

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. E1058 OF 2023

(Before Hon. Lady Justice Agnes Kitiku Nzei)

SYRUS ONGAKI OGARO.....1ST CLAIMANT
ANNE WANGUI NJUGUNA2ND CLAIMANT
ANNE WAMBUI3RD CLAIMANT
BILALA KALLA BILALLA4TH CLAIMANT
CATHERINE MWIKALI KIMEU5TH CLAIMANT
CHRISTINE JERUTO KOSGEI6TH CLAIMANT
CHRISTINE GATHONI NG'ANG'A7TH CLAIMANT
DUNCAN KIBET NG'ETICH8TH CLAIMANT
FESTUS NYAGUTHII KANDIA9TH CLAIMANT
HANNAH WAMBUI KARIUKI10TH CLAIMANT
HENRY KIRIMI MISHEK11TH CLAIMANT
IAN ROTICH TUMWET12TH CLAIMANT
JACKLINE KATHAMBI KIRIMI13TH CLAIMANT
JANE WANGECHI MURAGU14TH CLAIMANT
JEREMIAH MBUGUA GACHOKI15TH CLAIMANT
JONATHAN MALITI MBULA16TH CLAIMANT
KAREN BITSENGWA LUSEKA17TH CLAIMANT
KELVIN MBII MWICHING'I.....18TH CLAIMANT
KENTON MARTIN MANGARE19TH CLAIMANT

MARTIN MICHAEL MASAWA	20TH CLAIMANT
MARTIN MUTISO MUIA	21ST CLAIMANT
MOHAMEDNOOR ABDI IBRAHIM	22ND CLAIMANT
NELLY NAITORE	23RD CLAIMANT
PEACE WANGARI MUGOTHI	24TH CLAIMANT
PETER MUSYOKI MUNYEKE	25TH CLAIMANT
HOEBE WANGOI MIGWI.....	26TH CLAIMANT
REGINA MUSEMBI.....	27TH CLAIMANT
ROBERT NDUNG’U MURIGI.....	28TH CLAIMANT
SHADRACK MUMO MUIA	29TH CLAIMANT
SHALTON OCHARO MISATI	30TH CLAIMANT
SHARON NJERI EVAH.....	31ST CLAIMANT
THEOPHILUS MUNYENDO MASOSO	32ND CLAIMANT
VINCENT CHERUYOIT.....	33RD CLAIMANT
WARUCHU KURIA.....	34TH CLAIMANT
YVONNE MUTETE KING’OO	35TH CLAIMANT

VERSUS

KENYA REVENUE AUTHORITYRESPONDENT

JUDGMENT

1. The Claimants herein sued the Respondent vide a Memorandum of Claim dated 20th December, 2023 and pleaded:-

(a) that the Claimants were employed by the Respondent as analysts in its Intelligence and Strategic Operations Department for **a period of three years, effective from 1st July, 2021 to 31st June, 2024.**

(b) that the Claimants' terms of service as per the contract(s) were:-

- (i) the contract period was three years.
- (ii) remuneration packages depending on the KRA Grade of employees.

Other benefits.

- (iii) enrolment to the National Social Security Fund based on individual salary.
- (iv) enrolment to the National Hospital Insurance Fund based on individual salary.
- (v) medical scheme together with spouse and 4 declared children.
- (vi) Group personal accident.
- (vii) Leave at 30 pro-rated working days.
- (viii) Annual leave allowance.

(c) that during their service, the Claimants were stationed in different counties across the country.

(d) that before the lapse of the respective contractual periods, the Claimants were issued with letters of termination of employment dated 31st March, 2023 and signed on behalf of the Deputy Commissioner- Human Resource of the Respondent, citing redundancy as the reason for termination.

(e) that the said letters, **dated 31st March, 2023**, were forwarded to the respective Claimants **on 3rd April, 2023** when they had already started working in the month of April 2023. That the letters, backdated with the aim of only paying the Claimants salaries for March 2023, stated as follows:-

“ . . . Due to changes in business strategy and in line with the provisions of your contract of engagement Clause 5, the Authority has decided to terminate your services with immediate effect.”

(f) that unaware of the backdated letters, the Claimants reported on duty in their respective stations across the Country as usual on **3rd April**,

2023, only to establish that their log-in details had been disabled. That while still stranded, the Claimants received phone calls from the Respondent's Head Office in Nairobi, asking them to report to the Head Office and collect their respective letters, whose contents was still unknown to the Claimants.

