

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

CAUSE NO. E041 OF 2025

WILSON MUKAMANI MAZIRI CLAIMANT

VERSUS

ASSOCIATED VEHICLE ASSEMBLERS LIMITED RESPONDENT

JUDGMENT

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

The respondent employed the claimant under a written contract, the CBA between the respondent and the Amalgamated Union of Kenya Metal Workers (AUKMW or the Union) for the period of 1 January 2023 to 31 December 2024 and the respondent's grading system.

The employment was initially as a grade 3 motor vehicle assembler in October 2019. He was assigned duties at the Miritini plant within Mombasa County. The working hours were Monday to Friday, from 7 am to 3.30 pm, and he would occasionally be required to work overtime. On Sundays and public holidays, there was no attendance. Access to the workplace was by biometric registration.

The employment at grade 3 was changed after serving from 11 October 2019 to 26 March 2021, when the claimant's employment converted to permanent and pensionable and was placed on probation until 1 July 2021. He was then confirmed.

On 9 December 2022, the claimant's role was changed to a motor vehicle assembler grade 4 until 13 February 2023, when he was transferred from the Operations Department to the EOL, then to the Quality Department, with the main role of auditing.

On 21 March 2024, the claimant's job title changed to quality inspector, grade 5, with the main roles of audit and inspection, earning Ksh. 55,297 per month increased to Ksh. 102,148. Wages were paid through his bank account.

The claimant worked until 10 March 2025, when the respondent terminated his employment. He claims that, under the CBA, the claim was graded below his competence and qualifications and, hence, paid below his entitled dues. On 13 February 2023, the respondent promoted the claimant from the operations department to the quality department. Under the CBA and the job grading system, he ought to have been at grade 7 but was instead paid at grade 4. He was thus denied entitlements under the CBA and job grading:

March to December 2023, entitled to Ksh. 81,410 but paid Ksh. 56,229, hence the balance of Ksh. 25,181 each month;

January to March 2024 are entitled to Ksh. 87,109 but paid Ksh. 56,229, hence a balance of Ksh. 30,880 per month.

On 21 March 2024, the respondent was promoted to quality inspector grade 5, but was not paid the due salary for the grade. He claims the following:

From April 2024 to February 2025, the salary paid was Ksh. 67,748 instead of Ksh. 87,109, a balance of Ksh. 19,361 per month.

Total claim in underpayments is Ksh. 212,971.

The claim is also that there was discrimination in the payment of salaries. He was deprived of a salary of Ksh. 557,421, similar to other employees in his grade and qualifications. There was no criterion for placement at grade 4 when he qualified for a higher grade. This was discriminatory.

The claim is that the respondent engaged in unfair labour practices against the claimant. On 27 November 2023, the claimant was identified for fully sponsored travel to Brazil, South America, on deputation by Scania AB, one of the respondent's associates. However, while in transit from Kenya to Brazil, the claimant realised that he had misplaced \$2,300 that Scania AB had given him as per diem. He suspected that the money was lost at the Ethiopian Airlines office at Moi International Airport in Mombasa.

The claimant notified the respondent's human resources officer, Ms Angela Macharia, who instructed the security manager to report the matter to the airport police. On 30 November 2023, the security manager attended the airport, and a complaint was lodged on 11 December 2023 regarding the theft of \$2,300 involving the claimant. He was returning on 12 December 2023 when he was arrested and coerced into agreeing to a payment plan to recover the \$2,300. He was also accused of abusing the criminal justice system, and his employment was threatened to continue only if he signed the agreement to repay the \$2,300. Consequently, he remained in custody until he signed the payment agreement with the respondent.

This was intended to mask the respondents' unlawful deductions, which amounted to \$2,300. It was agreed that the claimant would pay Ksh. 360,958, equivalent to \$2,300 from 30 January to 27 July 2024. These would be done in monthly instalments of KSh. 60,164, and failure to repay would lead to summary dismissal.

The claimant appealed, but the verdict was predetermined: dismissal.

