

THE REPUBLIC OF KENYA

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT
MOMBASA**

CAUSE NO.E021 OF 2024

COSMAS MAGANGA CLAIMANT

VERSUS

JENEBS ENTERPRISES LIMITED RESPONDENT

JUDGMENT

The claimant is a male adult. The respondent is a limited liability company.

The claim is that the respondent employed the claimant as an oil specialist in 2000, at a salary of Ksh. 18,500 per month, which was below the wages required of a specialist. The claimant worked until March 2023 on the same wage stationed at Makupa, Mombasa County.

The claim is that the respondent dismissed the claimant without notice, without giving him any reasons, and without payment of terminal dues. His case was that he recommended a colleague at work. He was then placed on unpaid leave to address the issue. Instead, his employment was terminated without notice. This was wrongful and contrary to fair labour practices. Efforts to obtain reasons and letters of recommendation failed.

The claimant is seeking the following terminal dues;

- a) Notice pay at Ksh.18,500;
- b) Service pay Ksh.212,865;
- c) 12 months compensation Ksh.220,000;
- d) Unpaid leave Ksh.386,400;
- e) Unpaid public holidays Ksh.331,200;
- f) Unremitted NHIF Ksh.220,800;
- g) Costs of the suit.

The claimant testified that, after many years of employment with the respondent, he was dismissed for allegedly recommending a family member, Kenneth Mwai Charo, for employment, who was alleged to have stolen funds from the respondent. The matter was reported to the police, who conducted an investigation. The claimant was not linked to the

matter, yet the respondent nevertheless used extraneous matters to terminate his employment without notice, a hearing, or payment of terminal dues. He had worked diligently since 2000 as an oil specialist without any incidents or poor performance, only to be terminated unfairly. For 23 years, he worked for Ksh. 18,500 per month, which was an underpayment. Following an audit, the respondent identified missing funds, which led to another employee, unrelated to the claimant, being arrested. He was required to take leave to address the matter, but his employment was terminated without justification.

The claimant admitted that his employment with the respondent commenced in 2000, but under a contract dated 1 January 2023, his term was to run until 31 December 2023. On 13 April 2023, his employment was terminated without due process or being allowed to complete his term contract. No reasons or justifications were given. He had a disciplinary hearing regarding the allegations. This resulted in unfair termination of employment.

The claimant testified that he should be paid his dues as pleaded with costs.

In response, the respondent admitted that the claimant was employed as an oil specialist, but not in 2000 as alleged. He was employed on a fixed-term contract that would automatically terminate on a specific date unless renewed. The last contract was dated 1 January 2023 and automatically lapsed on 31 December 2023.

The response is that under the term contract, the respondent paid the claimant Ksh. 21,000, not Ksh. 18,500 as alleged. The claims are without merit because the term contract lapsed on its terms, and no notice is due or compensation is owed for the alleged unlawful and unfair termination of employment. Leave days and the house allowance were paid in accordance with the employment contract.

In evidence, the respondent called Said Salim Khamis, the director, who testified that he operates the Makupa Shell Station on behalf of **Jeneby Enterprises Limited** and not the respondent company, *Jenesby's Service Station*, which is unrelated to his company that employed the claimant.

Khamis testified that the respondent has the practice of issuing fixed-term contracts to its employees. The claimant was issued a written term contract dated 1 January 2023, which ran until 31 December 2023. The claimant alleges that he was dismissed for issuing a recommendation letter, but the letter in question does not emanate from the respondent. The

letter lacks the respondent's seal or letterhead. The letter of leave and other records bear the respondent's records, but not the alleged letter of dismissal.

The allegations that the dismissal is related to Kenneth Charo, a person unknown to the respondent. The respondent company is located in Makupa, Mombasa, while the claim alleges that Charo was working in Diani, a site separate from the respondent's operations.

At the close of the hearing, the parties filed their written submissions.

Determination

The respondent filed various employment records regarding the claimant's employment. It is admitted that the claimant was employed as an oil specialist, with his last fixed-term contract running from 1 January to 31 December 2023.

