *Employment Act* because this provision does not apply to probationary contract. This brings me to the question whether there was in law a probationary contract between the parties.
24. Section 2 of the *Employment Act* defines the term "probationary contract" to mean a contract of employment, which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period. From this definition, it is apparent that a contract of service can only be considered as a probationary contract if it is in writing.
25. It is common ground that the Claimant did not sign the draft agreements which contained the probationary term. In effect, the failure by her to sign the two instruments meant that there was no written contract of service between the parties. As such, there was no written instrument executed by the parties to anchor the probationary term in terms of section 2 of the *Employment Act* with the consequence that there was no probationary contract between them.
26. The foregoing being the case, the Respondent cannot invoke section 42 of the *Employment Act* to contend that it was justified to release the Claimant from employment without adhering to the



requirements of section 41 of the Act allegedly because she was still serving under a probationary contract. The parties did not have a probationary contract because they had no written and signed instrument to anchor such contract.

27. Although the Claimant did not execute the draft contracts of service, it is evident that she commenced to work for the Respondent. This fact is self-evident in the contradictory witness statement of the Respondent's witness in which he states in part as follows:-

"It is upon realizing that the Claimant was unable to deliver satisfactorily as an accounts director that the Respondent decided to negotiate with the Claimant and switch her from being an accounts director to a marketing strategist and consequently agreed to enter a different employment contract (the 2nd contract) which was forwarded to her on 9th June 2023 via email but the Claimant still maintained her position not to execute it...

...Due to the foregoing, the Respondent opted to terminate the Claimant who was still under probation and as such there was no statutory requirement [for] notice to terminate her as section 42(1) of the *Employment Act* provides the provisions of section 41 do not apply where a termination of employment terminates a probationary contract."

28. The fact that the Claimant began working for the Respondent despite the absence of a written contract is also evident from the Respondent's email to the Claimant dated 13th June 2023 through which the Respondent terminated her services. The email reads, in part, as follows:-

"We have been observing your performance keenly for the past week and sadly we haven't seen any initiative to align the department or to ensure timelines are met for our current clients. Since we don't have the luxury of time, we wish to terminate our engagement with immediate effect so we can work on aligning our company to meet the needs of our clients.

We have also treated your unwillingness to sign the employment contract as rejection of offer and we have moved to other suitable candidates.

Lastly, your non-performance for the last 3 days has been treated as unethical and unprofessional despite the current crises we are facing with clients.

@ Samuel Waweru will process your May salary and severance pay as per our probation policy. Kindly get in touch with him for any concerns.

We wish you all the best in your future endeavours."

29. How did the Respondent deploy the Claimant from the position of accounts director to marketing manager following her alleged failure to perform satisfactorily in the earlier position if the Claimant had not commenced working for it (the Respondent)? How did the Respondent measure the Claimant's performance in the position of accounts director if she had not commenced work? How could the Respondent have purported to terminate the Claimant's service during the purported probationary term if she in fact had not commenced working for it? Why did the Respondent commit to pay the Claimant's May salary if she did not worked for it?
30. Importantly, during the trial, the Respondent's witness conceded in cross examination that the Claimant indeed commenced to work for the Respondent despite the two having not executed the formal contracts of service. He conceded that the Claimant had begun working before the Respondent terminated her services for failure to deliver and for refusal to sign the formal contracts of engagement.
31. The above evidence can only lead to one conclusion: that despite the absence of a written contract between the parties, the Claimant offered her services to the Respondent in the position of an employee



of the Respondent. As such, there was an employer-employee relationship between the parties. The court so declares.

