

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT VOI

CAUSE NO. E006 OF 2025

CONSLIDATED

CAUSE NO. E007 OF 2025

FRANK JUMAPILI M'MARE CLAIMANT

AND

JASON TUJA MWAMODENYI CLAIMANT

VERSUS

THE COUNTY GOVERNMENT OF TAITA TAVETA RESPONDENT

JUDGMENT

The claims herein were consolidated for hearing and determination as they relate to the same cause of action and against the same respondent. The claims consist of **Voi ELRC Cause No. E007 of 2025 and E007 of 2025.**

The claimants are adults. The response is established under Article 176 of the Constitution.

The respondent employed the claimants on 27 March 2023 as a water, hygiene, sanitation and health advisor and a peacebuilding and conflict resolution advisor, respectively. The monthly salary was Ks. 169,140 plus a house allowance of Ksh. 20,000 and other benefits. On 7 October 2024, the claimant received a termination notice from the respondent. The notice was to take immediate effect.

The claim is that there was no due process, notice or payment of terminal dues. The claimant is seeking the following dues:

- a) *Declaration that employment was terminated unfairly and unlawfully.*
- b) *An order of reinstatement.*
- c) *In the alternative, payment of terminal dues as per the letter dated 27 March 2023.*
- d) *12 months' compensation Ksh. 2,029,680.*

e) *Certificate of service.*

f) *Costs of the suit.*

Each claimant testified in support of their case,

Frank Jumapli M'mare testified that, before the respondent terminated his employment, no notice or reasons were given. He was not invited to a disciplinary hearing, and his employment contract was to expire with the Governor's term on 27 August 2027.

The decision to terminate his employment was particularly harsh, as he had an outstanding loan he was repaying through payroll deductions from his monthly salary. KCB had granted the loan under his employment contract. He took Ksh. 2.5 million to run for 4 years, and has since been unable to repay it due to the unlawful termination of employment.

The termination notice was effected most brutally. He reported to the office, and a clerk asked him to open his email when he saw the notice. There are no reasons given. The respondent, the senior officer, or the Governor had no opportunity to call him to warn him or to inform him of the termination of his employment. Upon the notice, the claimant went into shock. He is in court seeking justice due to the trauma he has suffered since. The KCB loan has since accrued interest and is unable to repay it.

The claimant testified that the respondent asked to pursue reconciliation to punish him further and to stall these proceedings. The claimant is seeking an order of reinstatement to restore him to his employment and to do justice.

Upon cross-examination, the claimant testified that he was under a fixed-term contract for the duration of the governor's tenure. The contract included a termination clause, and clause 7 addressed a conflict of interest as a reason for termination of employment. Despite the offer to pay in lieu of notice, no reasons were given for the respondent's action.

The claimant admitted that at the time employment terminated, he had a salary advance of Ksh. 200,000. The notice pay was taken up to settle the advance. This was unexpected, and he ended up with nothing.

Jaso Tuja Mwamodenyi testified that he was employed by the respondent on 27 March 2023 for a term of the governor and paid KSh. 169,140 plus other allowances, including housing and telephone. On 7 October 2024, he was issued a notice of termination of his employment.

No reasons were given, nor was a disciplinary hearing held on any matter. He was shocked to learn about the decision via email.

Mwamodenyi testified that he had a fixed-term contract with a termination clause, which the respondent invoked unfairly. At the time, he had taken out a loan and would repay it through the checkoff system. On 7 October 2024, the respondent directed him to do the clearance. He did not clear, as he had been ambushed, and opted to file suit to protect his rights.

The loan with Cooperative Bank has accrued interest due to nonpayment, and the respondent employees had offered a guarantee.

In reply, the respondent admitted the employment relationship and that the termination was procedural, and that the order of reinstatement is not justified.

The claimants were under a contract dated 27 March 2022, and clause 7(a) provided for termination upon notice. This is what the respondent invoked, hence lawful and valid. The respondent offered to pay in lieu of notice.

In evidence, the respondent called Dinah Kishagha Katema, the County Attorney, who testified that employment was terminated lawfully. At the time, FRANK JUMAPILI M'MARE had a salary advance which had not been fully repaid, and hence his terminal dues were applied to offset the advance. Termination of employment was at the governor's behest, which is lawful and valid.

Katema testified that consultations were held before the termination of employment and that, on that basis, notices were issued. The governor employed the claimants, and he terminated their employment. Representation is unavailable because the claimants were serving at the governor's pleasure. As the County Attorney, she has no control over it, and only the governor can reinstate the claimant. The claimants were contract employees and cannot seek compensation for work not done.

Parties filed written submissions.

The court has analysed the pleadings, the written submissions, and the issues that emerge for determination are:

Whether there was an unlawful and unfair termination of employment;

Whether the order of reinstatement should be issued; and

Whether the remedies sought should be allowed.

Through notices dated 7 October 2024, the respondent terminated the employment of the claimants by invoking the provisions of section 7(a) of the contracts of employment. No other reasons are assigned to the decision to terminate employment.

Clause 7(a) of the contract is that the respondent was at liberty to terminate employment upon one month's notice. Hence, no reason(s) were necessary for the respondent to apply such provisions.

Indeed, the respondent's witness and County Attorney, Ms Katema, emphasised that the governor had absolute power to terminate the claimant's employment. They were serving at his pleasure. They were at the governor's behest. He thus invoked the termination clause.