Due to the large amounts, the claimant was unable to repay. On 10 March 2025, employment was terminated and backdated to 5 March 2025. The claim is that this was unlawful and unfair, and the claimant is seeking the following:

- a) Ksh. 557,421 in underpayments.
- b) Reimbursement of Ksh. 360,958 on account of repayment under the agreement.
- c) 12 months' compensation Ksh. 102,148 x 12 Ksh. 1,225,776.
- d) Ksh. 102,148 notice pay.
- e) Ksh. 32,950.97 for 10 days worked in March 2025.
- f) Ksh. 15,537 in overtime arrears.
- g) Ksh. 37,152 for 17 leave days.
- h) Damages for discrimination.

- i) Damages for unfair labour practices.
- j) Costs and interests.
- k) Certificate of service.

The claimant testified in support of his case that upon employment by the respondent, his employment was governed under his written contract dated 3 March 2021 and the CBA. He was not paid commensurate with his qualifications, and upon promotion, he was not placed in the correct grade. He was underpaid, there was payment discrimination, and the respondent committed unfair labour practices; the claims made should be awarded as pleaded.

The claimant testified that he travelled to Brazil and lost his per diem amount of \$2,300. He reported to the respondent, and upon his return on 12 December 2024, he was arrested at the airport and compelled to sign an agreement under coercion to secure his release. He was required to repay the lost funds, leading to the termination of his employment.

Upon cross-examination, the claimant testified that every change to his employment was communicated in writing, and he signed his approval. He did not make any complaint about the salaries paid.

The claimant was allowed to travel to Brazil, and \$2,300 was disbursed to be accounted for upon return. He alleged that the money was lost and that, upon police investigation at the airport, it could not be verified. The claimant admitted that he agreed to repay the money alleged to have been lost.

On 4 January 2024, the claim was issued with a notice to show cause. He responded, and on 26 January 2024, he attended a disciplinary hearing with a shop steward. He also called a witness. The issue was the loss of company funds, and he agreed to repay the funds in instalments. The union representative encouraged him to sign the minutes, agree to repay, and then file an appeal, but the appeal was dismissed without a hearing.

The claimant testified that on 13 April 2024, he met the respondent and agreed to repay the money he had lost. He signed the repayment agreement. It was a voluntary repayment proposal.

In reply, the respondent admitted that the claimant was employed on 1 April 2021 as an assembler grade 3 earning Ksh. 43,714 pursuant to his contract dated 26 March 2021.

The unionisable grading system between the respondent and the Union is contained in the CBA signed on 19 May 2023. The claimant signed the Code of Ethics and Disciplinary Policy (HR Policy) and agreed to the terms expected of all employees.

The claimant was engaged under a contract as a Grade 3 assembler. On 13 February 2023, he was transferred from the operations department to the quality department, which he accepted without objection.

On 21 March 2024, the claimant signed a new contract as a quality inspector at a salary of Ksh. 67,748 per month. The salary increase was in accordance with the CBA. There was no discrimination or unfair labour practices as alleged.

The respondent had an agreement with Scania Latin America Ltd to send its selected employees on an annual training programme on new technological advances and changes associated with motor vehicles at its premises in Brazil, South America. The claimant was among those chosen to travel in November 2023. The immigration office required that any person departing the country on a vocational visa must provide sufficient financial means to support themselves during travel. The respondent established a comprehensive travel policy to ensure all employees were covered and complied with immigration.

On 23 November 2023, the respondent provided the claimant with \$2,300 as an allowance to cover his daily expenses while in Brazil. He was required to account for all the funds disbursed by submitting relevant receipts and documentation. He was to return all unspent monies upon his return to the country.

Upon arrival in Brazil, the claimant informed the respondent that he had lost the money at Moi International Airport in Mombasa before departure. The security manager was notified, and a report was made to the airport police, who conducted an investigation. However, it was determined that no money was lost as alleged.

On 12 December 2023, the claimant returned to Mombasa and was questioned by the police at the airport about the alleged lost money. He made contradictory statements, then admitted responsibility and offered to refund the full amount under an agreement. There was a repayment plan, not a salary deduction, as alleged.

The respondent then conducted a disciplinary hearing on the claimant. On 4 January 2024, a notice to show cause was issued, and he filed a response. During the disciplinary hearing, the claimant called a witness, and the union representative was present. The claimant committed to repay the \$2,300 issued to him by the respondent.

The claimant was allowed the right of appeal. There was no new evidence, and the decision of the disciplinary hearing was upheld. The claims made are without merit and should be dismissed with costs.

