



**Lewatachum v Reborn Commercial Agency & another (Employment and Labour Relations Claim E003 of 2023) [2025] KEMC 224 (KLR) (21 August 2025) (Judgment)**

Neutral citation: [2025] KEMC 224 (KLR)

**REPUBLIC OF KENYA  
IN THE MARALAL LAW COURTS  
EMPLOYMENT AND LABOUR RELATIONS CLAIM E003 OF 2023  
AT SITATI, SPM  
AUGUST 21, 2025**

**BETWEEN**

**FREDERICK LEWATACHUM ..... CLAIMANT**

**AND**

**REBORN COMMERCIAL AGENCY ..... 1<sup>ST</sup> RESPONDENT**

**ALICE LESIYAMPE ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant herein lodged his Statement of Claim dated 24th October, 2023 verified by an affidavit of similar date praying for :
  - a. A declaration that the summary dismissal by the Respondent was unfair, unlawful, illegal, unprocedural, wrongful and contrary to the principles of natural justice, the provisions of the Employment Act 2007, Fair Administrative Actions Act 2015 and the Constitution of Kenya 2010.
  - b. Compensation or damages for unfair, unlawful, illegal, unprocedural and wrongful termination
  - c. Terminal dues, salary in lieu of notice and pay for unpaid offs and leave days not utilized.
  - d. Salary for days worked for and not paid.
  - e. Costs and interests at court rates of the above.

Accompanying the Claim included :-

List of witnesses dated 24/10/2024  
Claimant's written statement dated 24/10/2024  
Claimant's written list and bundle of documents dated 24/10/2024  
containing Employment contract dated 1st December, 2021  
Letter of invitation for



disciplinary hearing dated 11th JUNE, 2023NHIF Member data summary dated 14th August, 2023NSSF Provisional Member statement of account dated 19th June, 2023Complaint letter dated 14th June, 2023Letter of dismissal dated 8th August, 2023Labour complaint letter dated 7th July, 2023

2. The suit was opposed by a joint Reply to the Statement of Claim and Counterclaim dated 29th February, 2024 duly verified by an affidavit denying any wrongful acts as claimed and praying for:
  - a. The statement of claim be dismissed
  - b. The counterclaim be upheld
  - c. The claimant be condemned to pay the respondents jointly and severally an amount equivalent to one-month salary in lieu of notice as he never gave any notice employer prior to quitting his employment on 12.6.2023
  - d. Claimant be condemned to pay costs of the suit
  - e. Any other or further order that the court deems fit in the circumstances.
3. Accompanying the Reply and Counterclaim included –1st and 2nd Respondent’s list of witnesses dated 29th February, 20241st and 2nd respondent list and bundle of documents containingLetter of invitation to disciplinary hearing dated 11th July, 2023Letter dated 6/7/2023Letter dated 8/8/2023Minutes dated 31/7/2023Letter dated 8/6/2023Unlawful dismissal complaint letter 14/6/2023Reply letter to the complaint letter dated 8/8/2023List of and the written witnesses’ statements of George Lerosion and Paul Lerosion both dated 18/12/2024

#### **The Claimant’s Case**

4. PW1 Frederick Lewatachum adopted his witness statement as his testimony. in summary he told the court that he was employed by the respondents on a monthly salary of Kshs 25, 000/- which was to be subjected to statutory deductions but which were not deducted. He added that he was summoned to a disciplinary hearing vide a letter 11th July, 2023 but the very next day he was verbally dismissed from work by the respondents. He termed this as unfair termination entitling him to reliefs as prayed in the claim.
5. To support his claim, he produced the 7 listed documents as his exhibits.
6. In cross-examination, the following came to light:The claimant stated that he was employed on permanent and pensionable termsThe alleged contract of employment was actually unsigned by the employerThere is no proof of a monthly income at the rate of Kshs 25, 000/=He was served with the letter of invitation to disciplinary hearing dated 11th June, 2023 giving him notice to show cause why he should not be dismissed from employment on account of insubordination, misconducts, disrepute, abscondment from duty without causeAfter receiving the invitation to the disciplinary hearing, he did not respond but wrote a complaint letter to the labour officeIt was true that he was away from work from the date of the invitation letter on 12th June, 2023 to the date of the disciplinary hearing on 31/07/2023 totalling 2monthsHe did not object to *the constitution* of the committeeIt was true that he fully participated in the disciplinary hearing and cross-examined the employer. He admitted that he had not informed his advocate that he took part in a disciplinary hearingThe Minutes of the disciplinary hearing cite that he had an outburst at the workplace after he was served with a letter on 12th June, 2023The Minutes also indicate that he admitted that he absconded from work from 12th June, 2023 to the date of that hearingIt was true that during the disciplinary hearing, he openly stated that he would rather not continue with his employmentIt was true that he was served with a dismissal



letter dated 8th August, 2023 detailing his wrongdoings at the place of work. It was true that before he absented himself from work for 2 months he had not given his employer any notice at all. He had not taken sick leave to be away from work. His salary was being paid in cash. He did not line up any witness since most employees were the children of the employer.