32. The Respondent insinuates that if parties to a proposed employment relationship do not execute a written contract of service, there cannot be a valid employment relationship between them. This picture is flawed. Sections 8 and 9 of the *Employment Act* acknowledge the fact that contracts of service may be written or oral.
33. Although the Claimant did not sign the draft contracts with the Respondent, she nevertheless commenced and continued to work for the Respondent. She avers that she did so as the parties continued to engage on the content of the written contract.
34. The consequence of the foregoing is that although the parties did not have written contracts of service, they had an oral and or implied employment arrangement arising from their conduct. As has been stated earlier, this relationship was not subject to probation since the parties did not have a written contract. The ramification of the foregoing is that the parties to the action had an employment relationship which had no probationary term and which could only be terminated in accordance with section 41 of the *Employment Act*.
35. The Respondent contends that because the Claimant did not sign the impugned draft contracts, they did not agree on the terms of the contracts. As such, it contends that there were no agreed contracts with the consequence that no employment relationship ensued between them.
36. However, this narrative is debunked by the Respondent's own testimony in court. During the testimony of the defense witness, he clarified that the point of disagreement between the parties was whether a clause on maternity leave should be included in the draft contracts. Whilst the Respondent's position was that this was unnecessary since the right to maternity leave is addressed in its Employee Handbook which is normally incorporated in an employee's contract of service, the Claimant wanted the term expressly set out in the contracts.
37. This narrative demonstrates that the parties did not disagree on whether the right to maternity leave should form part of the terms of their engagement. Rather, they disagreed on whether, having been provided for in the Employee Handbook, the term should be regurgitated in the contracts of service.
38. In the Respondent's view, this was superfluous since the Employee Handbook already addressed the issue. In the Claimant's view, it was necessary to restate the term in the contracts.
39. Having regard to the foregoing, the Respondent cannot possibly contend that the terms of their engagement were not agreed. What was not agreed was whether all the terms should be set out in the contracts or whether some of them could be inferred from the Employee Handbook. As such, the court is satisfied that the terms of engagement between the parties were settled with the only disagreement being whether they should be expressly incorporated in the written contract between them.
40. The Claimant contends that the Respondent terminated her services through an email that was sent to her on 13th June 2023. She contends that the Respondent did not afford her a hearing before it terminated her services. It further avers that the Respondent did not prove the reasons for its decision.
41. On the other hand, the Respondent contends that the Claimant's services were terminated for want of performance and for her deliberate refusal to sign the draft contracts. In essence, the Respondent appears to be advancing two grounds to justify its decision: poor performance and misconduct on the part of the Claimant by her refusal to sign the draft agreements.



42. As has been noted earlier, because the Claimant's engagement was not on probationary terms, the Respondent was duty bound to justify its decision to terminate her services in terms of sections 41, 43 and 45 of the *Employment Act*. The Respondent had the obligation to prove the assertions of poor performance and misconduct. As the record shows, there was no hearing held at which the Respondent established these grounds.
43. Further, there is no cogent evidence to demonstrate that the Respondent evaluated the Claimant's performance before it terminated her services. Although during the trial the Respondent's witness contended that the Claimant's performance was orally evaluated, no cogent evidence was presented to back these claims. For instance, no minutes of the meetings during which her performance was reviewed were tabled in court. As such, the court finds that the Respondent did not prove the grounds for termination of the Claimant's contract (see *National Bank of Kenya v Samuel Nguru Mutonya* [2019] KECA 404 (KLR)).
44. The Respondent does not deny that it terminated the Claimant's services through an email dated 13th June 2023. It does not also deny that it did not offer her a hearing before it terminated her services. Rather, it contends that it terminated the Claimant's services without offering her the protection that is provided in section 41 of the *Employment Act* because she was allegedly still under probation.
45. The contention by the Respondent is flawed because, as has been demonstrated earlier, the contract between the parties was not a probationary one since it was not in writing. As such, the Respondent could only have validly terminated the Claimant's contract after hearing her in terms of section 41 of the *Employment Act*.
46. There is no evidence to demonstrate that the Claimant was afforded a hearing before her contract was terminated. As such, the court finds that the decision to terminate her services violated sections 41, 43 and 45 of the *Employment Act* (see *National Bank of Kenya v Samuel Nguru Mutonya* (supra)).
47. That said, it is perhaps worth pointing out that the provision which the Respondent relies on to contend that it was not obligated to hear the Claimant before it terminated her services was declared unconstitutional by this court (differently constituted) in the case of *Monica Munira Kibuchi & 6 others v. Mount Kenya University & Another* [2021] eKLR. In the case of *Red Lands Roses Ltd v Mugo* (Civil Appeal 68 of 2016) [2025] KECA 96 (KLR) (24 January 2025) (Judgment), the Court of Appeal observed that the *Monica Munira* decision reflected the present legal position on the subject. As such, the Respondent is not entitled to rely on the impugned section to sidestep the obligation to hear the Claimant even if she was on probation when her employment was terminated.
48. The totality of the foregoing demonstrates that the Respondent did not adhere to the law whilst terminating the Claimant's services. It neither proved the reasons for its decision nor afforded her the opportunity to be heard before her contract was terminated. It is so declared.
49. The next question for determination relates to whether the Claimant is entitled to the reliefs which she seeks through these proceedings. Although she has set out a plethora of prayers, it is left to the court's discretion to determine which ones to grant.
50. As noted earlier, the court has found that the Respondent's decision to terminate the Claimant's contract of service was improper in law. As such, it is declared that the Respondent unlawfully and unfairly terminated the Claimant's employment.
51. The Claimant has prayed for compensation for discrimination at the workplace. However, she did not tender cogent evidence to support her claim for discrimination. As such, the plea is declined.