In evidence, the respondent called Angie Njeri Macharia, the human resource manager, who testified that the respondent has since paid the claimant his terminal dues of Ksh. 200,000, and refunded what he had repaid from the loss of \$2,300. The allegations of discrimination are unsupported by evidence. There was a CBA that regulated employee pay and grading. The claimant had a contract that governed his employment; he was paid accordingly.

Ms Macharia testified that the claimant was selected to travel to Brazil for training. For his upkeep, he was advanced \$2,300 for accommodation and support, and was required to account for it upon return. He reported that the money was lost while at the airport. The security manager followed up with the police, CCTV footage was analysed, and no loss was found. Under the travel policy, the claimant was required to account for the monies advanced to him. Upon return to the country, he agreed to refund this money in a repayment agreement.

The witness testified that the claimant had travelled to Brazil with another colleague. Upon reporting the loss of funds, the respondent sent £2,300 to his colleague, who has rendered an account of the travel.

Upon the claimant signing of the repayment agreement, the police opted to release him instead of charging him with a criminal offence for stealing by a servant. He voluntarily signed the agreement, and the allegations that he was coerced into signing it are not true.

The claimant was taken through the disciplinary process, his rights were secured, and a decision was made to terminate his employment. He was allowed a right of appeal, which he exercised, and it was dismissed.

The respondent called Edwin Ochieng, the security manager, who testified that the claimant reported a \$2,300 loss. He reported the matter to the airport police since he had already travelled. The claimant alleged that while at the Ethiopian Airlines office, he lost the money that was in an envelope. This was a security concern for the airport police, who took it up and reviewed all the CCTV footage, but could not trace the lost envelope. The DCI officers intervened, and he recorded a statement, taking into account whether the dollar was in circulation. The report was taken on 30 November 2023.

The police conducted an investigation, and nothing came of it.

Upon the claimant's return to the country, he was taken in to record a statement. The police noted his contradictory statements and wanted to charge him with theft by a servant. He agreed to repay the money, and a repayment agreement was made to facilitate his release. This was done on 12 December 2023. The police had the choice to charge him with a criminal offence, and the option to repay the lost money was considered acceptable. The police wanted the serial numbers of the US Dollars, and if these were in circulation in Kenya, since the claimant alleged that he had lost the cash at the airport. Nothing was traced. He agreed to repay the money to the respondent. His repayment agreement resolved the matter with the police.

Ochieng testified that the police confiscated the claimant's phone. They discovered that he was boasting to different women that he had a lot of money and would spoil them. Investigations revealed that he had not used the money for travel and could not account for it. The allegations that the money was lost were made to avoid rendering an account to the respondent.

Both parties filed written submissions.

Determination

The record is analysed together with the written submissions. The issues which emerge for determination are:

Whether there was unfair termination of employment;

Whether there was discrimination against the claimant by the respondent;

Whether damages should be paid;

Whether the remedies sought should be used.

The employment relationship between the parties was regulated under a written contract. The first contract is dated 26 March 2021. There was a CBA that regulated the employment of unionisable employees.

In the letter dated 26 March 2021, the claimant was employed as an assembler grade 3 (III). His salary was agreed at Ksh. 43,714 with a house allowance of Ksh. 11,583 per month. He accepted the employment.

By letter dated 1 March 2023, the claimant was transferred to the Quality Department on the same terms. He accepted the transfer on 10 March 2023.

In a letter dated 21 March 2024, the claimant accepted a new contract with the respondent for the position of quality inspector. His job description is outlined under the contract. Salary changed under the new contract.

The claimant accepted the new contract and signed for it.

An employer is allowed under section 10(3) of the Employment Act (the Act) to regulate the employment relationship through a written contract. Such is a lawful and valid mode of employment as held in **Matsesho v Newton [2022] KEELRC 1554 (KLR)** and the case of **Maganga v Jenebys Enterprises Limited [2026] KEELRC 429 (KLR)**.

Therefore, upon the written contract, any changes thereto, the employer must issue written notice to the employee, and the employee must accept the employment changes in writing, as required under section 10(5) of the Act. In the case of **Gatebi v Savannah Brands Company Ltd [2026] KEELRC 332 (KLR)**, the court held that any change(s) to the employment contract must be made in writing. The employee must accept the changes to the employment contract in writing.

