

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. E112 OF 2025

ARNET BRINAH ASUKO.....CLAIMANT

VERSUS

WE WORLD FOUNDATION
(Sued through the country representative
Dr. Annarita Spagnulo).....RESPONDENT

JUDGEMENT

1. In a Statement of Claim dated 19th February 2025, the Claimant avers that she was employed by the Respondent as a Junior Human Resource and Compliance Officer from 16th September 2024 to 31st December 2024. She further states that her contract provided for a three-month probationary period, meaning that the entirety of her employment was subject to probationary terms.

2. The Claimant contends that, prior to the expiration of her probationary period, the Respondent decided to terminate her employment contract. She further avers that she was not paid her house allowance or prorated leave days upon termination. Accordingly, she contends that the Respondent violated her right to fair labour practices.

3. In light of the foregoing, the Claimant seeks a declaration that the Respondent's actions constituted unfair labour practices and that the failure to pay her terminal dues violated her right to fair administrative action. She further claims the sum of **Kshs. 332,154/-**, representing notice pay, unpaid house allowance, compensation for unfair labour practices, and prorated leave days, together with interest at court rates and the costs of the suit. She has further prayed for an order directing the Respondent to issue her with a certificate of service.
4. The Respondent opposed the Statement of Claim through its Statement of Response dated 27th May 2025. The Respondent admits that the Claimant was employed on a fixed-term contract and on probationary terms from 16th September 2024 to 31st December 2024, adding that her performance was subject to review before confirmation as a permanent employee.
5. The Respondent further avers that the Claimant was neither unfairly nor unlawfully terminated, as she had been duly notified of the non-renewal of her contract. The Respondent further contends that the Claimant's salary was a consolidated pay, and she was therefore not entitled to additional payments such as house allowance. That further, the Claimant is not entitled to any leave pay. On the basis of the foregoing, the Respondent has asked the Court to dismiss the suit with costs.
6. The matter proceeded for hearing on 9th October 2025, during which both parties called oral evidence in support of their respective cases.

Claimant's Case

7. The Claimant testified in support of her case as CW1. For starters, the Claimant adopted her witness statement and the list and bundle of documents filed together with the Statement of Claim as her evidence-in-chief.
8. The Claimant testified that, prior to the end of her probation period on 31st December 2024, the Respondent decided to terminate her employment. She averred that this decision was communicated to her on or about 13th December 2024, and she was directed to clear her responsibilities and was logged out of the Respondent's system.
9. She averred that her contract stipulated that termination during the probation period required either two (2) weeks' notice or two (2) weeks' pay in lieu thereof. The Claimant contended that no notice was issued when the termination communication was made.
10. She further stated that she received her terminal dues on or about 20th December 2024, and noted from her last pay slip that no notice pay or house allowance had been included.
11. The Claimant further contended that she had accrued pro-rata leave days during her employment, which were not paid. She further stated that she was issued with a

discharge voucher indicating that the amount received constituted her final dues, which she refused to sign.

12. According to the Claimant, the Respondent's actions amounted to unfair labour practices and also violated her right to fair administrative action.

Respondent's Case

13. The Respondent presented oral evidence through **Robert Akenga Kihamba**, who testified as RW1. He identified himself as the Head of Support Services at the Respondent organization and equally, adopted his witness statement as his evidence-in-chief. RW1 further produced the documents filed on behalf of the Respondent as exhibits before the Court.

14. It was RW1's testimony that the Respondent informed the Claimant that her contract would not be renewed at the end of the probationary period. He added that no other notice was given to the Claimant, indicating that her services would be terminated before the completion of the probation period.

15. He further stated that the Claimant was requested to clear and complete a Discharge Voucher on 20th December 2024, as the office was closing for the Christmas holidays on that date. RW1 added that the Claimant had requested leave from 23rd to 31st December 2024, which was granted.

16.RW1 averred that the Respondent made no guarantees of the Claimant's retention beyond the probation period. To this end, he termed the Claimant's suit a mere afterthought aimed at frustrating and financially burdening the Respondent.

