



REPUBLIC OF KENYA



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**Karuga v Taneem Proeprties & 4 others (Cause E111 of 2024)
[2025] KEELRC 3542 (KLR) (11 December 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3542 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E111 OF 2024
M MBARŪ, J
DECEMBER 11, 2025**

BETWEEN

NAOMI MWIHAKI KARUGA CLAIMANT

AND

TANEEM PROEPTIES 1ST RESPONDENT

ISSACK ABDULLAHI 2ND RESPONDENT

MUSTAFA ABDULLAHI 3RD RESPONDENT

JIHAN ABDULLAHI 4TH RESPONDENT

SAFIA MAALIM 5TH RESPONDENT

JUDGMENT

1. The matter proceeded ex parte. The respondents were invited to attend, returns were filed, yet there was no attendance.
2. The claim is that the respondents employed the claimant in August 2020 as a project manager for the development of Taneem Residence in Mombasa, under a verbal contract. Taneem Residence was a project undertaken by the respondents to construct 57 residential apartments and a hotel on the subject property.
3. The employment provided that the claimant would be paid ksh. 190,000 per month, and the respondents would cater for the statutory deductions, including NSSF and NHIF. A written contract of service was to be issued within 90 days.
4. The claimant had duties to oversee the construction and sale of units within the development. This included general management of contractors, employees, government agencies, and officials. Financial management of the project, sales management and liaison duties.



5. For units sold, the respondents agreed to pay the claimant Ksh. 300,000 as a bonus.
6. The claimant was owed a commission of Ksh. 12,000,000 upon the sale of the apartment N106, which was to be sold at Ksh. 41,250,000. This was agreed upon in a letter of instruction for the payment of commission, dated 23 October 2023, through the claimant's advocates.
7. The claimant oversaw the completion of 24 units in the 57-unit project. The remaining units were not completed due to respondents' lack of financing. In breach of contract, the respondents failed to pay the claimant the agreed bonuses upon completion of 24 units, totaling Ksh. 7,200,000 and an additional Ksh. 12 million in sales commissions. The payments were due in 90 days, but the respondents refused to comply.
8. On 28 July 2024, the respondent, without notice or lawful cause, terminated the claimant's employment through a phone call and directed her to vacate the allocated accommodation.
9. The claim is that termination of employment was unfair and lacked due process. The claimant is seeking the following terminal dues:
 - a. Ksh. 7,200,000 is the bonus for the completed units.
 - b. Ksh. 12 million for the sale of apartment No. N106.
 - c. Ksh. 2,736,000 being retained PAYE.
 - d. Ksh. 185,280 being retained NSSF and NHIF deductions.
 - e. Ksh. 1,368,000 being house allowances.
 - f. Ksh. 3,352,320 being 12 months compensation.
 - g. Ksh. 588,720 being service pay.
 - h. Ksh. 279,360 being leave pay.
 - i. Ksh. 2,795,904 legal fees.
 - j. Certificate of service.
 - k. Costs of the suit.
 - l. Interests in the awards.
10. The claimant testified that the respondents employed her under a verbal contract that was to be reduced to writing, but this was not done. She was the project manager for the construction of unit apartments, and it was agreed that, due to her excellent work performance, she would be promoted to Operations Manager to oversee construction, sales, financial management, and other related duties for employees. She worked for over 4 years without taking leave to ensure the project was completed.
11. As the manager, the respondents charged the claimant with the duties of paying suppliers and casual employees, and with taking responsibility for the entire project. In return, the respondents agreed to pay Ksh. 300,000 for each completed unit as a bonus. There were 24 units completed, amounting to KSh. 7,200,000 in bonuses, which were not paid.
12. The claimant testified that, despite selling 24 units, the respondents did not pay the due bonuses. She sold apartment N106 for Ksh. 41 and was to get a special bonus of Ksh. 12 million, which has not been paid.