(g) that the Claimants travelled to the Respondent's Headquarters from across the country on different dates as from 3rd April, 2023, and were **shocked** to receive letters of termination stating that their employment had been terminated and that their services were no longer required as from **31st March, 2023**.

(h) that the Claimants were summarily dismissed on account of redundancy; suddenly and unexpectedly, and were as a result subjected to tough economic situations.

(i) that the Respondent's Deputy Commissioner-Human Resource lacked the authority to issue an administrative decision touching on the Claimants' employment without making reference to a

meeting of the Respondent and giving reasons. That the Claimants were not given notice or reasons for their illegal termination.

(j) that the Respondent violated Articles 27, 232(2) and 236 [of the Constitution] which provide that the values and principles of public service apply to public service in all state organs in both levels of government; and all state corporations to the extent that it discriminated the Claimants by not affording them a fair labour practice, and unilaterally terminating their contracts without following the set procedure.

(k) that the Respondent did not notify the Claimants, individually in writing, of the intended redundancy not less than a month prior to the date of the intended termination on account of redundancy, in violation of Section 40 of the Employment Act which sets out redundancy procedure.

2. The Claimants sought the following reliefs:-

(a) A declaration that the Respondent's unilateral decision to declare the Claimants redundant by

various letters dated 31st March, 2023 was unprocedural, unlawful and unfair, and amounted to unfair and unlawful termination of employment.

(b) An order compelling the Respondent to compensate the Claimants' salaries that would have been earned in their respective positions for the remainder of their respective contractual terms from 3rd April, 2023, without any deductions whatsoever.

(c) An order for general and aggravated damages as compensation for the remainder of the respective contractual terms being for unlawful, unfair, discriminatory and unprocedural termination of employment.

(d) Compensation for wrongful, unfair and illegal termination at 12 months' pay.

(e) General and aggravated damages for discrimination, violation of constitutional rights and for unprocedural redundancy, breach of the Claimants' labour rights, right of non-discrimination, fair administrative action and right to human dignity and self-worth.

- (f) *Costs of the suit.*
- (g) *Interest on sums awarded at court rates from the date of termination until payment in full.*

3. Documents filed alongside the Claimants' Memorandum of Claim included the Claimants' respective witness affidavits in support of the Claim (sworn on 20th December, 2023) and an evenly dated list of documents, listing 8 documents. The listed documents included the Claimants' written authority authorising the 1st Claimant (**Syrus Ongaki Ogaro**) to swear a verifying affidavit in verification of their claim herein, the Claimants' respective employment letters, letters of termination dated **31st March, 2023** and demand letter, among others.

4. The Respondent filed Response to the Claimants' claim dated 20th February, 2023 and shown to have been amended on 4th April, 2024. The Respondent denied the Claimants' claim and pleaded:-

- (a) *that the reason for termination of the Claimants' secondment was as a result of **change in business strategy and in line with the***

provisions of Clause 5 of the Claimants' contracts.

(b) that the Claimants were engaged as analysts in the Respondent's Intelligence & Strategic Operations Department for a period of three (3) years effective 1st July, 2021 to 30th June, 2024, and were terminated with effect from 31st March, 2023 **due to change in business strategy and in line with Clause 5 of their contracts.**

(c) that the Claimants have since cleared with the Respondent, and were issued with Certificates of Service pursuant to Section 51 of the Employment Act.

(d) that 31st March, 2023 was a Friday and 2nd April, 2023 a Monday, and that the Claimants were issued with the letters terminating their services after resuming work after a weekend; and were paid three months' salary in lieu of notice **pursuant to Clause 5 of their contracts** and Section 36 of the Employment Act.

(e) that the Respondent's Deputy Commissioner-Human Resource exercised her administrative

*responsibility to communicate the Respondent's decision to terminate the Claimants' fixed term contracts, which was done in line with the provision of **Clause 5 of the Claimants' contracts** as read with Section 36 of the Employment Act, 2007.*

(f) that termination of the Claimants' contracts/employment was procedural, lawful, constitutional and fair.

(g) that the Claimants were compensated as per the letter terminating their secondment contracts of service, and are not entitled to any other salaries.

