

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E565 OF 2023

WINNIE

CHIRA.....CLAIMANT

VERSUS

**MESSIER INCLUSIVE TECHNOLOGY
LIMITED.....RESPONDENT**

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 12th July, 2023, and filed on 18th July, 2023. Under the claim and the supporting documents filed therewith, she seeks the following reliefs:-

- i. A declaration that the Respondent's termination of the Claimant's employment amounts to summary dismissal;
- ii. A declaration that the Respondent's termination of the Claimant's employment is not justified and unfair;
- iii. A declaration that the Claimant is entitled to;

- a) Compensation for summary dismissal and unfair termination amounting to one year's salary
\$ 80,000.00
 - b) One month's salary in lieu of notice
6,666.67
 - c) Unpaid leave days (18 days) \$5,217.39
 - d) Service pay for 2 years \$ 13,333.34
- iv. Exemplary damages for malicious termination, discrimination, victimization, and emotional distress.
 - v. The Claimant be issued with a certificate of service and a recommendation letter.
 - vi. Costs of the suit
 - vii. Interest at court rates
2. The Respondent filed a defence and Counterclaim and later filed an Amended Defence Statement dated 26th September, 2023.
3. The suit was referred to mediation, and the parties entered into a partial mediation agreement dated 9th May 2024, under which the Respondent paid the Claimant one month's salary in lieu of notice, amounting to USD 6,666.67, and unpaid leave days (18 days), amounting to USD 5,217.39. The Respondent also agreed to issue the Claimant a certificate of service and a recommendation letter when called upon.

4. The parties expressly agreed that the remaining unresolved issues were compensation for summary dismissal and unfair termination (US \$80,000.00) and service pay for two years (US \$13,333.34), which were left for determination by the Court.
5. The Claimant's case was heard on 14th May, 2025 when she testified in support of her case, adopted her witness statement, and produced her list and bundle of documents as exhibits in her case. The Respondent's case was subsequently heard on 5th November, 2025, with one Lorraine Maina Kageni testifying in support of the Respondent. She adopted her witness statement and produced the Respondent's list and bundle, and further list and bundle of documents as exhibits in the case.
6. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

7. The Claimant's case is that she was hired on 16th September 2021 as a Business Manager/Sales Lead in Nairobi, earning USD 6,666.67 per month.
8. She states that she successfully onboarded major clients, including Absa Bank Kenya PLC, DTB Bank Kenya, and HF Group, at a time when the Respondent had no clients in Kenya. It is her case that, on 2nd December 2022, her

supervisor, Lorraine Kageni Maina, positively reviewed her performance, praising her tenacity, leadership, and overall good work.

9. The Claimant further states that from January 2023, she experienced workplace exclusion after Robert Joseph Hiff took over her client contacts and left her out of meetings. She further avers that, during a request for three days' leave in January 2023, her supervisor shouted at her and made threatening remarks about her ability to pay school fees, citing her high salary.
10. It is the Claimant's case that after a leadership change on 4th February 2023, the issue of unfair treatment against her intensified. She avers that one Peter Ondieki, a friend of her supervisor, was hired at double her pay to manage the Absa account she had developed, and when she questioned her exclusion, she was shouted at and subjected to personal remarks referencing her as a "single mother whom she helped."
11. The Claimant states that on 9th February 2023, she was placed on a Performance Improvement Plan (PIP) without prior warning. She avers that the PIP was unsigned, lacked clear performance metrics, and was not properly reviewed with her, but despite this, her performance was later commended by Carol Boone, the Head of People, at the end of March 2023.

12. It is her case that on 4th April 2023, she was summarily dismissed for alleged poor performance without notice, a hearing, or justification, and without any prior warnings or reprimands during her employment.
13. The Claimant further states that the Respondent's own documents, including Performance Plan notes and emails, contradict their claims, as they reflect ongoing engagement meetings, but provide no evidence of unmet performance targets or any support extended to her. Additionally, the Claimant states that she was not consulted prior to her termination, constituting a breach of procedural fairness.
14. On cross-examination, the Claimant told the court that her targets in the last quarter of 2022 were to have data flowing and that data was flowing to Fintechs but not to banks. She avers this was a business objective which she did not meet, and she was placed on a Performance Improvement Plan (PIP). She again denied being placed on PIP and argued that she was being supported with a strategy to move forward.
15. It is her testimony that she had weekly meetings with an employee named Carol to check whether she met the objectives. She told the court that she did not meet her 2022 targets and was summarily dismissed.
16. The Claimant further told the court that she had no evidence that the Chief Executive Officer (CEO) of the Respondent shouted at her or that she acted unprofessionally.