13. The claimant testified that on 28 July 2024, the respondents called her and verbally terminated her employment contract without providing notice or due process. There was no prior warning or any disciplinary issue raised.
14. In reply, it is argued that the 1st respondent employed the claimant, and the 2nd to 5th respondents are improperly joined in these proceedings; hence, the suit should be struck out. The employment was for the claimant to manage its serviced apartments, not as a project manager to oversee any development, as alleged. The claimant lacked the credentials to work as a project manager and was only employed to manage the 1st respondent's serviced apartments because of her experience in the hospitality industry.
15. The project consists of 57 residential apartments, and no hotel has been erected on the subject property, as alleged.
16. The response is that the claimant requested an all-inclusive salary of Ksh. 190,000 per month without any deductions. She was to pay her statutory dues.
17. There was no agreement to pay any bonuses or commission for the sale of the units. The claimant never sold the apartment N106, and she is not a registered Real Estate Agent as required under the [Estate Agents Act](#) and therefore not qualified to practice as an agent. The commission claimed is above the 3% commission ordinarily due to agents of the 1st respondent.
18. The claimant left her employment voluntarily after being put to task for booking serviced apartments to guests without notifying the 1st respondent and failing to account for the rental income derived from the bookings. The claims for various terminal dues are without justification and should be dismissed with costs.

The respondents called no attendance or witness.

The claimant filed written submissions.

Determination

19. Based on the pleadings, the claimant's evidence, and written submissions, the issues for determination are whether employment was terminated unfairly and whether the remedies sought should be granted.
20. In response, the respondents have challenged the joinder of the 2nd to the 5th respondents herein. Their case is that the claimant was an employee of the 1st respondent.
21. Under section 2 of the [Employment Act](#) (the Act) an employer is defined to include the following:

“employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;
22. Therefore, an agent of the employer, such as a foreman, manager, or other person related to or associated with the employer's entity, including a director or shareholder, is considered part of the employer under the law. The 2nd to 5th respondents did not call any evidence or apply any other definition outside the provisions under section 2 of the Act.
23. The respondents did not produce any employment contract between the 1st respondent and the claimant. The claimant's assertion that the respondents employed her stands.



24. Regarding the claim, the employer has a legal duty to issue the employee a written contract under sections 8, 9, and 10 of the [Employment Act](#) (the Act). Where the employee fails to adhere to the law, the court must accept the employee's account of the basic terms and conditions of service.
25. Under Section 31 of the Act, the employer may pay a consolidated salary, provided that this is done in writing.
26. Parties to an employment relationship are therefore allowed to negotiate terms and conditions of employment, but only under a written contract. However, parties cannot contract to commit an illegal act. The payment of statutory dues is a duty vested in the employer. An employee cannot be allowed to take a consolidated salary devoid of statutory dues deductions, as held in *Kagisye v Angaza Kenya Limited* [2025] KEELRC 3016 (KLR).
27. Therefore, Section 26 of the Act requires the employer to apply the basic minimum terms and conditions of a contract of service. These should form the foundation of the terms of a contract of service, upon which the parties can only improve, not derogate. As
28. Parties to a contract of service cannot agree to contract out of the law.
29. Where no written contract exists, the court is permitted to apply the minimum Wage Orders.
30. In this case, the claimant was employed under a verbal contract. The salary was agreed at Ksh. 190,000. The respondents confirm this, stating that it included all statutory deductions. The respondents were required to pay statutory deductions under PAYE, NHIF, and NSSF.
31. The failure by the respondent to address this legal lapse justifies the claim for service pay under section 35(5) and (6) of the Act. For each full year served, the claimant is entitled to 15 days' pay.
32. There is no payment statement submitted by the respondents as required under sections 20 and 21 of the Act on how statutory payments were remitted. For this lapse, service pay is due to the claimant.
33. The claimant worked for the respondents from July 2020 until July 2024. This is 4 full years.
34. At a salary of Ksh. 190,000 per month, for 15 days each, this amounts to Ksh. 380,000 in service pay.
35. The claimant testified that on 28 July 2024, she was called by a person who told her to vacate her well-located residence and that her employment had been terminated. No notice or warning was issued.
36. The respondents asserted that the claimant voluntarily left their employment after being questioned about bookings that were not reported to them. She failed to render a proper account following bookings for the serviced apartments.
37. An employer does not terminate her employment as held in *Nyali Academy Service Limited t/a The Mombasa Academy v Muli* [2023] KEELRC 2041 (KLR). Where the employer alleges that the employee voluntarily terminated employment by deserting duty or that, following a disciplinary issue, the employee opted to abandon employment, the employer has the duty to address the issue and issue a notice of termination. The employer must bring closure to the employment relationship, as held in *Ongugo v Mombasa Parents Club* [2025] KEELRC 2968 (KLR),
38. The rationale is that an employee who is absent from work commits gross misconduct under section 44 (4) (a) of the Act. The employer has a duty to issue a notice to show cause to the employee and to address the matter firmly and with finality, as gross misconduct should not be condoned, as held in *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] KECA 300 (KLR). The respondents' allegations that the claim failed to render an account for bookings were not addressed.