5. The Respondent also filed a witness statement of **Jackson Kimeu** dated 2nd July, 2024, which largely reiterated the averments made in the Respondent's Amended Response to Claim, which I have substantially reproduced herein above.
6. Trial opened before me on 28th April, 2025. The Claimants' witness, **Syrus Ongaki Ogaro, (CW-1)** told the Court that he had been authorised by his Co-claimants who had **not** withdrawn their claims, and who had filed witness affidavits,

to represent them/to testify on their behalf in the suit herein. The witness **(RW-1)** adopted his filed witness affidavit as his testimony and presented to the Court the filed witness affidavits of his Co-claimants. He told the Court that the Claimants who had withdrawn their respective claims against the Respondent were:-

- (a) Jackline Kathambi (13th Claimant)**
- (b) Christine Jeruto Kosgei (6th Claimant)**
- (c) Anne Wangui Njuguna (2nd Claimant)**
- (d) Henry Kirimi (11th Claimant)**
- (e) Jeremiah Gachoki (15th Claimant)**
- (f) Karen Bitsengwa (17th Claimant)**
- (g) Regina Musembi (27th Claimant)**
- (h) Shadrack Mumo Muia (29th Claimant)**
- (i) Vincent Kibet Cheruiyot (33rd Claimant)**
- (j) Waruchu Kuria (34th Claimant)**
- (k) Yvone Mutete King'oo (35th Claimant), and**
- (l) Bilala Kala (4th Claimant)**

7. **CW-1** further testified:-

- (a) that the Claimants were **on 1st July, 2021** given fixed term contracts by the Respondent, but were*

abruptly and **without notice terminated on 31st March, 2023**, after about one year; and after the Claimants had already planned their lives within the three years contract period, and even taken loans. That the termination was unfair.

(b) that the termination letters were given to the Claimants on **3rd April, 2023**.

(c) that a week before **3rd April, 2023**, some of the Claimants had been unable to access their medical insurance service, and on getting to work on 3rd April, 2023, they realised that their cards, emails and fingerprints were not working on the Respondent's access doors and systems. That at around 10.00 a.m, they started receiving phone calls telling them to go to the Respondent's Headquarters and see the HR.

(d) that those of the Claimants working at the Respondent's Headquarter got their letters as from 10.00 a.m **on 3rd April, 2023**, while those working outside Nairobi travelled to Nairobi, and were given their termination letters by the Respondent's HR.

(e) that not all officers in the Claimants' department were terminated.

8. The Respondent's Counsel did not cross-examine the Claimants' witness **(CW-1)**, stating that she had **no** instructions to cross-examine the witness.
9. The Respondent called one witness, **Jackson Kimeu Kyalo (RW-1)**, a Human Resource Manager in the Respondent Authority. He adopted his filed witness statement as his testimony. **RW-1** further testified that the Claimants' contracts commenced on 1st July, 2021 and were to end on 30th June, 2024. That Clause 5 of the Claimants' contracts provided that either party could terminate the contracts by giving 3 months' notice or by paying 3 months' salary in lieu. That the Claimants were fully aware of that clause as they had signed the contracts. That the Claimants were paid all their dues, and were issued with certificates of service upon clearance.
10. Cross-examined, **RW-1** testified:-

- (a) that the Claimants' fixed term contracts were terminated before the lapse of the contractual period of 3 years, **and that the reason for termination was given as change in business strategy.**
- (b) that the termination letters cited Section 40 of the Employment Act, which relates to termination of employment on account of redundancy. **That the Claimants were terminated on account of Clause 5 of their contracts.**
- (c) that the Claimants' termination letters informed them that they would be paid severance pay under Section 40 of the Employment Act; but the Respondent did not follow the procedure set out in Section 40.
- (d) that the Respondent did not issue a 30 days' notice, and did not disclose the criteria used in selecting the Claimants for termination.
- (e) that the Respondent did not engage the Claimants in consultations before termination.
- (f) that **change in business strategy was given as the reason for termination, but**

particulars of that change in strategy was not communicated to the Claimants.

11. The Claimants' termination letters dated 31st March, 2023, produced in evidence by the Claimants **(CW-1)** and **worded uniformly** save for the respective Claimants' names, state as follows:-

“RE: TERMINATION OF FIXED TERM CONTRACTS.

Reference is made to your contract of service dated 30th June, 2021.

Due to change in business strategy and in line with the provisions of your contract of engagement Clause 5, the Authority has decided to terminate your services with immediate effect.