This position is reiterated in **Republic v South Eastern Kenya University (SEKU) & 3 others; Muasya (Ex parte) [2025] KEELRC 3712 (KLR)**, which holds that Section 10(5) of the Act prohibits employers from altering employment terms without the consultation and consent of the employee. Making changes without the employee's written approval is an unfair labour practice. See **Wanyoike v Agakhan University, Kenya [2026] KEELRC 265 (KLR)** and **Jonathan Spangler v Centre for African Family Studies (CAFS) [2017] KEELRC 1242 (KLR)**.

In this case, the employment relationship was regulated under a written contract. The application of the CBA was not to disadvantage the claimant. However, he has contracted to define his terms and conditions, and the position held. He cannot justify the assertion that, because of his qualifications, he was entitled to a different grade and pay. He accepted his contract dated 21 March 2024 and cannot now demand payment under a different regime or grading outside his contract.

The alleged underpayments or placement in the wrong grade are without merit.

On the claim that there was unfair termination of employment, through notice dated 5 March 2025, the respondent terminated the claimant's employment for failing to account for company funds provided for his travel expenses while in Brazil for training. The notice

further states that on 23 November 2023, the claim was paid KSh. \$2,300 to cover his travel expenses, and was required to account for the same, which he failed to do. Hence, following a disciplinary hearing on 26 January 2024, the respondent allowed him a 6-month repayment plan; the period was extended, but by November 2024, there was no payment.

The respondent also noted that, in a letter dated 18 October 2024, the claimant had proposed repaying the funds in KSh. 20,000 instalments per month and a lump sum of Ksh. 200,000, but this was not done.

The claimant does not contest these facts.

In his undated appeal subsequent to the notice terminating his employment, he admitted to the repayment plan and that he had not been able to adhere to the same. Instead, he gave reasons why repayment was not possible.

In light of the foregoing, I find that Respondent had a genuine reason for terminating the Claimant's employment as required under Section 43 of the Act. For a termination of employment to pass the fairness test, it must be shown that there was not only substantive justification but also procedural fairness.

The claim was issued with a notice to show cause. He replied, attended the disciplinary hearing, and called his witness in the presence of the union representative. This is in tandem with the provisions of sections 41 and 44 of the Act, which require that before termination of employment for misconduct or gross misconduct, the employee must be issued notice and allowed to attend and defend himself.

The disciplinary procedure adopted by the Respondent against the claimant is lawful and justified. Under section 43 of the Act, the reasons given for the termination of employment were justified.

There is no case of unlawful or unfair termination of employment.

On the claim of discriminatory payment of salaries different from those of other employees, the claim does not particularise the acts of discrimination against him by the respondent. He only cited that other employees who were qualified like him were on a different salary. Their contracts are not produced for assessment, including the number of years served and the terms and conditions thereof.

A claim premised on alleged discriminatory treatment is well defined by the Supreme Court in the case of **Law Society of Kenya v Attorney General & another [2019] KESC 16 (KLR)**, where the court held that Discrimination entails the unjust or prejudicial treatment of different categories of people in the same circumstances. The court adopted the definition applied by the Court of Appeal in **Barclays Bank of Kenya Ltd & Another v Gladys Muthoni & 20 others [2018] eKLR**, where the court held:

Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions... whereby persons of one such description are subjected to ... restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons

of another such description... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex ... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured.

It is therefore not sufficient to cite discrimination. The assertion must be supported by particulars that define the different treatment that is wholly applied to separate the one alleging from others similarly placed.

In this case, the court finds no case of discriminatory treatment by the respondent against the claimant. He was under a contract that defined his employment and under which he was paid.

The claim for payment of damages, payment of notice or compensation does not arise.

On the claim for reimbursement of Ksh. 360,958, the respondent attached various payments to the claimant through his bank account. This included:

- a) Salary for March 2025, including notice pay, leave pay and overtime arrears at Ksh. 96,412,
- b) A refund of Ksh. 200,000

Thus, although the claims for notice pay were not due, they were paid.

The claims for accrued leave days, March 2025 salary, and overtime arrears have all been settled.

Consequently, the claim is without merit. It is dismissed with costs to the respondent.

Delivered in open court at Mombasa on this 19th day of March 2026.

M. MBARŪ

JUDGE