



Eafula v Menengai Oil Refineries Limited (Employment and Labour Relations Cause E233 of 2024) [2026] KEMC 38 (KLR) (24 February 2026) (Judgment)

Neutral citation: [2026] KEMC 38 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
EMPLOYMENT AND LABOUR RELATIONS CAUSE E233 OF 2024
PA NDEGE, SPM
FEBRUARY 24, 2026**

BETWEEN

BRAMWELL MATAKALA EAFULA CLAIMANT

AND

MENENGAI OIL REFINERIES LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant's suit is carried in a Memorandum of Claim dated 02nd August, 2024. The Claimant seeks a declaration that his termination is unfair and unlawful, and seeks for compensation against the Respondent as well as terminal benefits. The Respondent entered appearance and filed a Memorandum of Response dated 04/11/2024 through the firm of Muli & Company Advocates.
2. During the hearing, the Claimant testified in support of his case. He adopted his witness statement and produced a bundle of documents filed in the matter. He also called a former work mate, CW2, Kennedy Likovolo Shikoko, as his witness. The Respondent presented one Mr. Peter Kanenje Muchibi, a Senior Human Resources Officer in the Respondent's Company to testify on its behalf. Both parties filed submissions in the matter.

The Claimant's Case

3. The Claimant's case is that he was employed, initially verbally, by the Respondent on or around 01.03.2017, as a Security Officer, and thereafter placed on fixed term contract vide a fixed term contract dated 29/05/2017 for 3 months from 01/06/2017 to 31/08/2017. That upon the expiry of the said contract on 31/08/2017, he was retained under further template fixed term contract of 3 months which would be renewed periodically but in an erratic manner, whereof the Claimant would routinely work without a fixed term contract, where the last contract for the period 01.07.2022 to 31.12.2022 was dated 30/08/2022. The contracts was produced as CEXH. Nos. 4A, 4B, 4C. 4D and 4E.



4. The Claimant states that his service, despite the fixed term contracts, was continuous from the date of employment on 01/03/2017 up to 01/06/2024, when he was unfairly and unlawfully terminated vide a Contract Termination Letter dated 20/05/2024, and produced herein as CEXH. No. 6, on account that the Respondent wanted to phase out its Security Officers and outsource private security services from Securex Agencies (K) Ltd. That the Claimant, apart from working in between the fixed term contracts also continued working up to the expiry of the last fixed term contract dated 30/08/2022 for the period from 01/07/2022 to 31/12/2022 whereof the Claimant's employment converted from fixed term to an indefinite term contract.
5. That at the commencement of employment on 01/03/2017, the Claimant herein was retained at a basic monthly wage of Kshs. 18,261/- together with Housing Allowance of Kshs. 2,739/- totaling to Kshs. 21,000/-. That his monthly wage was thereafter increased to a basic monthly wage of Kshs. 20,200/- together with Housing Allowance of Kshs. 3,030/- totaling to Kshs. 23,200/- on or around 01/01/2019 which he continued earning up to 01/06/2024 when he was unfairly and unlawfully terminated. That the respondent used to issue him with a Pay slip every month via email.
6. That during the pendency of the employment, the Claimant would commence work at 6.00am up to 6.00pm when working during the night shift or 6.00am to 6.00pm, when working during the day shift, thereby constituting a 12-hour working day without any breaks whereof he was required to electronically clock in and out of work and keep an Occurrence Book (O. B.) for purposes of taking over and handing over the assignment at the beginning and end of his shift respectively. On cross examination, the Claimant stated that his last Fixed Term contract was for 6 months in the year 2022. That he however still continued working That he used to work during public holidays and as per his claim herein.

The Respondent's Case

7. The Respondent's case is that the Claimant worked with it pursuant to fixed terms contracts that were issued and or extended at its discretion. That his last fixed term contract ended on 31/05/2024. That as such his claims for payment in lieu of termination notice and or compensation are therefore unfounded and baseless. That during the period of employment, the Claimant earned wages or salaries that was higher than the minimum prescribed by law. That during the period of employment, the Claimant worked for 8 hours a day for 6 days in every period of 7 days. That he usually rested for at least a day in every period of 7 days. That therefore, the claim for overtime is bereft of basis. Further, that the Claimant usually rested on days marked and or declared as public holidays. That the Respondent does not keep or maintain any electronic attendance register or electronic register as alleged by the Claimant or at all. That moreover, part of the overtime (normal overtime and in respect of public holiday) sought by the Claimant fall on days the Claimant was on leave and therefore cannot be payable. That the Claimant's certificate of service is ready for collection. That the claims for normal overtime and public holidays are statute time barred.
8. On cross-examination, the Respondent's witness stated that the Respondent keeps all the records relating to employment. That he did not however carry the Claimant's employment file with him/. He did not also have the last fixed contract which was terminated as alleged by them herein. That there are periods when the claimant worked without a contract. That the Claimant worked for 12 hours a day per shift. That a biometric clock in and out machine was placed at their place of work. That the said contract was terminated. He however denied that the claimant was replaced with guards from a contracted security company. That the certificate of service herein, DEXH. No. 4 was picked by the claimant herein on 31/05/2024.