17. In examination in chief, the Claimant denied that the objective of data flow was one of her targets.

18. It is the Claimant's prayer that her claim be allowed.

The Respondent's Case

19. The Respondent's case is that it is a duly registered international fintech company operating in Kenya. It avers that the Claimant was employed on 20th September 2021 as a Business Manager/Sales Lead under a letter of offer dated 13th September 2021, which outlined key terms including job responsibilities, compensation, and a dispute resolution clause.

20. The Respondent states that the letter specified that California law would govern matters of validity, interpretation, and performance. The Respondent asserts that the Claimant read, understood, and voluntarily signed the offer letter, thereby accepting its terms therein.

21. The Respondent states that the Claimant's primary role was to build and manage client relationships to drive sales of the company's software, and not to participate in technical product development. It argues that her insistence on attending technical team meetings was outside her job scope and beyond her expertise.

22.The Respondent further contends that declining sales performance from late 2022 into early 2023 was identified by Carol Boone, Head of People, and as a result, the Claimant was placed on a Performance Improvement Plan (PIP) starting 9th February 2023 to support her in meeting targets, with the understanding that failure to improve could lead to termination by 31st March 2023.

23.The Respondent states that the Claimant actively participated in the Performance Improvement Plan (PIP) process through a series of structured meetings with Carol Boone. It avers that the first meeting took place on 9th February 2023, focusing on accountability and alignment with company objectives, and that a second meeting held on 13th February 2023 addressed the status of key target clients, Stanbic and HFC, and included strategies to improve performance.

24.It is the respondent's case that follow-up meetings were held on 21st February and 27th February 2023 to track progress, refine strategies, and ensure the Claimant had the necessary tools to meet her targets. The Respondent maintains that the Claimant was not excluded from relevant meetings and, for instance, attended an all-hands meeting on 28th February 2023.

25.The Respondent states that during a meeting held on 7th March 2023, the Claimant confirmed that she was not

overwhelmed and had aligned her priorities, while also discussing the status of her targets, and continued to participate fully in company activities, including an all-hands meeting on 14th March 2023.

26. It avers that on 15th March 2023, the Claimant reported on the HFC account but had not yet onboarded the client despite receiving resources and training, and that she was reminded that failure to meet this target could result in termination at the end of the month, and this was followed up via email. The Respondent maintains that the Claimant was not excluded from meetings, citing additional engagements, including a check-in meeting on 22nd March 2023 and attendance at an all-hands meeting on 29th March 2023.

27. It is the Respondent's case that in a final meeting on 30th March 2023, it was evident that she had not met her performance targets as the quarter came to a close.

28. The Respondent asserts that the Claimant worked without restriction until her final day and received her full salary, along with continued health insurance coverage for the remainder of the year. It avers that she was also offered the option to purchase her work laptop and allowed to retain her company shares, and was treated with professionalism and kindness throughout her employment.

29. The Respondent rejects the allegations of victimization, emphasizing that it has a comprehensive Code of Conduct Policy that allows for anonymous reporting of ethical concerns. It notes that the Claimant never reported any incidents of discrimination or victimization during her employment and therefore considers the claims baseless.

30. On cross-examination, the Respondent's witness (RW1), who also doubles up as its CEO, told the court that the Claimant was consistently appraised, but the appraisal reports were not before the court. She avers that the Claimant was placed on PIP at the end of 2022 to help her improve.

31. RW1 further testified that the Claimant was terminated on 4th April, 2023, but the letter indicated 12th April, 2023. She avers that her final day was 11th April, 2023.

32. RW1 states that hearings were held prior to the termination, but the minutes were not produced in court.

33. The Respondent avers that the Claimant is not entitled to the remedies sought and urges the court to dismiss the suit with costs.

Analysis and Determination

34. I have considered the pleadings, the parties' oral testimonies, and the rival submissions filed in the matter.

The issues for determination are: -

- i. Whether the Claimant's termination was unfair

ii. Whether the Claimant is entitled to the reliefs sought.

Whether the Claimant's termination was unfair

35. On whether the Claimant's termination was fair, I would start by laying a clarification on the applicable law, the Respondent having pointed out that the Claimant was employed under a letter of offer dated 13th September 2021, which outlined key terms including job responsibilities, compensation, and a dispute resolution clause, and which letter it contends specified that California law would govern matters of validity, interpretation, and performance.

36. It is now settled that employment relationships performed in Kenya for entities registered outside Kenya are governed by Kenyan employment law, particularly the Employment Act, 2007, and the conflict of laws principles, especially the doctrine of *lex loci solutionis* or the law of the place of performance.

37. The Employment Act, 2007, applies where the employment relationship has a sufficient territorial nexus to Kenya, which is the situation in the instant case.

