



**Wambugu v Techno Brain Bpo Ites Limited (Cause E060 of 2023)  
[2026] KEELRC 147 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEELRC 147 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E060 OF 2023  
DKN MARETE, J  
JANUARY 28, 2026**

**BETWEEN**

**WOOD WAMBUGU ..... CLAIMANT**

**AND**

**TECHNO BRAIN BPO ITES LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated 31st January, 2023. The issue in dispute is there in cited as;  
  
Unfairly dismissal of the claimant's services.
2. The Respondent in a Statement of Response dated 24th March, 2023 denies the claim and prays that it be dismissed with costs.
3. The Claimant in a Reply to the Respondent's Statement of Response dated 24th August, 2023 rubbishes the defence and prays that this be dismissed with costs.
4. The Claimant's case is that he was employed by the Respondent as a data entry clerk in 2010 or thereabouts on casual basis at a monthly salary of Kshs.15,000.00 payable fortnightly. On 15th January, 2011 the claimant was assigned a new role as a call Centre Representative which position was confirmed on 15th April, 2011 thereby making him a permanent employee on a renewable contract every six (6) to eight (8) months. On 1st June, 2022, he was promoted to the position Assistant Operation Manager until 6th December, 2022 when his services were unlawfully terminated. As at the time of termination, the Claimant was on a monthly salary of Ksh.95,077.00.
5. The Claimant's other case is that he served the Respondent dedicatedly thereby earning the various promotions. On 29th November, 2022, he fell ill and sort medical assistant at Mwalimu Medical Clinic where he was treated. He reported to work on the following day while still unwell and in the course



of duty felt dizzy and nauseatic due to the effect of the medication he was on. This prompted him to rush to the toilet where he was found vomiting.

6. The Claimant avers that on 1st December, 2022, he sought further medical assistance at Komarock Modern Health Care where he was admitted, treated and discharged on 2nd December instant with a two-day rest period awarded. It is his case that when word reached the Human Resource Manager that he was found vomiting, he was called for a meeting where he was orally informed that his services were terminated due to intoxication. On 5th December, 2022, he was called for a meeting to show cause as to why he was intoxicated at the workplace and thereon summarily dismissed from employment on account of intoxication. This was substantively and procedurally unfair and in contravention of sections 41, 44 and 45 of the Employment Act, 2007 besides Article 41(1) of the Constitution of Kenya, 2010.

7. The particulars of unfair dismissal are as follows;

- i. That though the claimant was dismissed because of being intoxicated the respondent assumed that the claimant's intoxication was willingly caused, yet the said intoxication was due to the effect of medication which the claimant had taken.
- ii. The respondent never conducted any test to ascertain what caused the claimant's intoxication before dismissing the claimant.
- iii. The respondent never considered that the claimant has never been involved in any disciplinary action especially on the issue of intoxication.

8. He prays thus;

- a. General damages for unlawful dismissal 95,077 (salary per month)\*  
12 years of service .....  
Kshs.1,140,924
- b. One month salary payment in lieu of notice.....  
....Kshs.95,077
- c. Service charge  $\frac{1}{2} * 95,077 * 12$ .....Kshs.570,462  
Total .....Kshs.1,806,463/-
- d. Certificate of service
- e. Costs of this suit
- f. Interest on (a) to (c) above
- g. Any other suitable relief as the court may deem fit and just.

9. The Respondent's case is a denial of the claim. In as much as there is an admission of an employment relationship inter partes that culminated in Claimant's termination of employment vide a letter dated 8th December, 2022. The Respondent denies that the Claimant was a diligent and efficient employee. It further denies that the intoxication so well explained and excused by the Claimant is fallacious, a total farce, a deliberate misrepresentation of facts and an audacious attempt to hoodwink this court into sympathizing with his alleged ordeal. This was due to alcohol abuse and no more.



10. The Respondent's further case is that on 30th November, 2022 the Claimant reported to work normally but was later found by a colleague and confided to him that he was feeling unwell. He later stopped out of work place for food but ended up taking alcohol. Julius Wathika, his colleague, got worried about the Claimant's welfare and enquired on how he could help but the Claimant requested that he conveys a message of his unwellness to his superior, one Rajesh which was done. Mr. Rajesh requested that the Claimant goes to relay the message in person.
11. The Respondent further avers as follows;
  - i. At this point, the Claimant was extremely inebriated, staggered and could hardly stand.
  - ii. The Operations Manager got wind of this and called the Claimant on his cellphone who told him that he was unwell and on 4th floor. All this time, he was incoherent and staggering.
  - iii. Concerned, the Operations Manager rushed to 4th floor to check on Claimant and would not find him thereby prompting a team to start tracing him on other floors only to find him locked up inside a toilet on the 2nd floor.
  - iv. The Claimant refused to come out of the toilet despite incessant pleas but ultimately come out after considerable convincing.
  - v. He was taken to experience room for a discussion with a view to establishing the problem and hear him.
  - vi. The Claimant returned to the toilet and despite request choose to remain in the toilet. He admitted having taken alcohol to quell some personal issues he was dealing with.
  - vii. He was ultimately taken home in a cab as he was not capable of managing himself or even doing his work.
12. It is the Respondent's further case and averment that the serious misconduct of the Claimant was a breach of the employment contract and violation of section 4.3.3.3 of the Respondent's Code of Business Conduct and the Employees Handbook. He was therefore summarily dismissed in terms of section 44(1) and (4) of the Employment Act, 2007. This was after observing the terms of substantive and procedural fairness which did not require that the Claimant be subjected to any tests to ascertain his alcoholic intoxication.
13. The issues for determination therefore are;
  1. Whether the Claimant's intoxication was as result of alcohol consumption.
  2. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
  3. Whether the Claimant is entitled to the relief sought.
  4. Who bears the cost of this cause?
14. The 1st issue for determination is whether the Claimant's intoxication was as result of alcohol consumption. The Claimant submits that he was dismissed from service on allegations that on 10th November, 2022 he was intoxicated during office hours and that this intoxication was out of alcohol consumption. It is his case that though he emitted symptom that appeared like he was intoxicated out of alcohol consumption this was not the case. The Respondent never subjected the Claimant to any medical test to proof intoxication by alcohol but merely jumped to such conclusion due to the symptoms displayed by the Claimant.