7. In re-examination, he affirmed that most of the employees were the brothers and relatives of the employer. The letter of 12th JUNE, 2023 spoke about the Claimant and his wife and was served to him by Chief Sein. He added that his wife did not attend the disciplinary hearing. He denied absconding from work but stated that the 2nd respondent chased him away verbally. He added that the particulars of the outburst are not indicated. Further that the salary was paid to him in cash Kshs 25, 000/= monthly.
8. At that stage, he closed his case.

### **The Respondents' Cases**

9. DW1 Alice Lesiyampe adopted her witness statement as her testimony and produced the earlier listed defence documents as exhibits.
10. In summary, she told the court that the claimant worked for the respondents for 1 year and 4 months commencing 15th October, 2021 to 19th April, 2022 and a further period from 1st September, 2022 to 12th June, 2023. During the last part he was earning Kshs 25, 000 monthly.
11. She added that the claimant absented himself from work from 12th June, 2023 till his final dismissal on 8th August, 2023 following a disciplinary hearing on 31st July, 2023 in which the claimant admitted that he had absented himself from work without permission. Further that, the trigger of his abusive conduct towards the respondents on 12th June, 2023 was that the respondents had served him with a letter from a local chief which had invited the claimant to travel home to resolve some marital problems with his wife and that after he had read the letter while at the workplace, he turned unruly and hurled insults at the respondent calling her mwanamke taka taka (rubbish) in the presence of her clients before he stormed out of the workplace on 12th June, 2023. 2 days later, i.e. on 14th June, 2023 he wrote a false accusation to the Labour Officer alleging that the respondent had terminated him on account of suffering injury while at the work place but she rebutted his claim successfully after proving to the labour officer that the injuries mentioned by the complainant had been inflicted out of work by one Godwin Wafula who was charged in a criminal case but the complainant/claimant voluntarily withdrew that case after reaching an out of court settlement with Godwin Wafula.
12. In her final testimony, she stated that the claimant then vanished from the workplace until he resurfaced on 31st July, 2023 for the disciplinary hearing. She told the court that the disciplinary proceeding found him culpable. She pointed out that he attended the disciplinary meeting after being so invited in writing. She urged the court to dismiss his claim and enter judgement in the counterclaim.
13. In cross-examination, the following came to light. The Claimant had been employed as a rider starting with Kshs 15, 000 monthly salary which was later increased to Kshs 25, 000/- monthly by the time his employment came to an end. The nature of employment was on contract basis. The letter of 11th June, 2023 was by DW Mbugua Advocate who was the Minute taker. This letter detailed the misconduct of the claimant as including verbal abuse by calling her mwanamke taka taka (rubbish) and assaulting Alice Lesiyampe. The disciplinary hearing was at the County Commissioner's office because the Claimant himself had reported to the County Commissioner the employer. The claimant had alleged that he suffered a leg injury at the workplace and wrote to the Director of Occupational Health and Safety but she challenged the claim since he had not suffered any such injury while at work. The accused person in Criminal Case No. E100 of 2022 is one Godwin Wafula not the claimant herein. There is no proof vide any OB entry that she reported the accused person to the police for



any criminal conductThe Disciplinary hearing was attended by the Deputy County Commissioner, The Claimant, Grace Mukuria, Jackson Lesiyampe, Assistant Chief Sein and Advocate Dominic Mbugua. She was also present and termed this meeting as a reconciliation meeting with a view to resolve the dispute since the claimant would not have agreed to hold it in her offices following their conflict.The claimant declined to sign on the chief's letter to acknowledge receiptAfter the disciplinary hearing, she did not inform the claimant that he had a right of appealShe admitted that the Deputy County Commissioner was not an employee of the 1st respondent but denied using that office to intimidate the claimant hereinShe admitted that the Employment Act did not require the Deputy County Commissioner to resolve employment disputes

13. In re-examination, she affirmed that the Deputy County Commissioner acted as the chairman of the meeting. Her additional point was that the Claimant's outburst was triggered by a letter written to him by the chief inviting him to travel home to resolve a dispute involving his wife but upon reading it he caused chaos at the workplace. She complained that he called her rubbish in the presence of her employees and clients. On the issue of being injured at the workplace, the witness stated that the claimant had been injured by another person but he had reconciled with the said offender. She confirmed that his salary at the time of exit was Kshs 25, 000 per month and his nature of employment was casual. She confirmed that she issued the termination letter after he absconded from work for 2months.
14. DW2 Paul Lepita Lerosion and DW3 George Lerosion gave similar accounts by adopting their respective witnesses' statements. Both stated that they had gone to collect their rents from the 1st respondent's offices on 12th June, 2023 when the Claimant herein caused mayhem and insulted his employer after she had served him with a letter whose contents they did not know. She had to flee the premises to avoid being hurt by the Claimant herein. Their respective cross-examinations were unshaken.
15. At that stage the respondents closed their defences and counterclaim.
16. The firm of Abwuor & Co. Advocates represented the Claimant while the firm of Kihoro Kimani & Associates represented the Respondent.
17. Following the closure of their cases, the parties exchanged written submissions.

### **The Claimant's Submissions**

18. The Claimant submitted that there was no dispute that the relationship was that of an employer and employee commencing June 2021 up to 8th August, 2023 on the final monthly salary of Kshs 25, 000.
19. It was further contended that their relationship was partly based on a verbal contract with payment in cash since there was written contract but it was not signed by the parties. He argued that the issue of abscondment from work was untrue since it was the employer who had ordered him to stay off the workplace from 12th June, 2023.
20. The claimant pointed out that the alleged insubordination of 12th June, 2023 was allegedly committed in the presence of Diane and Grace but the respondent did not call them as witnesses. On the issue of assault, it was contended that there is no proof at all of the same since there is no police report and no medical report. The court was urged to disregard the statement of DW3 George Lerosion since his statement was dated 18th December, 2023 while he purport ted to speak of events of 12th June, 2024 while in fact the dismissal was in June 2023.



## The Respondents' Submissions

21. It was argued that this was a proper case of unlawful dismissal from employment since the respondent urged the court to find that the case by the employee lacked merit for the following summarized points: He was served with a notice to attend a disciplinary meeting. The notice particularized the allegations coming up for hearing and notified him to be accompanied by another employee but not an advocate. The employee attended, defended himself and questioned the employer but after the hearing, he admitted his wrongful actions. The employer then dismissed him on 8th August, 2023 vide the dismissal letter which was the natural thing to do since he had grossly misconducted himself as per his abusive and insulting words to his employer and his abstention from work for 2 months without any permission.
22. Reliance was placed on the following authorities
  - Issues for Determination
    - a. Nature of Employment
    - b. Manner of Termination of Employment
    - c. Legality or otherwise of the Termination
    - d. Reliefs, if any, available to the Parties

## Determination

### A. Nature of Employment

23. On the one hand, the claimant pleads that he was on a permanent and pensionable terms while the respondent contend that he was a casual employee as a motorcycle rider. The court noted that there no written contract of employment.

Both sides of the contest agree, however, that he was an employee on a contract of service within the meaning of section 2 of the *EMPLOYMENT Act* 2007 which stated that contract of service” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;
24. When faced with a similar situation on the precise nature of employment, the superior court in Kenya Shoe and Leather Workers Union V Hr Strategic Partners Limited [2013] KEHC 4600 (KLR) (D.O. Ogal J.) held as follows:
  1. Whether Grievant was a casual

The Respondent has in the defense alleged that the Grievant was a casual employee paid fortnightly. Casual employee is defined in Section 2 of the *Employment Act* as;  
  
“a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty four hours at a time.”
25. From this definition, the Grievant who was, as alleged by Respondent, paid fortnightly, was not a casual. The Respondent also does not deny that the Grievant was in continuous employment from 4<sup>th</sup> August 2006 to 4<sup>th</sup> October 2011. Under Section 37 of the *Employment Act*, a casual



employee who works continuously for 1 month is deemed to be on a monthly contract of service. For these reasons I find that the Grievant was on a monthly contract of service.”

26. Based on the foregoing, it is the finding of this Honourable Court that he was employed on a monthly contract of service.

## **B. Manner of termination of Employment**

27. The court is satisfied that the claimant was served with an invitation to a disciplinary hearing detailing his violations and this was done in compliance with section 35 of the *Employment Act* 2007 which provides as follows:

35. Termination notice

- (1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—
- (a) where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice;
  - (b) where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in writing; or
  - (c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.

28. The foregoing notice contained the particulars of his alleged wrongdoings and notified him that he was entitled to be accompanied by a shop attendant but not an advocate. When he attended the hearing, the claimant said that he would rather not continue with his employment. Such a breakdown notice complied with section 41 of the *Employment Act*:

41. Notification and hearing before termination on grounds of misconduct

- (1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

29. The claimant attended the disciplinary hearing and cross-examined his employer. In the course of the said hearing, the claimant admitted to being absent from work for 2 months without permission from the employer. Then 7 days after that hearing, the employer summarily dismissed him in writing from his employment vide the letter dated 8th August, 2023.



30. Furthermore, during the hearing of the case in court, the respondents proved that the claimant used insulting and abusive words towards his employer by calling her in Kiswahili mwanamke taka taka (rubbish of a woman) when she had only served him with a letter from the chief summoning him to travel back to his rural home to resolve the pending marital issues that he had with his wife. In these circumstances there was no fault on the part of the employer since it amounted to gross misconduct for the employee herein to insult his employer and thereafter absent himself without permission for 2 months. The Court finds that the employer served a termination notice on the employee.

### **C. Legality or otherwise of the Termination**

31. The foregoing evidence in (B) above discharged the evidential burden on the employer to prove grounds of dismissal as required of all employers under section 43 of the [Employment Act](#):

43. Proof of reason for termination

- (1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

32. As is provided in the employment statute aforesaid, abscondment from work without lawful permission and the use of abuse/insults towards the employer constituted gross misconduct for which the employer is authorised by law to summarily dismiss an employee under section 44 thereof:

44. Summary dismissal

- (1) Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.
- (4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if—
  - (a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
  - (b) during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
  - (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;



- (d) an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;
33. The explanation by the claimant that he was chased away verbally is clearly disproved in its entirety. Furthermore, he had acted craftily towards the employer by feigning injury at the workplace and reporting the employer to the Labour Officer yet he had been criminally harmed by one Godwin Wafula whom he forgave by withdrawing the case from the criminal court.
34. Following the findings in (B) above, the court is satisfied that the dismissal was lawful. This is because summary dismissal is founded on gross misconduct. Additionally, the employer conducted a disciplinary hearing as required by law notwithstanding the gross misconduct.

#### **D. Reliefs, if any, available to the Parties**

35. For the employee, there is no proof that the employer failed to pay even a single monthly salary.
36. Severance pay would not be available to the employee since he was not declared redundant and the prayer for severance pay is dismissed.
37. The court is satisfied that the employee is not entitled to the claim for 2months salary since during that period he was unlawfully absent from work from 12/6/2023 to 8/8/2023 and this entitled the employer to deduct the wage for each absent under section 19 of the *Employment Act*:
19. Deduction of wages
- (1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—
    - (c) an amount not exceeding one day’s wages in respect of each working day for the whole of which the employee, without leave or other lawful cause, absents himself from the premises of the employer or other place proper and appointed for the performance of his work;
38. That being so, the employer cannot turn around and pray for 1 month pay in lieu of notice since the employer recovered fully the wages for all the days that the employee was absent from work.
39. As for the claim for leave not utilized, the court dismisses the same since he himself opted to waive the leave. This is borne out of the undisputed pleading in the demand letter which clearly showed that the claimant told his employer he was waiving his leave days. In the authority of Stephen O. Edewa versus Lavington Security Limited [2019] KEELRC 976 (KLR) (AN Makau J.) the learned Judge held that the employee forfeited his annual leave when he opted not to take it:
17. The claimant stated that he applied for leave by letters but the leave was never granted and the letters were retained by the employer. He further contended that he was never shown the said HR Policy Manual. I however dismiss the said general statement as lacking merit, that he used to apply for leave and was denied. The failure to apply for the annual leave meant that the leave was forfeited except for the last year. I therefore award him cash for 21 leave days.”
40. The only reliefs remaining are:
- a. that the employee is entitled to a CERTIFICATE OR SERVICE under section 51 of the *Employment Act* which is hereby issued and the employer should comply within 30 days of this order:



51. Certificate of service

- (1) An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.
- (2) A certificate of service issued under subsection (1) shall contain—
  - (a) the name of the employer and his postal address;
  - (b) the name of the employee;
  - (c) the date when employment of the employee commenced;
  - (d) the nature and usual place of employment of the employee;
  - (e) the date when the employment of the employee ceased; and (f) such other particulars as may be prescribed

Final orders

- f. A declaration is made that that the summary dismissal by the Respondents was fair, lawful, legal, procedural, rightful and in compliance the principles of natural justice and the provisions of the Employment Act 2007.
- g. Flowing from (a) above, the court dismisses the prayer for compensation or damages for unfair, unlawful, illegal, unprocedural and wrongful termination as unmerited prayer.
- h. The employee is not entitled to any terminal dues.
- i. The employee is not entitled to any leave pay for leave days not utilized since he forfeited the same.
- j. The court declares that the employee was paid all his salaries for all months worked and there is no pending unpaid salary.
- f. The court dismisses the employer's claim for an amount equivalent to one-month salary in lieu of notice since the employer recovered the same under section 19 of the Employment Act.
- k. The employer shall issue within 30 days of this order a Certificate of service to the employee.
- l. Costs to the employer as a successful litigant.

Right of appeal is 30 days.

**DATED, READ AND SIGNED AT MARALAL THIS 21ST DAY OF AUGUST, 2025**

**HON.T.A. SITATI**

**SENIOR PRINCIPAL MAGISTRATE**

**MARALAL LAW COURTS**

Present



Claimant  
Respondent  
Samwel Court Assistant