17.He further stated that, having been employed on probationary terms, the Claimant was not entitled to a housing allowance during her probation. In his view, the Claimant's claim for house allowance is baseless.

18.RW1 further stated that the Claimant appeared to have accepted the terms of her agreement without raising any concerns regarding housing allowance throughout the probation period. He maintained that the Claimant's salary was a consolidated pay, which she seemed content with, having made no claims for additional payments.

19.He further averred that the Claimant was not entitled to leave pay, as her contract did not cover a full twelve-month leave-earning period. He added that the leave granted to the Claimant from 23rd to 31st December 2024 was provided on humanitarian grounds rather than as a contractual entitlement.

20.RW1 further stated that the Claimant received her full salary for December 2024, in addition to a Christmas bonus of Kshs. 10,000/- and overtime payment of Kshs. 2,667/-.

21.He added that the Respondent, having paid the Claimant a Christmas bonus as a token of appreciation, was surprised by the filing of the suit, which in his view, is an attempt at unjust enrichment.

22.RW1 maintained that there was no termination, as the Claimant's contract had simply come to an end.

23.He further averred that the Claimant was not entitled to payment in lieu of notice, as the notice provided was not a termination notice but a notification that her contract would not be renewed.

24.RW1 further stated that any concerns or objections regarding the funds remitted to the Claimant's account in December 2024 should have been raised before she utilized them. He added that he had invited the Claimant via email on 19th December 2024 to seek clarification if needed, but she did not respond and instead filed the suit herein.

25.RW1 further stated that the Claimant's Certificate of Service is ready for collection.

Submissions

26. On her part, the Claimant submitted that her contract was set to run until 31st December 2024, and that any cessation of employment prior to that date constituted a termination, thereby invoking the provisions on termination under clauses 5 or 9 of her Employment Contract.

27. The Claimant further submitted that she is entitled to notice pay, as the termination occurred after the probation period and fell outside the notice requirements under clause 5 of the contract.

28. The Claimant stated in further submission that she is entitled to 1.75 days of leave for each month worked, since the leave days granted to her were rendered unusable due to her termination before she could take them.

29. On the other hand, the Respondent submitted that the Claimant's contract was already coming to an end, and, in the absence of any guarantee from the Respondent that her employment would continue beyond probation, her claim for unfair dismissal is baseless. To support this argument, the Respondent relied on several authorities, including ***Ronald Ongori Gwako v Styroplast Limited [2022] KEELRC 1086 (KLR)***, ***East Africa Sea Food Limited v Mwazito (Appeal E013 of 2020) [2023] KEELRC 1257 (KLR)***, and ***Edwin Momanyi & 4 others v Wonder Feeds Limited [2021] KEELRC 1002 (KLR)***.

30. The Respondent further submitted that the Claimant was not terminated from employment, but was merely informed that her contract would not be renewed upon the completion of the probationary period hence is not entitled to a one-month salary in lieu of notice.
31. It was the Respondent's further submission that the Claimant's contract did not cover a full twelve-month leave-earning period, and therefore no leave pay was due or payable.
32. It was the Respondent's further submission that the Claimant's Contract was not valid for a twelve months' leave-earning period hence no leave pay was due and owing.
33. Referencing the decision in *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd (2017) eKLR*, the Respondent further submitted that the parties are bound by the terms of their contract, and it is the Court's role to enforce the contract as agreed.
34. The Respondent further submitted that the Claimant's salary was consolidated, and she was therefore not entitled to any additional payments, including a housing allowance, as alleged.

Analysis and Determination

35. Having considered the pleadings by both parties, the evidence on record, and the rival submissions, the Court has singled out the following issues for determination:

a) Whether the Claimant's contract was terminated prematurely; and

b) Whether the Claimant is entitled to the reliefs claimed.

Whether the Claimant's contract was terminated prematurely

36. Whereas the Claimant contends that her employment was terminated before the expiry of her fixed-term probationary contract, the Respondent maintains that it did not terminate her contract but merely informed her that the same would not be renewed.

37. It is common cause that the Claimant's employment contract was set to run from 16th September 2024 to 31st December 2024.

