



Mogesi v Crown Healthcare (Employment and Labour Relations Cause E319 of 2024) [2026] KEELRC 201 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 201 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E319 OF 2024
BOM MANANI, J
JANUARY 29, 2026**

BETWEEN

CHARLES GUGWA MOGESI CLAIMANT

AND

CROWN HEALTHCARE RESPONDENT

JUDGMENT

1. The parties to the action had an employment relationship which was terminated by the Respondent due to alleged improper conduct on the part of the Claimant. Whilst the Claimant asserts that the relationship was terminated unjustifiably, the Respondent expresses a contrary view. And hence the institution of this suit to resolve the dispute.

Claimant's Case

2. The Claimant avers that the Respondent hired his services as a Sales Manager for an indefinite term through a contract dated 14th September 2018. He avers that the contract had a probationary term which he successfully served. He further contends that he discharged his duties diligently and exceptionally well leading to the upward revision of his salary from Ksh. 127,851.86 to Ksh. 419,954.00.
3. The Claimant asserts that on 19th April 2023, the Respondent abruptly terminated his services through a text message delivered via the WhatsApp platform. He alleges that on this date, the Respondent instructed him to hand over his responsibilities to another employee.
4. The Claimant contends that the Respondent did not give him the reasons for the decision. He further avers that he was not accorded an opportunity to be heard before his contract was terminated. As such, he contends that the Respondent's action was unlawful.



5. The Claimant asserts that after the Respondent illegally terminated his services, it sought to sanitize its misdeeds by issuing him with a notice to show cause dated 20th April 2023. He avers that by this letter, the Respondent invited him for a disciplinary hearing on 26th April 2023.
6. The Claimant avers that the show cause letter was a façade since the Respondent had already terminated his services on 19th April 2023. It is his case that termination of his services took effect the moment the Respondent asked him to hand over his responsibilities.
7. The Claimant contends that after the Respondent terminated his services, it issued him with a short term contract of service. He avers that this demonstrates that the Respondent did not have legitimate grounds to terminate his services and that it (the Respondent) was using the termination to convert his contract from long term to short term.
8. The Claimant avers that throughout his service to the Respondent, the latter did not pay him house allowance. As such, he claims for backdated house allowance from commencement of the employment relationship between them. In addition, he prays for the other reliefs which are set out in the Statement of Claim.

Respondent's Case

9. On the other hand, the Respondent denies that it terminated the Claimant's services unfairly. It further denies that the Claimant's services were terminated on 19th April 2023 as he claims.
10. According to the Respondent, although its Managing Director sent the Claimant a text message on 19th April 2023 asking him to hand over, this did not mean that his contract was terminated on that day. To support this assertion, the Respondent avers that the Claimant continued to work after this date until his contract was terminated later in April 2023.
11. The Respondent contends that although the Claimant's services were initially satisfactory, they began to deteriorate because of his failure to adhere to instructions. It contends that the Claimant was engaged severally on the matter but did not change his behavior.
12. The Respondent avers that just before the Claimant was issued with the show cause letter, he sent medical equipment to a client without first examining them. The Respondent contends that the Claimant's conduct amounted to gross neglect of duty which exposed the client to the risk of injury and other adversities.
13. The Respondent avers that following this misconduct, it issued the Claimant with the show cause letter dated 20th April 2023. It further avers that it invited him for a disciplinary hearing which took place on 26th April 2023.
14. The Respondent contends that it accorded the Claimant the opportunity to be heard during the disciplinary session but he chose not to offer his defense. As such, it disputes his assertion that he was denied a fair hearing.
15. The Respondent avers that after the disciplinary hearing, it issued the Claimant a letter dated 28th April 2023 terminating his services. It avers that it subsequently computed and paid him his exit benefits thus conclusively and legitimately closing the long-term contract between the parties.
16. The Respondent asserts that it rehired the Claimant on a short term contract after he requested to be accommodated as he looked for alternative employment. It denies that the decision to rehire him on short-term basis demonstrates that the real intention of terminating his earlier contract was to alter the employment relationship between the parties from long-term to short-term.



17. The Respondent denies that it owes the Claimant house allowance. It contends that the Claimant's salary was consolidated to include house allowance.
18. Further, the Respondent contends that the parties agreed on the Claimant's exit benefits which it paid in full and final settlement of all claims. It contends that it made further ex-gratia payments to the Claimant thereby closing the issues between them with the consequence that the Claimant is not entitled to lodge fresh claims based on the terminated employment contract.

Issues for Determination

19. After evaluating the pleadings, evidence and submissions by the parties, the following are the issues which arise for determination:-
 - a. Whether the Respondent terminated the Claimant's contract of service unlawfully on 19th April 2023 or on some other date.
 - b. Whether the Claimant is entitled to the reliefs which he prays for in this action.

Analysis

20. The Claimant asserts that the Respondent unlawfully terminated his contract on 19th April 2023 through a text message. He avers that on this date, the Respondent's Managing Director sent him a text message asking him to hand over his responsibilities to another employee. According to the Claimant, this meant that the Respondent had terminated his services.
21. The Claimant avers that the impugned decision was illegal because the Respondent did not inform him of the reasons why it asked him to leave employment. He further contends that the Respondent did not accord him a hearing.
22. The Claimant goes further to assert that after the Respondent unlawfully terminated his services, it purported to issue him with a show cause letter on 20th April 2023 where after it took him through a sham hearing on 26th April 2023. It is his case that these subsequent actions by the Respondent were of no consequence since the decision to terminate his services crystalized on 19th April 2023 after the Respondent's Managing Director sent him the impugned text message.
23. On the other hand, the Respondent denies that it terminated the Claimant's services on 19th April 2023. It avers that the Claimant was released from employment on 28th April 2023 for valid reason and after he was subjected to due process.
24. I have evaluated the contrasting positions expressed by the parties on the matter against the evidence on record. It is true that the Respondent's Managing Director sent the Claimant a text message on 19th April 2023 asking him to hand over his responsibilities to another employee. The Managing Director also wished the Claimant the best in the future.
25. Looked at in isolation, the text message can only be understood as having been intended to communicate the Respondent's intention to sever the employment relation between the parties. Otherwise, it would be difficult to explain why the Respondent asked the Claimant to hand over his responsibilities to another employee and wished him well in his future endeavors.
26. Although the Respondent expressed its intention to end the employment relationship between the parties through the aforesaid text message, it appear that it (the Respondent) reflected on and reversed the decision. As such, it let the employment relationship to continue as it pursued disciplinary action against the Claimant.



27. The above reality is apparent from the fact that despite the Claimant having been instructed to hand over on 19th April 2023, he continued to work for the Respondent until 28th April 2023. The fact that the Claimant continued in the Respondent's service beyond 19th April 2023 is clear from his own testimony during cross examination when he stated as follows:-

“On 19th April 2023, I worked. I worked on 20th April 2023. I continued working until 28th April 2023. There were no restrictions against me at the workplace after 19th April 2023.

....I continued working until 26th April 2023 when I attended the disciplinary hearing....After the DC of 26th April 2023, I continued to work. I confirm I was at work until 28th April 2023. I had not been terminated before then.”

28. This evidence affirms the reality that although the Respondent may have intended to terminate the Claimant's service on 19th April 2023, it recalled the decision and allowed him to continue in service. As such, the court finds that despite the Respondent's impugned text message of 19th April 2023, the Claimant remained in its (the Respondent's) service beyond 19th April 2023.

29. Although the Respondent had expressed the intention to terminate the Claimant's services through the aforesaid text message of 19th April 2023, nothing stopped it from rethinking and recalling the decision. In the court's view, the Respondent was entitled, after reflecting on the impugned communication, to come to the realization that its actions may have been irregular and to recall the decision. As such, the court finds no fault in its (the Respondent's) decision to let the employment relation between the parties to subsist beyond 19th April 2023 despite the text message as it processed the Claimant's release through lawful means.

30. The evidence on record shows that the Respondent issued the Claimant with a notice to show cause letter dated 20th April 2023 in which it set out the accusations against him. The Respondent accused the Claimant of: failure to establish positive client relationships thus negatively impacting on the Respondent's success; failure to cooperate with other team members thus impacting on the productivity and moral of other team members; and failure to follow through with clients.

31. The letter of show cause shows that the Respondent asked the Claimant to attend a disciplinary hearing on 26th April 2023. The Claimant was further informed of his right to attend the session in the company of a workmate of his choice.

32. The Respondent tendered in evidence a copy of the minutes of the disciplinary session. According to the minutes, the Claimant was given an opportunity to respond to the accusations against him but elected not to. Instead, he left the matter to the Respondent to make its final decision.

33. During the trial, the Claimant acknowledged that the minutes which the Respondent tendered in evidence relate to the disciplinary proceedings of 26th April 2023. He did not challenge the accuracy of the minutes. As such, the court takes it that the aforesaid minutes are a true reflection of the proceedings of 26th April 2023.

34. Although the Respondent leveled a number of accusations against the Claimant, the Claimant elected not to contest them at the disciplinary hearing. That being the case, the accusations were not impugned.

35. Some of the accusations such as careless discharge of duty and failure to provide clients with details of their orders, amount to gross misconduct under section 44 (4) (c) of the [Employment Act](#) which entitled the Respondent to summarily terminate the Claimant's contract of service. As such, the



- court finds that the Respondent had legitimate grounds to consider terminating the Claimant's employment.
36. During trial and in their submissions, counsel for the Claimant contended that although the Respondent leveled several accusations against the Claimant, it did not tender evidence in court to substantiate them. As such, counsel urges the court to find that the Respondent has not demonstrated that it had legitimate grounds to terminate the Claimant's contract.
 37. The court holds a contrary view. In the court's view, the Respondent was required to justify the reasons for its decision before the Disciplinary Panel which terminated the Claimant's contract. All that this court is expected to do at this stage is to verify that the Respondent discharged this obligation before the Panel. If the evidence presented to court demonstrate that this was done, the court is not expected to reopen the matter with a view to overturning the employer's verdict. That would be tantamount to taking over the employer's managerial prerogative at the workplace.
 38. The evidence on record shows that although the Respondent informed the Claimant about the accusations against him both before and during the disciplinary hearing, the Claimant elected not to challenge them at the said hearing. As such, the Respondent's accusations stood unchallenged and therefore established.
 39. The foregoing being the case, the question whether the Respondent had valid reasons to terminate the Claimant's services was positively answered during the disciplinary hearing. As such, the court cannot re-open the matter at this stage with a view to replacing the employer's decision with its (the court's) own.
 40. Before I close the above discussion, I wish to comment on another issue which the Claimant has placed considerable emphasis on in his submissions. He contends that although the Respondent questioned his performance, there is no evidence that it had placed him on a performance improvement plan to warrant the decision to terminate his contract. As such, he contends that the decision was invalid.
 41. I do not understand the Respondent's case to have been one of inability by the Claimant to meet the set targets because of poor preparedness for the tasks assigned to him which would have denoted poor performance. Rather, the Respondent's case was that the Claimant was guilty of deliberate or reckless neglect of duty. These two are distinct and should not be conflated.
 42. An employee who neglects to perform or carelessly performs his duties does not necessarily do so because of lack of preparedness for the task. This may be out of a sheer carefree attitude on the employee's part.
 43. The latter, which forms part of the grounds for gross misconduct under section 44 (4) (c) of the [Employment Act](#), is what I understood the Respondent to have been speaking to. I did not perceive the Respondent to have been alluding to the poor performance that is spoken to under section 41 of the Act. As such, the issue of placing the Claimant on a performance improvement plan did not arise in the circumstance of this case.
 44. The evidence on record shows that the Respondent processed the Claimant's release from employment in accordance with the principles of fair procedure. It issued him with a notice to show cause letter setting out the accusations against him. It subjected him to a disciplinary hearing during which he was offered a chance to respond to the accusations against him but elected not to.
 45. Having regard to the foregoing, the court is satisfied that the Respondent has demonstrated that it had legitimate grounds to consider terminating the Claimant's contract of service. It has further been demonstrated that the Claimant was released from employment in accordance with fair procedure.



As such, the court arrives at the conclusion that the Claimant's contract of service was legitimately terminated on 28th April 2023.

46. The evidence on record shows that after the parties severed the employment relationship that was anchored on their contract dated 14th September 2018, they entered into a short-term contract which ended through effluxion of time. In the court's view, this latter relation was entirely distinct from and had no bearing on the earlier contract.
47. The Claimant has prayed for various reliefs to wit: a declaration that his contract of service was unlawfully terminated; compensation for unfair termination of his contract; payment in lieu of notice to terminate the contract; damages for unfair labour practices; and costs of the suit. All of the aforesaid reliefs are founded on the supposition that the Claimant's contract was unfairly terminated. However, the court has found otherwise. Therefore, it follows that the prayers cannot be granted.
48. Importantly and in respect of the plea for notice pay, there is evidence that the Respondent made this payment to the Claimant. This is apparent from the statement on the Claimant's final dues dated 28th April 2023 which was tendered in evidence by the Respondent. It is also noteworthy that the Claimant conceded having received pay in lieu of notice during cross examination.
49. This brings me to the prayer for house allowance. According to the Claimant, the Respondent did not pay him house allowance for the entire period of the contract between the parties. As such, he claims for this amount.
50. On the other hand, the Respondent disputes the claim on two fronts. First, it contends that the Claimant's salary was consolidated to include house allowance. As such, it avers that the purported house allowance is undeserved.
51. Second, the Respondent contends that it, in any event, paid the Claimant final dues which included an ex-gratia amount thus settling all claims by him. As such, he is not entitled to raise this claim again.
52. House allowance is a benefit which accrues to an employee as a statutory right. It is provided for under and protected by section 31 of the *Employment Act*. By virtue of this provision, an employer is obligated to provide an employee with either physical housing or pay him an allowance which will enable him to secure housing.
53. If the employer elects to pay house allowance, he can either pay it as a stand-alone benefit or consolidate it with the employee's basic salary. When the employer consolidates the allowance with the basic salary, the employee is not entitled to claim it as a separate benefit.
54. However, the law requires that if the employer consolidates the allowance with the basic salary, he should explicitly speak to this fact in the employment contract between the parties. This reality is self-evident in section 31 (2) (a) of the *Employment Act* which provides, inter alia, as follows:-

"This section shall not apply to an employee whose contract of service contains a provision which consolidates as part of the basic wage or salary of the employee, an element intended to be used by the employee as rent or which is otherwise intended to enable the employee to provide himself with housing accommodation." Emphasis added by underlining.
55. As such, it is not sufficient for a contract of service to simply state that an employee's salary is gross pay. The contract must specifically state that the benefit of house allowance is consolidated in the gross salary.