15. It is also evidence that the doctor who treated the Claimant on 29th November, 2022 when he fell sick had proven the Claimant had visited the facility with a history of dizziness, nausea and abdominal pains whereby tests were conducted and he was found to be suffering from a acute gastritis. He got a subscription of drugs and was advised to take some rest. This was because the side effect of this medication: auto brewery syndrome also known as gut fermentation syndrome which usually makes a patient to be intoxicated and have effects of a drunkard. This is clear from the evidence of Dr. G.K Onyango in his witness statement dated 24th August, 2023. The Respondent has failed to proof that the Claimant was intoxicated by alcohol in satiation of section 43 (1) of the Employment Act, 2007 which requires employers to proof a valid reason for termination of employment.
16. Again, the Claimant confided his predicament to a co-worker, one, Julius Wathika. Mr. Wathika did not testify or file a witness statement and therefore this particular evidence must be discarded. The evidence of medical report tendered by the Claimant together with the further check-up and admission at Komarock Modern Health care where he was admitted for two days comprises ample evidence of the Claimant's malady.
17. The Claimant further submits that he reported to work on 30th November, 2022 and was allowed into the Respondent's premises by the security guards without any alarm as to drunkenness or possession of alcohol. The security guards were not called to testify on the stature of the Claimant as at the time of reporting to work thus demeaning the claim of inebriation through alcohol.
18. The Respondent in furtherance of a case of intoxication through alcohol consumption submits that auto-brewery syndrome or gut fermentation is a rare medical condition in which a person digestive system produces ethanol (alcohol) through the fermentation of ingested carbohydrates. This is a medical condition that is diagnosed after tests and not a causative of medication. The doctor did not tender evidence of which medicine could have caused the situation thereby rendering his evidence of no assistance to court. It ought to be disregarded.
19. The Respondent in his witness statement by George Mutua dated 11th March, 2024 takes issue with the Claimant's witness statement by Dr. G.K Onyango and avers that this was only filed after she took issue with the Claimant's failure to file a witness statement by a competent doctor as per the statement of claim. This statement therefore becomes an afterthought on the part of the Claimant.
20. The Respondent elaborately narrates the sequence of events of the Claimant's conduct on 30th November, 2022. This is as follows;
  - i. That the Claimant reported to work normally.
  - ii. He was found at the basement by one, Julius Wathika to whom he confided that he was unwell.
  - iii. He left for lunch where he ended up taking alcohol as well.
  - iv. He requested Julius Wathika to convey a message of his malady to his superior
  - v. The superior requested that the Claimant goes to report the sickness in person.
  - vi. At this point he was extremely inebriated and could not stand. He was staggering.
  - vii. The Operational Manager and his assistant found the Claimant in a toilet from which he refused to come out.
  - viii. It is only after incessant pleas that he came out.



- ix. He admitted getting outside the work place and imbibing alcoholic substances to quell some personal issues he was dealing with.
21. The circumstances of this case spell out a case for the Respondent. A case of drunkenness and intoxication on alcohol is the probable of the two. This is also established on a preponderance of evidence. The big question is, if the Claimant was indeed unwell out of natural causes, why would he have chosen to play hide and seek during the search and interrogation of his condition on 30th November, 2022? Your answer is as good as mine. The Claimant was intoxicated on alcohol and I find as such.
22. The 2nd issue for determination whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant pleads and submits a case of unlawful termination of employment which is denied by the Respondent. The Claimant supports his case by relying on the authority of section 41(2) of the *Employment Act, 2007* and submits that he was not awarded an opportunity to be accompanied by a representative of his choice in the disciplinary meeting. He seeks to rely on authority of *Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR* where the court observed thus;
- “... that four elements must be discernable for the procedure to pass the fairness test:
- a. An explanation of the grounds of termination in a language understood by the employee;
  - b. The reason for which the employer is considering termination;
  - c. Entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made.
  - d. Hearing and considering any representation by the employee and the person chosen by the employee.
23. The Respondent counters and submits that the termination of the employment of the Claimant was lawful and in accordance with section 44 (4) (b) of the *Employment Act, 2007* touching on being drunk and intoxicated at the work place. This was admitted by the Claimant and amounts to gross misconduct for which the Claimant was dismissed. This court agrees with the Respondent. There is overwhelming evidence of drunkenness by the Claimant during working hours to the extent of incapacitating his performance. I therefore find a case of lawful termination of employment and hold as such.
24. The 3rd issue for determination is whether the Claimant is entitled to the relief sought. He is not. Having lost on a case of unlawful termination of employment, he becomes disentitled to the relief sought.
25. I am therefore inclined to dismiss the claim with orders that parties bear their costs of the same.

**Delivered, dated and signed this 28<sup>th</sup> day of January 2026.**

**D. K. Njagi Marete**

**JUDGE**

Appearances:

1. Mr. Amati instructed by Eric N. Amati & Company Advocates for the Claimant.



2. Mr. Muga instructed by Muthoga Gaturu & Company Advocates for the Respondent.