Consequently, you will be paid three (3) months' gross salary in lieu of notice less any liabilities owing to the Authority, upon clearance. Further, and in line with Section 40 of the Employment

Act, 2007, the Authority will pay you the following:-

- 1. Severance pay at the rate of fifteen (15) days for each completed year of service.**
- 2. Any leave days earned but not taken as at 31st March, 2023.”**

12. **Clause 5** of the Claimants’ Fixed Terms Contracts of Employment dated 30th June, 2021, worded uniformly save for the respective names and the amounts of remuneration (in some cases) and produced in evidence by the Claimants **(CW-1)**, states as follows;-

“5. Termination of Service/Notice period

Termination of employment during the probationary period may be done by either party by giving one month’s notice or payment of one month’s gross salary in lieu of notice.

Thereafter, on confirmation, termination may be done by either party by giving three months’ notice or payment of three months’ gross salary in lieu of notice.”

13. **Clause 4** of the Claimants' fixed term contracts provided:-

“4. You will be required to serve on probation for a period of six (6) months before confirmation. Confirmation is subject to successful probation performance appraisal by your immediate supervisor.”

14. It is **evident** from the letters dated **31st March, 2023** terminating the Claimants' fixed term contracts that termination of the contracts was **not** on account of redundancy, though the letters **mention** Section 40 of the Employment Act, 2007 regarding what the Respondent referred to as **“Severance Pay”**. This brings the impugned termination within the purview of **Section 45 of the Employment Act.**

15. Having considered the pleadings filed and all the evidence presented in Court, issues that fall for determination, in my view, are as follows:-

(a) Whether termination of the Claimants' respective fixed term contracts of employment by the Respondent was unfair.

(b) Whether the reliefs sought are merited.

16. On the first issue, **Section 45 of the Employment Act, 2007** provides as follows:-

“(1) No employer shall terminate the employment of an employee unfairly.

(2) 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.

17. In the instant case, the Claimants’ respective contracts were terminated by the Respondent **“due to changes in business strategy”**. This was the reason given by the Respondent for terminating the contracts. The Respondent’s

witness **(RW-1)** admitted under cross-examination **that particulars of the alleged “change in business strategy” were not given to the Claimants.** None were given to the Court at the trial. The Respondent **did not prove** that the reason given for the termination was **valid.** The termination was, therefore, **substantively unfair.**

18. Section 43 (1) of the Employment Act provides as follows:-

“(1) In any claim arising out of a 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 have been unfair within the meaning of Section 45.”

19. The existence of a termination clause in the Claimants’ employment contracts was **no valid reason** for the Respondent to terminate the Claimants’ employment **without a valid reason.** This Court stated as follows in my Judgment in the case of **Benson Muriithi Kagai - vs -**

**Kenga Equatorial Hotels Limited t/a Mombasa
Continental Resort [2024] KEELRC 2641 (KLR):-**

“20. . . . The fact that Clause 18 of the Claimant’s employment contract provided that either party could terminate the contract by giving the other a one month Notice or by paying one month pay (salary) in lieu did not mean that the Respondent could terminate the Claimant’s employment without a valid reason. The said Clause could only be invoked by the Respondent if it had a valid reason to terminate the contract of employment. . . .”

20. I return a finding that termination of the Claimants’ employment by the Respondent was unfair, and I so declare.

21. Before delving into the second issue, it is worthy noting that **twelve (12) out of the thirty five (35) Claimants named herein withdrew their respective claims against the Respondent before commencement of**

trial herein. Those who withdrew, according to the 1st Claimant (**CW-1**), are as follows:-

- (a) Jackline Kathambi Kirimi (13th Claimant)**
- (b) Christine Jeruto Kosgei (6th Claimant)**
- (c) Anne Wangui Njuguna (2nd Claimant)**
- (d) Henry Kirimi (11th Claimant)**
- (e) Jeremia Gachoki (15th Claimant)**
- (f) Karen Bitsengwa (17th Claimant)**
- (g) Regina Musembi (27th Claimant)**
- (h) Shadrack Mumo Muia (29th Claimant)**
- (i) Vincent Kibet Cheruiyot (33rd Claimant)**
- (j) Waruchu Kuria (34th Claimant)**
- (k) Yvone Mutete King'oo (35th Claimant), and**
- (l) Bilala Kalla (4th Claimant)**

