



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E696 OF 2023

PAOLO MARRO.....
.....CLAIMANT

-VERSUS-

AVIC INTERNATIONAL REAL ESTATE
(KENYA) LIMITED GTC.....
RESPONDENT

JUDGMENT

Introduction

1. By a Memorandum of Claim dated 29th August 2023, the Claimant sued the Respondent for unfair and unlawful termination of his employment contract and prayed for the following reliefs:-

a) A declaration that the Claimant's termination was unlawful and/or procedurally unfair.

b) 12 months' salary as compensation for unlawful termination USD 90,000.

c) USD 12,375 on account of unpaid House Allowance from June 2022 to May 2023 at the statutory rate 15% of the Claimant's basic salary per month.

d) Certificate of Service.

e) Interest on (b) and (c) above at Court's rate; and the

f) Costs of this Claim.

2. The Respondent filed a Memorandum of Response dated 28th September 2023 denying the alleged unfair and unlawful termination. It averred that the contract was lawfully terminated by paying two months salary in lieu of notice as provided in the employment contract.

Facts of the case

3. The Claimant was employed by the Respondent vide a letter of appointment dated 14th June 2022. His position was General Manager of Pan Pacific Serviced Suites Nairobi and his monthly net salary was USD 7,500. He served the first six months on probation after which he was confirmed.
4. On 26th May 2023, the Respondent terminated the Claimant employment for no reason and without according him any

hearing. The termination took effect on the same date. The termination was made pursuant to clause 16 of the Letter of Appointment dated 14th June 2022 that entitled either party to terminate the contract by serving a notice of two months or paying the other two month's salary in lieu of the notice.

5. The Claimant averred that the termination was unfair and unlawful since it did not comply with section 45 and 51 of the Employment Act and Article 41 of the Constitution of Kenya which guaranteed him right to fair Labour practices. He further averred that his right to housing under section 31 of the Employment Act was denied since he was neither provided with reasonable housing by the employer nor was he paid house allowance.
6. In response the Respondent maintained that the termination was lawful since it merely invoked its contractual right that allowed it to terminate the contract by issuing a notice of two months. It further averred that the termination of the Claimant's employment was a normal one and not for any disciplinary reason. It also averred that it paid the Claimant all his terminal dues therefore prayed for the suit to be dismissed with costs.
7. The suit came up for hearing on 1st October 2025 but the counsel agreed to have the same disposed of by written submissions on the strength of the documentary evidence on

record. The witness statements for the two sides echoed the facts in the pleadings. Only the Claimant filed submission as at 23rd October 2025 when the Court closed the matter and gave a Judgment date.

8. Having carefully considered the pleadings, evidence, and the submissions filed, the following issues fell for determination:-

- a) Whether the termination of the Claimant's contract of employment was unfair and unlawful.
- b) Whether the reliefs sought are merited.

Analysis

Unfair and unlawful termination

9. Section 45 (2) of the Employment Act provides that:-

“ 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 employee's 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.”

10. The above provision highlights two factors that must exist for a termination of employment to pass the muster, namely a valid reason and fair, procedure. The burden of proof of the two factors is on the employer. I gather support from the case of **George Musamali v G4S Security Services Kenya Ltd [2016] eKLR**, where the court held that:

“14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the Employment Act or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the face of the record. He or she must be heard no matter how weak or useless his or her defence

might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”

11. In this case the Respondent did not attempt to prove a valid reason for the termination as it maintained that the termination was a normal one and not for any disciplinary reason. As regards the procedure, it maintained that it complied with the contract of employment by invoking clause 16 of the contract which entitled either party to terminate the contract by a notice of 2 months or payment of 2 months salary in lieu of notice.
12. However, the Claimant maintained that the termination was unfair and unlawful because the termination was not grounded on any valid reason and it was done abruptly without prior hearing. That he had no record of performance issues or misconduct, and he had not received any warning.
13. There is no dispute that the Letter of Appointment dated 14th June 2022, clause 22 provided that the Claimant’s contract herein was governed by the Laws of Kenya and the Respondent acknowledged the foregoing fact in paragraph 18 of the Memorandum of Response. It follows that any stipulations in the said contract had to be viewed through the

lenses of the Employment Act of Kenya which provides for the irreducible minimum terms of employment in Kenya.