The Claimant's Submissions

9. It is submitted that the Claimant was an employee of the Respondent who worked continuously from 01/03/2017 to 01/06/2024 in the designation of a Security Officer at a starting monthly basic wage of Kshs. 18,261/- together with a Housing Allowance of Kshs. 2,739/- totaling to Kshs. 21,000/- which amount was later increased to a monthly basic wage of Kshs. 20,200/- together with a Housing Allowance of Kshs. 3,030/- totaling to Kshs. 23,200/-.
10. As to whether the claimant's employment was unfairly and unlawfully terminated, learned counsel for the Claimant submitted that RW1, in cross-examination, admitted that CEXH. No. 5 did not state any reason for termination and also did not make any reference to any fixed term contract that was terminating on 31/05/2024 by effluxion of time. That RW1, went ahead to state that the Respondent upon terminating the Claimant, went ahead and proceeded to hire new employees on account that the contracts of the employees who were let go had expired and that he had not produced or brought to Court the expired contracts. That from the foregoing, it is therefore not in dispute that the Claimant was terminated effective 01/06/2024 vide CEXH. No.5. That the substantive reason for the termination of his employment fits perfectly into the ideal situation for declaration of redundancy within the meaning of Section 40 of the *Employment Act, 2007*. That the procedure for termination on account of redundancy as provided for under Sections 40 and 41 of the *Employment Act* was however not followed.
11. As to whether the Claimant is entitled to maximum compensation for unfair and unlawful termination of employment, learned counsel submitted that the claimant herein is 41 years old. That he is yet to get any other employment since he was terminated, and that he did not contribute to the termination. Further, that he had worked for a period of 7 years and 3 months, and would have worked for not less than 19 years to the mandatory retirement age of 60 years, save for the unfair and unlawful termination. That the prospect of the Claimant securing comparable or better employment is greatly diminished especially due to his advanced years whereof the remainder of the period within which he would expect to get employment is similarly reduced by almost 2 years from the date of his termination. That this is therefore a proper case for award of maximum compensation under Section 49 (c) of the *Employment Act, 2007*.
12. As to whether the Claimant is entitled to 1 month's pay in lieu of notice, learned counsel submitted that section 35 of the *Employment Act, 2007*, states that notice pay at not less than 1 month's wages is due where due procedure is not adhered to, and as was held in the case of *James Ochar Oyoo v Sunripe Alpha Academy*, Nakuru 2LR No. 112 of 2017.
13. As to whether the Claimant is entitled to payment of normal overtime dues for the time worked, learned counsel submitted that the Claimant worked from 6.00am to 6.00pm and that he was never paid any overtime. That further, evidence of RW1 was that the Respondent herein kept a Muster Roll as well as a Biometric Clock in and Clock out Register which were however not produced in court. That if the said records were produced in Court, they would easily have solved the dispute regarding working hours. That it is indeed a notorious fact that security guards in Kenya work 12-hour shifts. That in any case, where an entity concedes to keeping employment records but however neglects and/or refuses to produce such proper records in the event of a dispute in Court, it was stated as thus in the matter of *Paul Wafula v Century Feeds Ltd Nakuru* [2018] e KLR: -
 54. In respect of Prayer C on overtime pay, the Respondent failed to produce any records to disapprove the claim by the Claimant that he worked overtime and as such this prayer is allowed as prayed in the total sum of Kshs. 123,907/58.