22. The Claimants whose claims remain for determination vide this Judgement are:-

- (a) Syrus Ongaki Ogaro (1st Claimant).**
- (b) Anne Wambui (3rd Claimant).**
- (c) Catherine Mwikali Kimeu (5th Claimant)**
- (d) Catherine Gathoni Ng'ang'a (7th Claimant)**
- (e) Duncan Kibet Ngetich (8th Claimant)**

- (f) Felistus Nyanguthii Kandia (9th Claimant)**
- (g) Hannah Wambui Kariuki (10th Claimant)**
- (h) Ian Rotich Tumwet (12th Claimant)**
- (i) Jane Wangechi Maragu (14th Claimant)**
- (j) Jonathan Maliti Mbula (16th Claimant)**
- (k) Kelvin Mbi Mwaching'i (18th Claimant)**
- (l) Kenton Martin Mongare (19th Claimant)**
- (m) Martin Michael Masawa (20th Claimant)**
- (n) Martin Mutiso Muia (21st Claimant)**
- (o) Mohamednoor Abdi Ibrahim (22nd Claimant)**
- (p) Nelly Naitore (23rd Claimant)**
- (q) Peace Wangari Mugothi (24th Claimant)**
- (r) Peter Musyoki Munyeke (25th Claimant)**
- (s) Phoebe Wangai Migwi (26th Claimant)**
- (t) Robert Ndung'u Murigi (28th Claimant)**
- (u) Shalton Ocharo Misati (30th Claimant)**
- (v) Sharon Njeri Eva (31st Claimant)**
- (w) Theophilus Munyendo Masoso (32nd Claimant)**

23. Having made a finding that termination of the Claimants' employment by the Respondent was unfair, and taking into

account the abrupt and unexpected manner in which the termination was effected, I award **each of the 23 Claimants named in the foregoing paragraph (paragraph 22 of this Judgment) the equivalent of four (4) months' gross salary being compensation for unfair termination of employment.** The said Claimants' contractual gross salaries are stated in their respective fixed term contracts **dated 30th June, 2021,** which were produced in evidence by the Claimants. Each of the said Claimants is shown to have been earning a consolidated gross salary of **Kshs.181,000/=** per month.

24. In its written submissions dated 29th July, 2025 and filed herein, the Respondent cited the Court of Appeal's Judgment in the said Court's **Civil Appeal No. E111 of 2024 (Kenya Revenue Authority - vs - Victor Odhiambo Otieno & 3 Others)**, which related to the Claimants' work colleagues who had been terminated on the same date as the Claimants. The Court of Appeal awarded each of the Claimants' said work colleagues the equivalent of four (4) months' salary as compensation.

25. The Court of Appeal stated as follows in the Judgment of **P.O. Kiage JA**, with which **S. Ole Kantai** and **L. Achode, JJA** agreed:-

“In the end, my considered view of the appeal is that it should partly succeed. I would therefore set aside the learned Judge’s Order number two (2) and substitute it with an order that;

(a) The Appellant to pay each of the respondents and the 60 other affected officers four (4) months’ gross salary at the last monthly rate prior to the termination of the secondment contracts (less PAYE) and the amount due to each be computed as part of the decree.”

26. The claim for salaries for the remainder of the fixed term contracts, as from the date of termination, is declined, as it is not one of the reliefs set out in Section 49(1) of the Employment Act.

27. The claim for general and aggravated damages is declined, in view of the award of compensation for unfair termination

of employment. Compensation for unfair termination of employment is in the nature of damages.

28. The Claimants did not prove the allegation of discrimination against them by the Respondent.

29. The Claimants neither pleaded **breach** of their employment contracts nor sought relief in that regard. An employment contract is a contract like any other. The only difference is that an employment contract creates a **personal contractual relationship** between an employer and an employee, called **employment**.

30. In the upshot, and having considered written submissions filed on behalf of the parties herein, Judgment is hereby entered for the **23 Claimants** listed at paragraph 22 of this Judgment as follows:-

(a) Each of the Claimants listed at paragraph 22 of this Judgment is awarded the equivalent of four (4) months' gross salary being compensation for unfair termination of employment

**(Kshs.181,000/= x 4) = Kshs.724,000/= less
PAYE.**

(b) Each of the said Claimants is awarded interest on the awarded sum, to be calculated at Court rates from the date of this Judgment.

31. The said Claimants are awarded costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
19TH DAY OF DECEMBER 2025**

AGNES KITIKU NZEI

JUDGE

ORDER

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Mr. Khasogo for the Claimants

No appearance for the Respondent

ORIGINAL