38. It is evident from the record that the Claimant's performance was evaluated on 13th December 2024, with the overall conclusion being that her contract would not be renewed at the end of the probationary period. Notably, there is no communication on record, other than the finding in the Claimant's probationary report, regarding the non-renewal of her contract of employment.

39. The Respondent produced a leave application form dated 11th December 2024, indicating that the Claimant had applied for five (5) days of annual leave from 23rd to 31st December 2024.

40. It is also apparent from the record that vide an email dated 19th December 2024, RW1 notified the Claimant that her last working day would be 20th December 2024 and requested that she return all keys and assigned assets.

41. What manifests from the foregoing is that the Claimant's contract of employment was not terminated prematurely; rather, she was informed that her contract would not be renewed following her performance evaluation, and she subsequently utilized the remaining period of her contract as annual leave. This conclusion is reinforced by the fact that she received her full salary for December 2024.

Reliefs?

42. The Claimant has sought an award of Kshs. 40,000/- as notice pay, alleging that she was neither given notice nor paid salary in lieu of notice. However, as the Court has found that the Claimant's contract was not terminated prematurely, her claim for notice pay is accordingly disallowed.

43. The Claimant further contended that she was paid only a basic salary, excluding any house allowance. The Respondent, however, averred that the Claimant's salary was a consolidated package and that she was not entitled to any additional payments as house allowance. The Respondent also asserted that the Claimant had willingly accepted the contractual terms.

44. A review of clause 6 of the Claimant's employment contract shows that her remuneration was described as a "*basic gross salary*," with no indication that it was consolidated or inclusive of a house allowance.

45. It is also noteworthy that clause 6 constitutes the operative provision governing the Claimant's remuneration. Consequently, any reference to a consolidated pay appearing elsewhere in the contract, outside the ambit of clause 6, is of no effect.

46. **Section 31(1) of the Employment Act** imposes a statutory obligation on employers to provide reasonable housing accommodation or pay a reasonable housing allowance. The provision is couched as follows:

[31](1) An employer shall at all times, at his own expense, provide reasonable housing accommodation to each of his employees either at or near 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.

47. It is also worth pointing out that under **Section 26 of the Employment Act**, the provisions in Parts V and VI of the Act constitute the basic minimum terms and conditions of employment, which include reasonable housing or a housing allowance.

48. Accordingly, the Respondent's argument that the Claimant accepted the contractual terms and is therefore not entitled to a housing allowance is untenable. It should be appreciated that pursuant to Section 26 of the Employment Act, the employment contract ought to reflect the basic minimum terms and conditions set out under the Act.

49. Accordingly, the Court finds that the Claimant is entitled to the unpaid house allowance for the duration of her employment with the Respondent.

50. The Claimant has also sought to be paid Kshs. 16,154/- in respect of prorated leave days. The Respondent has opposed this claim, arguing that the Claimant was not entitled to leave pay since her contract did not cover a full twelve-month leave-earning period. The Respondent's argument fades in light of **Section 28(1)(b) of the Employment Act**, which provides as follows:

(1)[b] where employment is terminated after the completion of two or more consecutive months of service during any twelve months' leave earning period, to not less than one and three-quarter days of leave with full pay, in respect of each completed month of service in that period, to be taken consecutively.

51. Essentially, the foregoing statutory provision protects an employee's right to prorated annual leave where employment terminates before the completion of a twelve-month leave-earning period.

52. Accordingly, the Claimant was entitled to 5.25 leave days, being prorated leave for the three months served.

53. As the record shows that the Claimant utilized 5 leave days prior to the separation, the leave balance is 0.75 days.

54. In light of the undisputed employment relationship, the Claimant is entitled to the issuance of a certificate of service in accordance with Section 51 of the Employment Act.

Orders

55. In the final analysis, judgment is entered in favour of the Claimant against the Respondent as follows:

(a) The Claimant is hereby awarded Kshs 36,000 being unpaid house allowance for a period of three (3) months.

(b) The Claimant is hereby awarded Kshs 2,000 being unpaid leave pay equivalent to 0.75 leave days.

(c) The total award is Kshs 38,000/-.

compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE