



**Nyangun v Cafesserie Limited (Cause E104 of 2024)
[2026] KEELRC 214 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 214 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E104 OF 2024
M MBARŪ, J
JANUARY 29, 2026**

BETWEEN

SHALLYNE NYANGUN CLAIMANT

AND

CAFESSERIE LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant as a waitress on 13 February 2016. She was promoted to a supervisor, earning Ksh. 95,000 per month.
2. The claimant alleges that on 22 March 2024, she received a text message from the director, Isaac Shapak, informing her that her services were no longer required. There was no prior notice, justification, or payment of termination dues. Later, a payment of Ksh. 276,334 was made without a breakdown. This was too low considering the number of years served.

The claimant is seeking payment of the following terminal dues:

- a. Notice pay Ksh. 95,000.
 - b. 12 months' compensation Ksh. 1,140,000.
 - c. Service charge for 8 years Ksh. 9,120,000.
Paid less Ksh. 276,334.
3. In support of her case, the claimant testified that she worked diligently for the respondent from February 2016 to 22 March 2024, when her employment was terminated without cause. She reported to work and received a voice note from the managing director, Isaac, who informed her that her services were no longer required. She was cleared and paid Ksh. 380,000 through coercion and made to sign the discharge voucher.



4. The claimant testified that she received no written notice of termination. Following the phone note terminating her employment, she went into shock since she had a loan of Ksh.300, 000 with the respondent. She was made to sign the discharge voucher as a condition for payment of her terminal dues of Ksh. 380,000:
 - a. Notice pay Ksh. 95,000;
 - b. Due salary until 22 March 2024;
 - c. Gratuity;
 - d. Leave days.This was paid less Ksh. 300,000, the loan amount.
5. The gratuity pay was for the 7 years of service. She was part of the team that moved to Uganda to open a new branch for the respondent and was therefore entitled to service pay. The amount paid in terminal dues was insufficient, given that no disciplinary case or other reasons were provided.
6. In reply, the respondent's case is that employment was terminated pursuant to section 35(1) (c) of the Employment Act (the Act). Terminal dues were tabulated at KSh. 576,334 for the following:
 - a. Basic pay Ksh. 90,000.
 - b. March salary for 22 days Ksh. 69,667.
 - c. One month's notice pay Ksh. 95,000.
 - d. Gratuity Ksh. 380,000.
 - e. Accrued leave Ksh. 31,667.
7. The gratuity pay was not provided for under the claimant's contract of employment. This was paid in good faith. The claimant had an outstanding loan of Ksh. 300,000, which was deducted and paid Ksh. 276,334.
8. The claim is meant for unjust enrichment after the respondent complied with section 35(1) (c) of the Act.
9. In evidence, the respondent called Angela Ndugi, the general manager, who testified that the claimant had a written contract of employment and had worked for the respondent for 7 years. There was no disciplinary case or any poor work record. No reasons were given for the termination of employment, but operational factors. The claimant's services were no longer needed. Termination of employment applied section 35(1) (c) of the Act, and terminal dues were paid in full.
10. At the close of the hearing, both parties agreed to file written submissions. Only the respondent complied.
11. The respondent submitted that under section 35(1) (c) of the Act, the employer is allowed to terminate employment upon notice or by paying in lieu of notice. The respondent opted to pay in lieu of notice. The Act thus allows the employer to terminate employment at will, provided the employer pays in lieu of notice, as held in *Bunde v Network for Adolescent and Youth of Africa (NAYA)* [2022] eKLR.
12. The claimant was verbally advised that her contract of employment would be terminated. Under section 36 of the Act, the employer has the right to issue notice and pay terminal dues. These dues have



since been paid, including notice pay, salary for days worked and gratuity, which was not contractual. The remedies sought are not justified, and the claim should be dismissed with costs.

Determination

13. It is common cause that on 22 March 2024, the respondent terminated the claimant's employment through verbal notice. The respondent has invoked the provisions of section 35(1) (c) of the Act to justify the right to terminate employment upon payment in lieu of notice.
14. The claimant asserts that she had no disciplinary case, notice or any reasons to justify termination of her employment. This is corroborated by the respondent and assertions by the witness, Angela Ndugi, who testified that, indeed, there was no reason leading to the termination of the claimant's employment save for operational reasons. Terminal dues have since been paid.
15. The question that stands out for determination is whether the termination of employment was unfair. Whether the remedies sought should be issued.
16. Section 35(1) (c) of the Act allows the employer to terminate employment upon payment in lieu of notice. However, these provisions must be given context. Termination of employment must be procedurally and substantively fair.
17. Under section 47(5) of the Act, the employee has the burden of proving that the termination of employment was unfair and occurred without due process. This is addressed and corroborated by the respondent. The witness called confirmed that, due to operational reasons, there was no notice or reasons given to the claimant. Hence, the burden placed upon the employer under sections 43 and 45(2) of the Act was not discharged. The justification and the onus to prove that the termination of employment was both procedurally and substantively fair rest on the employer. It must be demonstrated following a fair process in the termination of employment and that the reason was justified, as held in *Alomba v Green Park Golf & Country Complex t/a the Great Rift Valley Lodge & Golf Resort* [2025] KECA 378 (KLR)
18. In *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the court, in addressing the question of burden of proof, held that:

There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (Section 43); prove the reasons are valid and fair (Section 45); prove that the grounds are justified (Section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the *Evidence Act* and the *Civil Procedure Act/Rules*. Finally, the remedies for breach set out under Section 49 are also fairly onerous to the employer and generous to the employee. But all that accords with the main object of the Act as appears in the preamble: "...to declare and define the fundamental rights of employees, to provide basic conditions of employment of employees.."

Those provisions are a mirror image of their constitutional underpinning in Article 41 which governs rights and fairness in labour relations. ...

19. The employer cannot terminate employment at will. Where there were operational reasons leading to the termination of employment, as Ms Angela Ndugi testified for the respondent, the due process under section 40 of the Act should have been followed. Payment in lieu of notice or other terminal



- dues is not sufficient cause to terminate employment at will. There must be due process by justification and procedural fairness as held in *Oloo v Kisumu County Assembly Service Board & another; O.C.S. Kisumu Central Police Station & 2 others (Interested Parties)* [2025] KECA 333 (KLR).
20. In this case, termination of employment was devoid of any justification, and there was both procedural and substantive unfairness. Under section 45 of the Act, employment is terminated both unlawfully and unfairly.
 21. The claim for compensation is due under section 49 of the Act. The court takes cognisance of the payment of gratuity, which was not contractual. It was paid immediately upon termination of employment. The claimant has since acknowledged this payment.
 22. This taken into account, having served the respondent diligently for 7 years, compensation for 3 months' gross salary is hereby found justified. Ksh. 95,000 x 3 = Ksh. 285,000.
Notice pay has since been paid and acknowledged.
 23. The claim for the service charge lacks any basis. The claimant did not assert that she was unionized under a Collective agreement that gave this benefit, or that she had a private treaty giving rise to a service charge.
 24. On the claim for costs, the respondent substantially complied and paid terminal dues immediately upon termination of employment. Under section 45(5) of the Act, this being taken into account, each party should pay its costs. See *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR.
 25. Accordingly, the claim is allowed to the extent that there was an unlawful and unfair termination of employment, and the claimant is awarded compensation at Ksh. 285,000 subject to section 49(2) of the Act. Each party bears its costs.

DELIVERED IN OPEN COURT AT MOMBASA ON THIS 29TH DAY OF JANUARY 2026.

M. MBARŪ
JUDGE

