

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

CAUSE NO. E1037 OF 2023

**NEBERT KANGWANA AMBULA
CLAIMANT**

v

**INKOMOKO LIMITED (formerly known as
AFRICAN ENTREPRENEUR KENYA LTD
RESPONDENT**

EMPLOYMENT AND LABOUR RELATIONS COURT

JUDGMENT

1. Inkomoko Ltd (the Respondent) offered Nebert Kangwana Ambula (the Claimant) employment as an Investment Officer on or around 9 June 2021.
2. On 21 September 2021, the Respondent informed the Claimant that it would not renew the contract from that date, which also marked the end of the 3-month probation.
3. The Claimant filed a claim on 10 December 2023, asserting unfair termination of employment. The Respondent filed a Response and Counterclaim on 21 February 2024.
4. The Cause was heard on 25 March 2025, 16 June 2025 and 5 November 2025. The Claimant and a

Human Resource Director with the Respondent testified.

5. The Claimant filed his submissions on 13 November 2025, and the Respondent filed its submissions on 12 December 2025.
6. The Court has considered the pleadings, evidence and submissions.

Probation

7. The Claimant's employment contract indicated that the contract would initially run for one year with a 3-month probation and a commencement date of 21 June 2021.
8. The probation period was expected to end on or around 21 September 2021.
9. The Respondent informed the Claimant that it was not confirming him and that it was bringing the contract to an end.
10. The Court finds that the Respondent promptly informed the Claimant that it would not confirm him and that it was ending the contract.

11. Section 42(1) of the Employment Act, 2007, ousts the procedural fairness requirements outlined in section 41 of the Act if the employment relationship is terminated during the probation period.

12. However, the constitutionality of the provision was challenged in *Kibuchi & 6 vs. Mount Kenya University; Attorney General (Interested Party)* (2021) KEELRC 2310 (KLR), and a 3-judge bench of the Court held that the section was inconsistent with Articles 24, 41 and 47 of the Constitution.

13. The significance of the holding of inconsistency is that even employees on probation are assured of the right to procedural fairness.

Unfair termination of employment

Procedural fairness

14. During a human resource audit around September 2021, the Respondent found an error in the salary paid to the Claimant (an offer letter indicated gross salary of Kshs 181,491/- and another one Kshs 84,633/-). There was an overpayment.

15. The Respondent engaged the Claimant on the error, and an agreement was reached on or around 7 September 2021, that the overpayment would be refunded. The Claimant suggested a period of over 6 months through an email on 8 September 2021.

16. On 21 September 2021, the Respondent sent an email to the Claimant on non-renewal of the contract (confirmation after probation).

17. Section 35(1)(c) of the Employment Act required that the Respondent issue a written notice to the Claimant informing him of the contemplated termination of the contract. The notice is commonly referred to as a show cause.

18. The troves of email placed before the Court do not meet the threshold of the notice envisaged under section 35(1)(c) of the Employment Act.

19. Apart from the show cause/notice, section 41 of the Act demands that the employer allow the employee an opportunity to make representations before deciding to terminate the employment contract.

20. The Respondent did not place any evidence or records before the Court to demonstrate that it informed the Claimant that the termination of the employment was on the cards, and called upon him to make representations.

21. Equally, the Respondent did not satisfy the Court that the Claimant was allowed to make such representations in the company of a colleague (no minutes were produced in Court).

22. The Court finds that the termination of the Claimant's employment did not meet the legal threshold for procedural fairness.

Substantive fairness

23. When there is a challenge, sections 43 and 45 of the Employment Act place a burden on the employer to prove valid and fair reasons to terminate an employment contract. Section 45(4) of the Act requires the employer to act in accordance with equity and justice.

24. The precipitating reason giving rise to the termination of the Claimant's contract was the failure to alert the Respondent that he was getting a salary above what was in the contract.

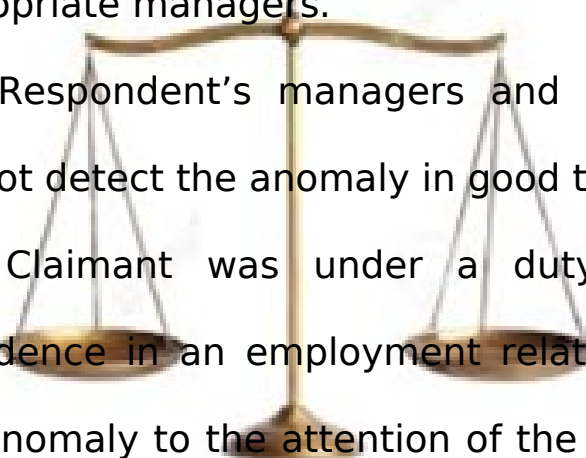
25. The offer letters and contracts issued to the Claimant had different salaries. The documents were prepared by the Respondent and signed by the appropriate managers.