The pleasure doctrine under which the respondent purports to apply against the claimants only applied under the repealed Employment Act, No. 2 of 1976. Under the Act, an employee was a servant who served at the pleasure of his employer, who was deemed to be his master. All that was required of an employer in the event of termination of employment was to give notice or pay in lieu of notice. The employer was further entitled to summarily dismiss an employee for gross misconduct, a determination made solely by the employer, as there was no requirement for a hearing before dismissal, as held in **Tanui v National Police Service Commission & 2 others [2026] KEELRC 349 (KLR)**. See **Whitesands Sarova Hotel Limited v Omburo [2026] KEELRC 436 (KLR)**.

This normative framework in employment relations changed in 2007 with the enactment of the Employment Act, 2007. The shift is aptly captured in **County Government of Nyeri & another v Ndungu [2015] KECA 1011 (KLR)**, where the court held that:

Originally the doctrine of pleasure was a prerogative power which was unfettered. A holder of an office under pleasure could be removed at any time, without notice, without assigning cause and without there being a need for any cause. However, with the passage of time and evolution of democracy the doctrine has undergone a series of modification. The evolution of the doctrine of pleasure has been on the basis of putting to an end arbitrary action by a public authority and ensuring that such a power is exercised reasonably and for the public good.

The court further held:

We are of the considered view that Section 31 (a) grants power to a Governor to dismiss a member of the County Executive Committee at any time, that is, at his pleasure. However, we find that the said power is qualified to the extent that he can only exercise the same reasonably and not arbitrarily or capriciously.

In **Richard Erskine Leakey & 2 others v Samson Kipkoech Chemai [2019] KECA 700 (KLR)** the doctrine of pleasure is further espoused. The court held that:

*In its original formulation, the doctrine of pleasure was a prerogative power which was unfettered. A holder of an office under pleasure could be removed at any time, without notice, without assigning cause, and without there being a need for any cause. However, with the passage of time and evolution of democracy, the doctrine has undergone modification. In **B.P. Singhal -vs- Union of India & Another (2010) INSC 365** the Supreme Court of India found that in the absence of an express limitation on the application of the doctrine of pleasure there exists an implied limitation that the power would not be exercised arbitrarily, whimsically or capriciously; the power would be subject to the fundamentals of constitutionalism. (See also the decision of this Court in **County Government of Nyeri & another -v- Cecilia Wangechi Ndungu [2015] eKLR**).*

In this case, there was no due process. A proper application of the County Government Act in addressing the employment relationship must draw on the best practices under the Employment Act. It requires that the employees, such as the claimants, be accorded due process. This is addressed in various cases, particularly in **Pius Machafu Isindu v Lavington Security Guards Limited [2017] KECA 225 (KLR)**, the court 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 and generous to the employee.*

The employer is bound to issue a notice and give reasons for the action taken for the action to be valid and fair. In a disciplinary matter, the employer is bound to issue a notice and hear the employee. Thus, the motions of section 31 of the County Government Act or an employment contract on its own cannot suffice. Due process requires the employer to terminate employment in accordance with the law.

In this regard, the respondent provides no reasons. During the hearing, the witness called by the respondent was emphatic that the governor had the right to employ and to terminate employment at will. That can't be held in a democratic society, as the people of Kenya have affirmed through the constitution.

The claimants' employment was thus terminated unlawfully and unfairly, contrary to section 45 of the Employment Act.

Notice pay was offered and applied to settle the claimants' liabilities.

The claimants are seeking an order of reinstatement. However, such an order will be issued only in exceptional cases where it is clear that this is the only remedy capable of addressing the injustice visited on the employee. The working relationship between the claimants and the respondent was that of advisors. This means close contact, which will not be possible to secure upon reinstatement. It may even end in more frustrations than ever before.

Reinstatement will not be an appropriate remedy in this case.

The alternative remedy sought is payment of compensation. On the finding that there was unfair termination of employment, section 49 of the Employment Act allows for an assessment of compensation.

The claimants were under written contracts that they hoped to serve until the end of the governor's term on 27 August 2027. This was cut short due to the governor's unlawful and unfair actions. The claimants had invested in their employment and secured loans that they are unable to repay due to the respondent's unlawful acts. The termination of employment was carried out in the most brutal manner, without any iota of due process, and under the belief that the pleasure doctrine applied to the respondent.

A compensation of 10 months' gross wage is hereby found appropriate and justified. This may not fully address the problems faced by the claimants, including resolving their loan

repayments. However, compensation only partially alleviates the situation and secures the employee's rights.

Compensation is due at Ksh. 1,614,000.

However, under sections 18, 19, and 20 of the Employment Act, at the end of employment, the employer is entitled to deduct all dues owed by the employee, including salary advances, loans, and unaccounted-for disbursements. In **Electine Merina Bwire & another v Krystalline Salt Limited [2018] KEELRC 2501 (KLR)** and **Javan Were Mbango v H. Young & Co (EA) Ltd [2012] eKLR**, the court held that an employer is entitled to make a deduction of any amount authorised by any written law for the time being in force. Whatever the claimants owed the employer should be deducted before any payments are made. See **Nyaachi v Rembo Shuttle Savings & Credit Co-operative Society [2023] KEELRC 687 (KLR)**

The claimants shall undertake clearance and be paid dues under their respective contracts, if any.

On costs, the claimants are successful and hence entitled to costs.

Accordingly, judgment is hereby entered for the claimants against the respondent in the following terms:

- a) A declaration that employment was terminated unlawfully and unfairly.**
- b) Compensation awarded at Ksh. 1,614,000 to each claimant.**
- c) Dues (b) above shall be paid less what the claimants owe the respondent, if any.**
- d) Certificate of Service shall be issued under section 51 of the Employment Act.**
- e) The claimants are awarded costs.**

Delivered in open court at Mombasa, this 2nd day of March 2026.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

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