14. Section 3(1) of the Act provides that:-

“ This Act shall apply to all employees employed by any employer under a contract of service.”

15. Section 26 (1) of the Act then provides that:-

“ The provisions of this part and part VI shall constitute basic minimum terms and conditions of contract of service.”

16. Part VI of the Act deals with termination and dismissal from employment. Section 45 of the Act falls under part VI and therefore parties cannot enter into a contract that takes away the statutory provisions that require in mandatory terms that termination of employment ought to be grounded on a valid reason, and that fair procedure must be followed. Therefore in the face of section 45 of the Act it is unconscionable for the employer to ride on a termination clause alone to terminate an employees contract of service.

17. In view of the Respondent’s own admission that there was no reason for terminating the Claimant’s employment, I find and hold that the termination was unfair and unjustified. Section 43 (1) of the Act provides that:-

“ In any claim arising out of termination of a contract, the employer, shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to be unfair within the meaning of section 45.”

18. As regards the Procedure, Article 41 and 47 of the Constitution of Kenya entitles an employee to be heard before any decision is made to their detriment. The said Articles guarantee the right to fair Labour Practices and right to fair administrative action. The Respondent did not discharge the burden of proving that it accorded the Claimant a hearing before the termination. In **Kenfreight (EA) Limited v. Benson K. Ngati [2016] eKLR**, the Court of Appeal held that:-

“It is considered unfair to terminate contract of service if the employer fails to demonstrate that the reason for the termination is valid and fair, that reason related to the employee’s conduct, capacity and compatibility or is based on the operational requirements of the employer. The employer must also prove that the termination was in accordance with fair procedure...”

Apart from issuing proper Notice according to the contract (or payment in lieu of Notice as

provided), an employer is duty-bound to explain to an employee in the presence of another employee or union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service.”

19. Having found that the termination was not grounded on any valid reason and that a fair procedure was not followed, I hold that the termination of the Claimant’s contract of service was unfair and unlawful within the meaning of section 45 of the Employment Act.

Reliefs

20. In view of the foregoing conclusion I award the prayer for declaration that the termination of the Claimant’s contract of employment was unfair and unlawful. For the same reason I find that the prayer for compensation for unfair termination is merited. He prayed for the maximum 12 months salary compensation because he was an expatriate in the hospitality industry and he had challenges securing another job.

21. Having considered the above sentiments, the fact that the Claimant did not contribute to the termination through misconduct, and also his short period of service, I award him Four months salary as compensation. His salary was USD 7500 per month and therefore he is awarded USD 30000.

22. The Claimant further prayed for housing allowance at 15% of the monthly basic salary. The Respondent did not deny the claim for house allowance both in its pleadings and the witness statement. Section 31 (1) of the Employment Act provides that:-

“An employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee as will enable the employee to obtain reasonable accommodation.”

23. In this case, the employer neither provided the Claimant with any housing nor paid him any house allowance as required by section 31 above. Regulation 4 of the Regulation of Wages (General) Order provides that:-

“ An employee on a monthly contract who is not provided with free housing accommodation by his employer shall in addition to the basic minimum

wage prescribed in the First schedule, be paid housing allowance equal to fifteen percent of his basic minimum wage.”

24. The Claimant worked for eleven (11) months earning basic salary of USD 7500 each month. Therefore I assess his unpaid house allowance as $USD\ 7500 \times 11 \times 15\% = USD\ 12,375$.

25. The Claimant prayed for an order to be issued with a certificate of service and I grant the same since it was a right under section 51 of the Employment Act. The said section entitled an employee to be issued with a certificate of service for a continuous period of not less than four weeks.

Conclusion

26. I have found that the termination of employment contract herein was unfair and unlawful. I have further found that the Claimant is entitled to the reliefs highlighted above. Consequently I enter Judgment for him against the Respondent as follows:-

a) A declaration that the termination of the employment contract was unfair and unlawful.

b) Award of;

(i) Compensation USD 30,000

(ii) House allowance USD 12,375

Total

USD 42,375

- c) The award is subject to statutory deductions.
- d) Award of costs and interest at court rate from the date of this Judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 11TH DAY OF DECEMBER, 2025.

**ONESMUS MAKAU
JUDGE**

Appearance:

Ojiambo for the Claimant

Obuya for the Respondent