There is no evidence of such matter or misconduct. These allegations were left bare. Hence, allowing the claimant to leave employment without good cause supports her assertions that she was called by her employer and that her employment was terminated for no justifiable reason.

39. Termination of employment that is devoid of due process as required under sections 35, 41, 43, and 45 of the Act is both unlawful and unfair. The employee is entitled to notice pay and compensation under section 49 of the Act.
40. The claimant was last earning Ksh. 190,000 per month, due as notice pay.
41. On compensation, the claimant is seeking payment for 12 months. She had worked for the respondent for 4 full years. Her employment was unfairly terminated. For time served, the court finds a commission of 4 months appropriate in the given circumstances, totaling Ksh. 760,000.
42. On the other claims for bonuses and commissions, parties were under a verbal contract. No agreement has been produced for the payment of bonuses or commissions. The claimant cites only the completion of 24 units, without giving particulars. The alleged sale of apartment N106 is based on a demand notice to the respondents, rather than a written agreement, under which the claimant would sell the apartment and receive a commission payment in return. Without particulars, these claims must fail.
43. On the claim for payment of Ksh. 2,736,000 being retained PAYE, the respondents should issue the claimant the due Kenya Revenue Authority (KRA) P9 form for clearance with the statutory body. A report to KRA will outline the necessary penalties payable by the employer for failing to pay the dues on time.
44. On the claims for Ksh. 185,280 is being retained by NSSF and NHIF, which are due to the statutory bodies, not to the claimant. The claim for service pay addresses the legal lapse.
45. On the claim for Ksh. 1,368,000, being house allowances, the claimant was earning KSh.190, 000 per month. Although there is no written agreement, the salary paid is above the minimum wage. Under the Wage Orders, to claim a house allowance above what was paid would be unjust enrichment. In any case, the claimant testified that the respondents allocated her accommodation and, upon termination of her employment, directed her to vacate immediately. With accommodation addressed, under section 31 of the Act, the house allowance is not due.
46. On the claim for leave pay, the employer has the duty to produce work records under section 10(6) and (7) of the Act on how leave days were allocated to the claimant. Without any records, the claim for pay in lieu of taking annual leave is justified. However, under section 28(4) of the Act, the claimant can only go back 18 months, giving only 33 leave days.
47. At ksh.190, 000 for 33 days, the due annual leave pay is Ksh. 209,000.
48. A certificate of service is due under section 51 of the Act. This should be issued upon clearance.
49. On costs and interests, if the claim is successful, this is awarded. On interests, this being an employment claim, the respondents shall pay the terminal dues owed to the claimant within 30 days, after which the awards shall attract interest until paid in full.
62. Accordingly, judgment is entered for the claimant against the respondents in the following terms:
 - a. Employment terminated unlawfully and unfairly.
 - b. Compensation Ksh. 760,000.
 - c. Notice pay Ksh. 190,000.



- d. Service pay Ksh. 380,000.
- e. Leave pay Ksh. 209, 000.
- f. Certificate of service.
- g. Costs of the suit.
- h. Payment of the dues above shall be in 30 days, after which, the awards shall accrue interest from the date hereof and until paid in full.

DELIVERED IN OPEN COURT AT MALINDI, THIS 11TH DAY OF DECEMBER 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Davis Wekesa

..... and