52. The Claimant has claimed for compensation for the wrongful termination of her contract. The court notes that the Respondent made the decision to terminate her contract approximately one month after the parties had entered into the employment relation.
53. At the time, the Claimant's salary was Ksh. 150,000.00. This is confirmed by the Respondent's email to the Claimant dated 9th June 2023. The Respondent's witness also confirmed this during cross examination.
54. Having regard to the factors which the court is obligated to take into account under section 49 of the [Employment Act](#) whilst determining the quantum of compensation to grant for unlawful termination of a contract of service, one of which is the duration which the contract of service between the parties had lasted, the court awards the Claimant compensation which is equivalent to her salary for one month, that is to say, Ksh. 150,000.00.
55. The Claimant prays for one month's salary in lieu of notice to terminate her contract. Under section 35 of the [Employment Act](#), a party who terminates another's contract ought to issue him/her with the requisite notice. The notice should be for a period that is equivalent to the time the employee is to serve before he/she becomes entitled to earn a salary. If this is not done, the aggrieved party is entitled to be paid an amount which is equivalent to the salary which the employee would have earned during the notice period (see section 36 of the Act).
56. There is no evidence that the Respondent issued the Claimant with notice to terminate her services. From the evidence on record, the Claimant was entitled to a monthly salary. In the premises, she is entitled to be paid Ksh. 150,000.00 being the amount that is equivalent to her exit salary for one month.
57. The Claimant has prayed for salary for the period she worked for the Respondent but was not remunerated. In the Respondent's email to the Claimant dated 13th June 2023, the author states that the Respondent was to compute and pay to the Claimant her salary for May. This is an admission that the Respondent had not paid the Claimant's salary for May 2023 at the time her contract was terminated.
58. In the Claimant's witness statement and her testimony in chief, she asserted that her initial salary was agreed at Ksh. 120,000.00. This fact was confirmed by the Respondent's witness during his cross examination.
59. As such, the court is satisfied that the Claimant's entry salary was Ksh. 120,000.00 and that her salary for May 2023 was not paid. In the premises, the court enters judgment for her for Ksh. 120,000.00 being for her salary for May 2023.
60. The Claimant also prays for salary for the thirteen (13) days she worked in June 2023. The Respondent did not assert that salary for this period was paid to the Claimant. Rather, it contended that the amount (including the May 2023) salary was not payable to her because she did not perform to its expectations. The Respondent contends that the Claimant's salary was to be paid subject to her good performance.
61. The position expressed by the Respondent on the subject is not tenable in law. As a matter of law, an employee is entitled to remuneration for work done (see Part IV of the [Employment Act](#)).
62. There is no provision of law which pegs remuneration of an employee on his performance. If the parties to a contract of service desire this to be the case, they must capture the desire in the contract which should bear their concurrence through their signatures.



63. There is no evidence that the Claimant committed to this kind of arrangement. As such, she is entitled to be paid for the period she was at work including the thirteen days in June 2023. In the premises, the court awards her Ksh. 65,000.00 under this head.
64. The Claimant prays for payment in lieu of her accrued leave days. However, this claim is not tenable in law.
65. Under section 28 of the *Employment Act* an employee's leave entitlement ordinarily matures after he/she has had an uninterrupted service of twelve months. However, he/she may earn pro-rata leave if his/her contract is terminated two or more months after he/she begun working.
66. In the instant case, the Claimant's employment commenced on 5th May 2023 and was terminated on 13th June 2023 before she had served for two or more months. As such, she is not entitled to the leave claim.
67. I direct the Respondent to issue the Claimant with a Certificate of Service in terms of section 51 of the *Employment Act*.
68. I ward the Claimant interest on the sums awarded at court rates from the date of this decision.
69. I ward the Claimant costs of the case.
70. The amount awarded to the Claimant is subject to the applicable statutory deductions.

Summary of Findings and Award

71. After evaluating the evidence on record against the applicable law, the court makes the following findings and attendant orders:-
 - a. There was an employment relationship between the Respondent and the Claimant.
 - b. The employment relationship between the parties did not have a probationary term.
 - c. The Respondent unlawfully and unfairly terminated the contract of service between the parties.
 - d. The Claimant's claim for discrimination fails for want of proof.
 - e. The Claimant is awarded compensation for unfair termination of her contract of service which is equivalent to her salary for one month, that is to say, Ksh. 150,000.00.
 - f. The Claimant is awarded the sum of Ksh. 150,000.00 as pay in lieu of notice to terminate her contract of service.
 - g. The Claimant is awarded Ksh. 120,000.00 being unpaid salary for May 2023.
 - h. The Claimant is awarded Ksh. 65,000.00 being salary for the thirteen days worked in June 2023.
 - i. The claim for leave is disallowed.
 - j. The Respondent is ordered to issue the Claimant with a Certificate of Service in terms of section 51 of the *Employment Act*.
 - k. The Claimant is awarded interest on the sums awarded at court rates from the date of this decision.



- l. The Claimant is awarded costs of the case.
- m. The amount awarded in the judgment is subject to the applicable statutory deductions.

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