55. The presumption in law is that upon being challenged to produce employment records of the Claimant and failing to do so, the said records would have been against the Respondent's Case – See Section 107 of the [Evidence Act](#) (Cap 80).
14. As to whether the Claimant is entitled to payment for working on public holidays, it was submitted that evidence, both oral and REXH. No. 3 (bundle of leave application forms) prove that the Claimant only attended 6 public holidays off/rest days for the entire period of employment. That public holiday off/rest day cannot fall on a normal off/ rest day as both are distinct statutory entitlements whereof a normal off/rest day would ideally be due after every 6 days. That in case of conflict, the normal off day would need to be given to an employee on another occasion. That in essence, this means that for the period from 01/01/2019 to 31/05/2024, the Claimant is entitled to public holiday pay for 65 public holidays instead of the 71 public holidays claimed. That the same be granted cognizant that public holidays/ rest days or pay in lieu is a statutory right to be granted based on the records produced by an employer demonstrating the public holidays attended and those due or which remain unpaid within the meaning of Sections 9 and 10 of the [Employment Act](#), 2007.

The Respondent's Submissions

15. It is the Respondent's submission that the Claimant was employed on various fixed term contracts, the last being the one terminating on 31/05/2024. It is submitted for the Respondent that the Claimant has not established a case against the Respondent. The Respondent further submitted that no evidence has been tendered to show that it was under obligation to renew the claimant's contract. The Respondent cited the case of [Isaiab Makhola V Basco Products Ltd](#) (2014) eKLR where Justice Radido held that where a fixed contract term is involved, and in the absence of any agreement to renew, it did not amount to unfair termination.
16. It is the Respondent's submission that the Claimant has not proved any of the claims as is required by law. It is further submitted that the Respondent separated with the Claimant lawfully. That he was not lawfully dismissed from employment as he claims. That his contract of service lapsed by effluxion of time. That besides this, his position was not declared redundant.
17. It is further submitted for the Respondent that the claims for Public Holiday pay and normal overtime are not merited as the claimant did not specify the period or days in respect of which the same is sought. The Respondent further submitted that the Claim for Severance pay is only awardable when an employee is terminated on account of redundancy. That the Claimant did not produce any evidence to prove that his employment was terminated on account of redundancy.
18. As to compensation, learned counsel urged the court to be guided by section 49 (g) of the *Employment Act* which provides for the matters to be considered when determining the number of months' salary to award. That the Claimant herein had been engaged as a security guard, which is not a skilled job. That accordingly, in light of section 49 (g), he can easily secure comparable employment. That besides, he had only worked with the Respondent for just a few years when employment terminated. He therefore urged the court to consider compensation equivalent to 2 months' salary as sufficient in the circumstances of this matter.

Analysis and Determination

19. I have considered the pleadings, the parties' oral testimonies and the submissions filed in the matter. The issues that call for determination are:



- i. Whether the Claimant was unfairly terminated; and
- ii. Whether the Claimant is deserving of the remedies sought

Whether the Claimant was unfairly terminated

20. The question of fairness or lack thereof, is one that is deduced from the procedure the employer adopts when effecting a termination, and the substantive justification of the termination, whose building blocks are mainly the reasons as to why the employer arrived at the decision to terminate.
21. The Claimant's case is that he continuously worked for the respondent even without a contract and as such there was a presumption that he was employed indefinitely from 01.03.202017. The Respondent on its part stated that the Claimant was on a series of fixed term contracts throughout his engagement which terminated on 31/05/2024 when the last one expired by effluxion of time. The Claimant, while admitting the short-term contracts, however confirmed that the contracts could be renewed erratically or in an inconsistent manner, and it was confirmed by both parties herein than the claimant could often work in between the contracts and even after their expiry.
22. There was however no contract produced herein as exhibit or evidence to prove that the last of the contracts expired on 31/05/2024 as claimed by the Respondent. During the hearing, it became apparent to this court that the Claimant did not know the nature of this last contract with the Respondent. He however confirmed that the contracts used to be renewed. In the absence of contrary evidence, I will deem the Claimant to have been on a renewable fixed term contract, premised on the contracts produced in evidence before this court as I find it preposterous to deem it that the Claimant was employed for an indefinite term as urged by the Claimant. The contracts were for terms of either 3 months or 6 months. Whether they were for 3- or 6-months period, the contract was to lapse on 31/06/2024 and not 31/05/2024 given that the last contract produced herein was for a 6-month period which was to lapse on 31/12/2022. There is thus a case of premature, unprocedural and unlawful termination of the contract as the termination did not adhere to Clause 7 of the contract. Clause 7 provided that either party was to terminate the contract by giving of 1 month notice to the other or payment in lieu of such notice.
23. The Respondent told this court that the Claimant was notified that his contract was to be terminated on 31/05/2014. It is common ground herein that the notification came on 20/05/2024 barely 11 days before the termination. No reason or ground for the termination was given, and no reference was made to expiry of a contract. It was a blunt, bare and direct termination of services.