26. The Respondent's managers and payroll systems did not detect the anomaly in good time.

27. The Claimant was under a duty of trust and confidence in an employment relationship to bring the anomaly to the attention of the Respondent. He did not.

28. When the Respondent detected the error, it engaged with the Claimant. The Claimant gave proposals to pay back the overpayments. The proposals involved substantial deductions from the Claimant's salary.

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29. The Respondent did not disclose before the Court whether it accepted the proposal or not. From the emails presented before the Court, the Claimant had acceded to make good any overpayments.

30. Under the circumstances, would a reasonable employer have taken the decision to terminate? The law demands that an employer consider the justice and equity of a termination.

31. The decision of the Respondent did not consider the justice and equity of the prevailing circumstances. Its Managers and systems did not detect the salary anomaly.

32. The Court holds that the termination of the Claimant's contract did not consider the justice and equity standards and was therefore unfair.

Compensation

33. The Claimant served the Respondent for 3 months. He had left another employer before joining the Respondent, and considering these factors, the Court is of the view that the equivalent of 2 months'

gross salary would be appropriate (gross salary was Kshs 84,633/-).

Pay in lieu of notice

34. The Respondent did not give the requisite notice, and the Court will allow the head of claim for one month's pay in lieu of notice.

House allowance

35. The Claimant was earning a gross salary, and this head of the claim is not available, save for the earned days as computed by the Respondent.

September 2021 salary

36. The Claimant was entitled as of right to earned salary for September 2021, and the Court will allow this head of the claim in the sum of Kshs 59,243/-.

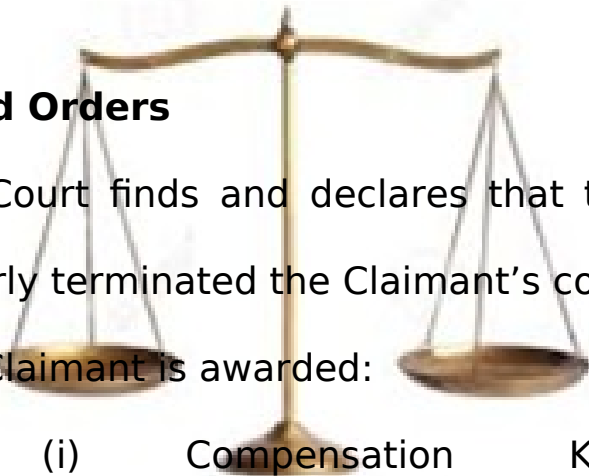
Annual leave

37. The Respondent commuted the Claimant's accrued leave as Kshs 9,068/-, and the Court will allow the head of the claim.

Counterclaim

38. The Respondent counterclaimed against the Claimant for Kshs 172,401/-. The Claimant had given the Respondent a proposal on how to pay back the overpayment.

39. Since the overpayment was not denied, the Respondent should offset the same from the awards to the Claimant.



Conclusion and Orders

40. The Court finds and declares that the Respondent unfairly terminated the Claimant's contract.

41. The Claimant is awarded:
- (i) Compensation Kshs 169,266/-
 - (ii) Pay in lieu of notice Kshs 24,763/-
 - (iii) Annual leave Kshs 9,068/-
 - (iv) Pay September 2021 Kshs 59,243/-
 - (v) House allowance Kshs 9,824/-
- TOTAL Kshs 332,034/-**

Less Kshs 172,041/-

Payable **Kshs**

159,993/-

42. The award to attract interest at court rates from the date of judgment till full payment.

43. Each party to bear own costs, both parties having succeeded.

Delivered virtually, dated and signed in Nairobi on this 22nd day of January 2026.

Radido Stephen, MCI Arb
Judge

Appearances

For Claimant

Rashid and Obayi
Advocates

For Respondent

Amoit and Seif Law LLP

Court Assistant

Wangu

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