The respondent called its witness, Khamis, who asserted that he is the director of Jenesby Enterprises Limited, which operates the Makupa Shell Station and not *Jenesby's Service Station*, which is unrelated to his company that employed the claimant. The contract of service filed by the respondent as the employer is with Jeneby Enterprises Limited for a fixed-term employment from 1 January to 31 December 2023. A term of one year.

The claimant accepted the term contract, and it was signed. The stamp under the document is by ***Jenesby's Enterprises Ltd***, the respondent.

On his part, the claimant filed various records, including the financial statement for Jenesby's Service Station and Shell Makupa Service Station.

There is the Kenya Revenue Authority (KRA) statement for *Jenesby's Service Station* and the NSSF statement for the respondent.

The respondent herein, **Jenebys Enterprises Ltd**, is the employer named in the contract of employment filed by the respondent. That contract is the correct, true record under section 10 of the Employment Act.

The claim is that on 13 April 2023, the respondent set the claim on unpaid leave after he had issued a recommendation letter to one Charo for employment at a different site. The claimant does not produce this letter. The import of its contents, leading to alleged unpaid leave, is not disclosed.

Further, the need for the claimant to proceed on unpaid leave arising from the alleged recommendation letter remains unaddressed.

The court is left with the term contract ending on 31 December 2023.

Among the records filed by the respondent, the employer, are the payment statements. These include statements for January to December 2023. These are not contested by the claimant. He was paid Ksh. 21,000 each month.

Employment under a fixed-term contract is lawful and valid. It is an accepted mode of employment under section 10(3) of the Employment Act as emphasised in the case of **Middle East Bank Kenya Limited v Waseka [2025] KECA 2113 (KLR)** and **Judicial Service Commission v Mayieka & 22 others [2025] KECA 1220 (KLR)**. A fixed-term contract has a start and end date.

The records on file indicate that the respondent employed the claimant under a fixed-term contract ending on 31 December 2023. There is evidence of payments ending on 31 December 2023.

Employment terminated as agreed upon by the parties. The claim that there was a wrongful and unfair termination of employment does not arise.

Notice pay and compensation are not due.

The service pay claim is due when the employer fails to remit statutory dues. Part of the records filed by the claimant is his NSSF statement. This demonstrates that the respondent as the employer was remitting the dues from 1 April 1996. Under the provisions of Section 35(5) and (6) of the Employment Act, service pay is not due.

Regarding the claim for untaken leave days for 23 years, Section 28(4) of the Employment Act allows the employee to carry over up to 18 months of accrued leave, unless the employer has approved its carrying over. The employee must take the due annual leave unless they can demonstrate that the employer rejected their application without good cause.

In this case, under the fixed-term contract, the claimant was entitled to 21 leave days under clause 8.1. There is no record filed by the respondent on his right, which was secured. The filed payment statements do not reflect any payment for annual leave. See **Rumba Mnyika Nguta v Southern Hills Development Agency Limited t/a Radio Kaya [2020] eKLR**.

For 18 months, the claimant is entitled to 33 leave days under Section 28 of the Employment Act, all assessed on the last wage of KSh. 20,350.

On the claim for payment for work during public holidays, these days are gazetted by the Minister. They are not general and must be outlined by the employee to justify working on such a day. Without any particulars of which public holidays are under reference, such is not justified despite the claim being unopposed.

Regarding the claim for unremitted NHIF dues, they are owed to the statutory body, not to the employee. The alternative claim is service pay, which is addressed above.

The other issue the claimant raises is that he was dismissed from his employment without being issued a letter of recommendation. Under Section 51 of the Employment Act, the employer is only required to issue a Certificate of Service and issuing a letter of recommendation is discretionary. In this case, issuance of a Certificate of Service shall suffice.

Accordingly, the claims made are without merit, save for Leave pay, Ksh. 20,350; Certificate of Service be issued in accordance with Section 51 of the Employment Act; and each party bears its costs.

Delivered in open court at Mombasa, this 19th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Omar

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