Whether the Claimant is deserving of the remedies sought

24. The Claimant sought the following reliefs:
 - i. A declaration that his termination is unfair and unlawful,
 - ii. Payment of 12 months' salary as maximum compensation for unfair and unlawful termination
 - iii. One month's salary in lieu of notice
 - iv. Unpaid Public Holiday dues,
 - v. Normal overtime Pay
 - vi. Severance pay;
 - vii. Costs and interest of the suit.



Payment of 12 months' Salary as maximum compensation for unfair and unlawful termination

25. The Claimant was terminated prematurely, without one month notice as required. His contract was bound to expire one month later and I shall award him one month pay compensation for the unfair and unlawful termination. This comes to Kshs. 23, 230/-.

One month's salary in lieu of notice

26. Common practice is that an employee in a fixed term contract is not, or ought not to be given termination notice as his contract is for a definite period, and is aware of the time the contract would lapse. The Claimant herein was in a renewable fixed term contract, which in my view, would require or entitle the Claimant to notice in the event of non-renewal of the contract. This was however not done. Having found the termination herein to be unfair and unlawful, and going by the provisions of Clause 7 of the Contract herein, I do hereby find that the Claimant is entitled to one month's salary in lieu of the notice that was not given herein. that amounts to Kshs. 20,200/- which I hereby award.

Public Holidays and Normal Overtime Pay

27. As relates to these Claims, I do agree with the learned counsel for the Claimant's submissions. It is common ground herein that the Claimant worked from 6.00am to 6.00pm and that he was never paid any overtime. The Pay slips produced by the Respondents herein as CEXH Nos. 4A to 4E did not contain any payment for overtime or public holidays. Further evidence of RW1 was that the Respondent herein kept a Muster Roll as well as a Biometric Clock in and Clock out Register which were however not produced in court. If the said records were produced in Court, they would easily have solved the dispute regarding working hours. In any case, having admitted to keeping employment records, the Respondent's negligence and or omission to produce such proper records and as stated in the matter of *Paul Wafula v Century Feeds Ltd Nakuru* [2018] e KLR, such records are deemed to have been against its interest and a presumption is that the Claimant's claim of working overtime and during public holidays, as has been admitted herein is valid after all. I do therefore find that the Claimants deserves the awards for normal overtime and public holidays and I do hereby award the same as prayed and/ computed in the pleadings and submissions.

28. Contrary to the learned counsel for the Respondent's submissions and or arguments, the claims herein are continuing claims and the same have been filed within 12 months after the cessation of employment. I thus do not find them to be time barred, statutorily or otherwise, as claimed by the learned counsel.

Severance Pay

29. As correctly submitted by the learned counsel for the Respondent, Severance pay is mandatory compensation (typically 15 days' pay per year) for termination due to redundancy and as provided for under Section 40 of the *Employment Act*. Having found that this was not a case of termination on account of redundancy, but due to end of a fixed term contract, I do find that the claimant is not entitled to Severance pay.

30. The Claimant would have instead claimed for service pay, however, it is clear from the payslips produced herein that the Claimant was registered with the NSSF, and further that deductions were made in this respect as shown by the pay slips produced in evidence. In the case of *Philip Waweru Gitu v Straight Security Services Limited* (2009) eKLR, the court emphasized that an employee who is a member of the NSSF as evidenced by his pay slip, is not entitled to service pay. The Claimant having



been a member of NSSF is not entitled to service pay per Section 35(6)(d) of the *Employment Act*, 2007. The claim for Service pay would have still been dismissed.

31. In whole, the Claimant's Memorandum of Claim dated 07th August, 2024, is hereby allowed with costs and interest, as follows:
- a. A declaration be and is hereby made to the effect that the termination of the Claimant's employment on 01/06/2024 vide the Contract Termination Letter dated 20/05/2024 was unfair and unlawful.
 - b. Compensation for unfair and unlawful termination of employment under Section 49(1) (c) of the *Employment Act*, 2007 of Kshs. 23, 230/-.
 - c. 1 month's salary in lieu of Notice of Kshs. 20,200/-
 - d. Normal overtime of Kshs. 1, 213, 507/69
 - e. Public Holidays pay of Kshs. 185, 840/-

32. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAKURU THIS...
24TH DAY OF FEBRUARY, 2026.**

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

Appearance:

..... n/a present for the claimant

..... n/a present for the respondent

.....Wanyoike - C/A