56. This reality is informed by the fact that an employee may receive some other benefits such as medical, travel and airtime allowance which will qualify his salary to be described as gross even though it may not cover all the allowances. As such, absent evidence of what has been taken into account as “gross” pay, the court cannot assume that the “gross” pay covers all allowances including housing allowance. That is the reason why the law imposes an obligation on the employer who wishes to consolidate house allowance with basic pay to expressly state so in the agreement between the parties.
57. A perusal of the contract dated 14th September 2018 between the parties does not show that there was an express clause in it consolidating the Claimant’s house allowance with his salary. Although the contract describes the Claimant’s salary as gross, it does not indicate whether house allowance was part of the allowances which were taken into account when describing the pay as gross.
58. Absent the foregoing, the court is not able to rely on the contract to find that the Respondent paid the Claimant house allowance during the duration of the contract between them. As such, all factors remaining constant, the Claimant would have been entitled to claim the allowance. However and as will be demonstrated below, subsequent developments have disentitled him from pursuing the claim.
59. The record shows that after the contract of service between the parties was terminated, the Respondent worked out what it described as the Claimant’s “final dues”. The Respondent then prepared a “Final Dues Settlement” dated 28th April 2023 setting out the Claimant’s exit dues as Ksh. 941,213.00.
60. The document bears a declaration by the Claimant in the following terms:-
- “I hereby confirm that I have been given all dues payable to me and that there is nothing else owed to me by Crown Solutions Limited- Crown Healthcare Division.”
61. The document was signed by the Claimant and a representative of the Respondent. Through the instrument, the Claimant warranted the following:-
- a. That he had been paid all dues that were payable to him by the Respondent.
 - b. That there was nothing else which the Respondent owed him.
62. It is noteworthy that the Respondent issued the Claimant a cheque for the aforesaid dues. As a matter of fact, the Claimant confirmed receipt of the funds during his oral testimony in court.
63. The record further shows that after this payment, the Respondent issued the Claimant with a further cheque on 6th March 2024 for Ksh. 539,108.60. The cheque was forwarded to the Claimant vide a letter dated 11th March 2024. In the letter, the Respondent, inter alia, expressed itself as follows:-
- “Kindly find enclosed cheque No. 335 of Kenya Shillings Five Hundred Thirty Nine Thousand One Hundred Eight and Sixty Cents (Ksh. 539,108.60) being full and final settlement of all dues payable to you.”
64. The evidence on record shows that the Claimant accepted this payment purporting to be for the purpose set out in the letter that forwarded the settlement cheque. He did not protest the Respondent’s communication.
65. The first letter which the Claimant wrote to the Respondent after the aforesaid payments was through his lawyers on or about 28th March 2024. A perusal of the letter does not suggest that the Claimant claimed for outstanding house allowance.



66. The Respondent's case is that even assuming that the claim for house allowance is legitimate, the same is not payable to the Claimant since this matter was settled through the exit payments it made to him. As such, it contends that he cannot pursue the claim through these proceedings.
67. In the court's view, the final dues instrument alluded to by the Respondent operates as a contractual document between the parties. Once the parties signed it, they became bound by the terms in the instrument.
68. Similarly, the document operates as an estoppel against the Claimant. The Respondent is entitled to rely on it as a shield against further claims by the Claimant.
69. It is trite that parties are bound by the terms of their agreement and are not entitled to walk away from the agreement merely because the terms thereof have become unfavourable. Generally, the law expects that an agreement will be kept unless it is demonstrated that it was procured through fraud, mistake, undue influence or is otherwise unconscionable (*Muriuki v Muriithi & 3 others* [2025] KEELC 729 (KLR)).
70. It is also trite that if one makes a representation to the other with the intention that the other acts on it and the other does act on it to his detriment, the party who made the representation is not entitled to turn his back on it. He is estopped from changing his position on the matter (*National Bank of Kenya Limited v Carol Construction Engineers Limited & another* [2022] KECA 1426 (KLR)).
71. As seen earlier, the Claimant gave the Respondent some assurances through the final dues instrument. This included an assurance that what he was paid under the instrument covered all that he was entitled to as his final exit pay. He further warranted that there would be nothing else that will be due to him after the aforesaid payment. This includes the arrears of house allowance which he now claims.
72. Once the Claimant executed the aforesaid instrument, he waived his right to make further claims against the Respondent. By giving the Respondent an assurance that there would be nothing owing from it to him under the contract of service after the payments in the instrument, he closed the door to revive the claim for house allowance.
73. The Respondent made the payments to the Claimant against the assurance by the Claimant that they (the payments) would close the matter between them. As such, the Claimant is estopped from reviving any claims under the impugned employment relationship including the one for house allowance.
74. Having regard to the foregoing, the court arrives at the conclusion that the Claimant waived the right to claim the outstanding house allowance when he executed the instrument dated 28th April 2023 giving the Respondent an assurance that there was nothing else which the Respondent owed him. As such, he is not entitled to revive the claim through these proceedings.

Determination

75. The upshot is that the court finds that the instant claim is unmerited.
76. As such, the suit is dismissed.
77. Each party to bear own costs of the case.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JANUARY, 2026

B. O. M. MANANI

JUDGE



In the presence of:

.....for the Claimant

.....for the Respondent

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

