



**Anyona v Joipet Services & Printers Limited (Cause 2632 of 2016)
[2026] KEELRC 223 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 223 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2632 OF 2016
CN BAARI, J
JANUARY 28, 2026**

BETWEEN

LILIAN MIDURI ANYONA CLAIMANT

AND

JOIPET SERVICES & PRINTERS LIMITED RESPONDENT

JUDGMENT

1. In a Statement of Claim dated 28th December, 2016 and filed on even date, the Claimant sued the Respondent alleging unfair and unlawful termination of employment. She seeks an order for payment of Kshs. 936,408.90/- comprising salary underpayment, house allowance, notice pay, balance of severance pay, compensation for unfair termination, costs, and interest thereon.
2. The Respondent filed a Memorandum of reply and Counterclaim dated 28th February, 2017, denying the Claimant's claim and contending that the Claimant was terminated for poor performance and late reporting at her workplace.
3. The matter first proceeded for hearing on 26th March, 2025, with the Claimant testifying in support of her case. The Respondent's case was heard on 9th October, 2025, when one Ms. Lilian Wanji Ngotho testified in support of the Respondent's case.
4. Submissions were received from both parties and have been duly considered.

The Claimant's Case

5. The Claimant's case is that she was employed by the Respondent on or about 7th February, 2011, as a sales representative to sell their products at a monthly salary of Kshs. 15,000 per month. She avers that the pay for her position per Legal Notice No. 64 of 1st May, 2011 was Kshs. 16,348.40 per month.



6. It is her case that Legal Notice No. 71 of 1st May, 2012, further provided the minimum wage for her position as Kshs.18,490.90/- while she continued being paid Kshs.15,000, hence her claim for underpayment.
7. The Claimant states that the Respondent increased her salary on 1st January, 2013 to Kshs.40,000, but failed to pay her a house allowance at 15 percent of her salary (Kshs.6000), which she argues was not paid for 13 months.
8. The Claimant further states that from 1st February, 2014, the Respondent yet again increased her salary to Kshs. 40,000 per month, but failed to pay her a house allowance, which would have amounted to Kshs.6750/- per month.
9. It is her case that her services were unfairly terminated on 31st December, 2015. She avers that at termination, the Respondent paid her severance pay for 4 years at the rate of 15 days per year worked, instead of 5 years, hence the severance pay balance claim of Kshs.19,157.70/-.
10. The Claimant avers that she filled a leave form on 31st December, 2015, but instead of leave, she was issued a termination letter without being given any notice or taken through a disciplinary hearing.
11. The Claimant, in her testimony, confirmed that she was paid terminal dues amounting to Kshs.27,000/-.
12. On cross-examination, the Claimant told the court that she was employed on 7th February, 2012, but was not issued with an employment letter. She avers that employment contracts were later issued in 2013.
13. The Claimant confirmed receipt of warning letters from the Respondent related to her work, and avers that she corrected the areas subject to the warnings.
14. It is her evidence that she was paid salaries for January and February, 2016, and Kshs. 110,650.68 as severance pay.
15. The Claimant prays that her claim be allowed.

The Respondent's Case

16. The Respondent's case is that the Claimant was indeed its employee, but denies that she loyally and diligently served the Respondent. It is the Respondent's position that the Claimant was a very indisciplined employee, a position it contends is confirmed by the documents she has filed before the court.
17. It is the Respondent's case that the Claimant was on various occasions cited for poor work performance for failing to meet her sales targets, which was her main duty. It avers further that she, on various occasions, reported late to work and that, on being asked to give reasons for her lack of punctuality, she failed to provide convincing reasons; hence her termination from the service of the Respondent.
18. The Respondent states that on 21st October, 2015, the Claimant was informed of the Respondent's intention to dismiss her for poor performance and lack of punctuality. It avers that it summoned the Claimant to a disciplinary hearing where she was informed of the charges against her and allowed to respond by 4th November, 2015.
19. The Respondent states that the Claimant decided to remain silent at the disciplinary meeting and that it resolved to terminate her services and did so through a letter dated 31st December, 2015.



20. The Respondent denies owing the Claimant the alleged outstanding amount or any amount at all. It avers further that it paid the Claimant the entire amount owed, including her terminal dues.
21. The Respondent avers that the Claimant was paid the entire amount due to her in lieu of notice and that the amount paid was more than her one month's pay, and thus seeks payment of the overpayment as the subject of the counterclaim.
22. It is the Respondent's case that the Claimant was not entitled to payment of severance pay on the basis that she was summarily dismissed and not declared redundant, and thus seeks to recover the amount paid.
23. The Respondent further states that the Claimant was terminated procedurally and not unfairly and is thus not entitled to compensation.
24. The Respondent denies that the Claimant was wrongfully terminated and avers that it followed all legal procedures and that the Claimant's claim lacks legal basis.

The Counterclaim

25. The Respondent avers that it wrongly paid the Claimant two months' salary in lieu of notice instead of one month as provided in law and in her contract of employment. It avers that it seeks a refund of Kshs. 45,000 on this account.
26. The Respondent further avers that it paid the Claimant Kshs. 110,650.68 on account of severance pay, while she was summarily dismissed and did not deserve the payment, and which it claims a refund of. It further states that it made NSSF deductions in respect of the Claimant and is therefore not entitled to service pay.
27. That in total, the Respondent seeks a refund of Kshs. 155,650.68.
28. On cross-examination, RW1 told the court that the Claimant's initial salary was Kshs. 15,000 per month, and cannot confirm that the payment was lawful.
29. It is RW1's testimony that the Claimant was not issued with a show cause letter, but that she was taken through a disciplinary hearing.
30. RW1 further told the court that the Claimant did not improve her sales target as alleged, but that she brought in a new client who brought five million, while her target was Ksh.1,200,000 per month.
31. RW1 confirmed that the minutes of the disciplinary hearing were not signed, do not show who prepared the minutes, and do not carry the stamp of the Respondent company.

Analysis and Determination.

32. Having considered the pleadings, evidence on record, and the rival submissions, the court identifies the following issues for determination:-
 - i. Whether the termination of the Claimant's employment was procedurally and substantively fair.
 - ii. Whether the Claimant is entitled to the reliefs sought.
 - iii. Whether the Respondent's counterclaim is merited.



Whether the termination of the Claimant's employment was procedurally and substantively fair

33. A termination from service is deemed fair where the employer meets a just cause standard by prioritizing fair treatment of an employee through adherence to procedural fairness, and the substantive justification for the termination. A termination is procedurally fair when the employer affords an employee an opportunity to state his case and to have a representative of his choice present at the disciplinary hearing.

34. Section 41 of the *Employment Act* demands that an employer, before terminating the services of an employee on the grounds of misconduct, poor performance, or physical incapacity, explain to the employee, in a language the employee understands, the reasons for which termination is being considered. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, fair procedure was explained in the following words: -

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee....Secondly, it would follow naturally that if an employee has a right to be informed of the charges, he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing, or through a representative or shop floor union representative if possible. Thirdly, if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give another sanction.”

35. RW1 confirmed to this court that no show cause letter was issued to the Claimant before the disciplinary hearing. This goes to say that the charges against the Claimant were not made known to her in writing so as to enable her respond accordingly. In *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, the Court held that failure to issue a show cause letter and to conduct a proper disciplinary hearing renders termination procedurally unfair.

36. Further, although the Respondent told the court that the Claimant was taken through a disciplinary hearing, the disciplinary hearing minutes presented in evidence are unsigned, unstamped, and do not disclose the author.

37. The Respondent has also not led any evidence to show that the Claimant was informed of her right to have a representative present during the disciplinary hearing. The letter inviting her to the hearing does not at all advise the Claimant to attend the hearing accompanied by a representative of her choice.

38. In light of the foregoing, the Claimant's termination is found procedurally unfair.

39. On the question of substantive justification for the termination, the law demands that the employer prove that the reasons upon which a termination is premised are fair, valid, and justified.

40. In *Kenfreight (EA) Ltd v Benson K. Nguti* [2016] eKLR, the Supreme Court stated:-

“Termination of employment will be unfair if the court finds that, in all the circumstances of the case, it is based on invalid reasons or if the reason itself or the procedure of termination is itself not fair.”

41. The Respondent alleged poor performance and lateness as the reasons for terminating the Claimant's employment. By dint of Section 41 of the *Employment Act*, poor performance is, without doubt, a ground for termination. The primary duty of an employee is to perform work for which he/she is



contracted. It is, however, settled that the employer does not have a right to immediately rescind an employment contract on the grounds of poor performance, but is instead expected to mitigate the impact of an employee's poor performance.

42. To rely on poor performance as a ground for termination demands that the provisions of Section 45(2) of the *Employment Act* must be met. The burden of proof that poor performance was a fair reason for dismissal rests on the employer.
43. While it is evident that warning letters were issued to the Claimant, RW1 admitted that the Claimant brought in a client generating Kshs. 5 million against a monthly target of Kshs. 1.2 million.
44. Further, no performance appraisal reports, structured performance improvement plans, or comparative performance data were produced as proof of the Claimant's poor performance. In *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR, the Court of Appeal emphasized that poor performance must be proved by objective, demonstrable evaluation mechanisms.
45. I therefore reiterate that poor performance must be proved through objective, measurable, and documented evaluation. The Respondent, in my view, has failed to meet this threshold, and the Court finds that the reasons for the Claimant's termination were not proved.
46. In light of the foregoing, the Court finds and holds that the Claimant's termination fell far short of the statutory threshold, which renders the termination both procedurally and substantively unfair.

Whether the Claimant is entitled to the reliefs sought

Underpayment

47. The Claimant contends that she was underpaid between 2011 and 2012, contrary to Legal Notice No. 64 of 2011 and Legal Notice No. 71 of 2012.
48. RW1 candidly admitted under cross-examination that she could not confirm whether the Claimant's initial salary of Kshs. 15,000 complied with the law. The Respondent did not place before the Court any evidence to rebut the specific statutory wage figures pleaded by the Claimant.
49. Under Section 48 of the *Labour Institutions Act* and the applicable Wage Orders, compliance with minimum wages is mandatory and not subject to negotiation.
50. The Court therefore finds that the Claimant has proved her claim for underpayment.

House Allowance

51. Section 31 of the *Employment Act* obligates an employer to either provide housing or pay house allowance unless the wage is consolidated.
52. The Respondent did not produce any contract or payslips demonstrating that the Claimant's salary was consolidated.
53. Further, RW1 did not dispute that no separate house allowance was paid.
54. The Court in the circumstances finds that the Claimant is entitled to house allowance as claimed.

Notice Pay

55. The Claimant confirmed that she was paid salaries for the notice period being January and February, 2016. The claim for notice pay thus lacks legal basis and is dismissed.



Severance Pay and Terminal Dues

56. The Court agrees with the Respondent that severance pay is only payable in cases of redundancy.

Compensation for unfair termination

57. The court has found the Claimant's termination unlawful and unfair, which finding entitles her to compensation pursuant to Sections 49 and 50 of the *Employment Act, 2007*.

58. The Claimant admitted to failure to meet targets and the warning letters are further confirmation that she did not have a good record of service.

59. In the circumstances, I find an award of 4 months' salary sufficient compensation for the unfair termination, and which is hereby awarded.

The Counterclaim

60. The Respondent's counterclaim is anchored on alleged overpayment of notice pay and severance pay. No documentary evidence was produced to demonstrate that the payments were made in error or contrary to the contract.

61. The Respondent voluntarily paid severance pay and cannot now seek recovery absent evidence of fraud or misrepresentation by the Claimant.

62. Furthermore, the termination was unfair, and the Respondent cannot seek to benefit from its own procedural lapses.

63. The counterclaim is therefore unproven and is dismissed in its entirety.

Conclusion

64. In whole, the Claimant's claim succeeds and orders issued as follows:-

- a. That the Respondent shall pay the Claimant salary underpayment of Kshs. 44,101.20
- b. That the Respondent shall pay the Claimant house allowance of Kshs. 233,250/-
- c. That the Respondent shall pay the Claimant four (4) months' salary as compensation for the unfair termination at Kshs. 180,000/-
- d. The Claimant shall have the costs of the suit.
- e. Interest shall accrue at court rates from the date of judgment until payment in full.

65. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.

C. N. BAARI

JUDGE

Appearance:

Ms. Njenga present for the Claimant

Ms. Mutimba present for the Respondent



Ms. Esther S - C/A