38. In ***Kamurasi v Absa Bank Kenya PLC & another [2023] KEELRC 3229 (KLR)***, the court applied *lex loci solutionis* to hold that Kenyan law was the applicable law on the basis that performance of the contract occurred in

Kenya, the breach occurred in Kenya, and finally that the employee resided in Kenya.

39. Further in ***Dorcas Kemunto Wainaina v. IPAS (2018) eKLR***, the court held that in the absence of an express choice of law clause, the applicable law is determined by where the contract is predominantly performed.

40. In light of the foregoing, I arrive at the conclusion that this court has jurisdiction to adjudicate on the dispute herein, for the reasons that the contract was performed in Kenya, the alleged breach happened in Kenya, and the Claimant was resident in Kenya.

41. It therefore follows that the most suitable law for addressing the dispute between the parties herein is the laws of Kenya.

42. On whether the Claimant's termination was unfair, Sections 43 and 45 of the Employment Act require that an employer prove valid and fair reasons for termination.

43. The Respondent's reason for terminating the Claimant's employment is poor performance. Under Section 41 of the Employment Act, poor performance is a ground for termination, as the primary duty of an employee is to perform work for which he/she is contracted. It is, however, settled that the employer does not have a right to immediately rescind an employment contract on the

grounds of poor performance, but is instead expected to mitigate the impact of an employee's poor performance.

44. It therefore follows that to rely on poor performance as a ground for termination, the provisions of Section 45(2) of the Employment Act must be met. The burden of proof that poor performance was a fair reason for dismissal rests on the employer. It is further the employer's responsibility to implement corrective mechanisms through employee coaching before any disciplinary action is taken.

45. In ***Jane Simba Mukala v. Oltukai Lodge Limited (2013) eKLR***, the court emphasized that an employer must set clear targets, give guidance, and allow the employee reasonable time to improve.

46. The Claimant admitted under cross-examination that she did not meet her 2022 targets. The Respondent, on its part, demonstrated the existence of a PIP (February–March 2023), multiple review meetings with a specific focus on onboarding HFC and other clients.

47. The court, however, notes that no documentary evidence of clear measurable targets was produced in court and that no appraisal reports were tendered, a position RW1 admitted in her oral testimony.

48. There was also no evidence tendered of a structured evaluation criteria, and PIP meetings alone, without objective benchmarks, fall short of the legal threshold.

49. In my view, the Respondent partially proved poor performance, but failed to fully justify it as a valid ground in law to justify termination due to lack of objective metrics and documentary proof.

50. I therefore find and hold that the Claimant's termination on account of poor performance is substantively unfair and unlawful.

51. On procedure, Section 41 of the Employment Act demands that the employee be explained for the allegations on the basis of which termination is being considered, that a hearing be held in the presence of another employee or representative, and the employee be allowed an opportunity to respond.

52. The Respondent alleged that hearings took place, but no minutes of the disciplinary hearings were produced in evidence before this court. There was also no allegation or evidence that a show cause notice was issued regarding the charges, or that the Claimant was invited to the hearings and informed of her right to have a representative present.

53. In my view, the PIP meetings do not substitute a disciplinary hearing. This position was affirmed by the Court of Appeal in ***National Bank of Kenya v Samuel Nguru Mutonya***

[2019] KECA 404 (KLR), where it held that performance discussions are not a substitute for a disciplinary hearing.

54. In the upshot, I hold that the Respondent failed to prove procedural fairness.

55. The Claimant's termination is therefore found to be both procedurally and substantively unfair and unlawful.

Whether the Claimant is entitled to the reliefs sought

Compensation for Unfair Termination

56. Under Section 49(1)(c), the law allows compensation of up to 12 months' salary where a termination or dismissal is held unfair/wrongful.

57. In making an award of compensation, the court considers the factors set out under Section 49(4) of the Employment Act. Taking into account the Claimant's two (2) years of service, and the fact that she partially admitted underperformance, hence contributing to the termination, I deem an award of five (5) months' salary sufficient compensation for the unfair termination of employment.

Service Pay

58. Under Section 35(5) & (6) of the Employment Act, service pay is not payable where the employee is a member of NSSF or a similar pension scheme.

59. Clause 12 of the Claimant's employment letter states that compensation was subject to applicable taxes and other deductions required under the applicable law.

60. The claim, therefore, fails.

61. In whole, the claim succeeds and orders granted as follows:

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- a) A declaration is hereby issued that the termination of the Claimant's employment was unfair and unlawful.
- b) The Respondent shall pay the Claimant five (5) months' salary as compensation for the unfair termination at USD 33,333.35
- c) The claim for service pay is dismissed.
- d) The Respondent shall bear the costs of the suit.

62. Judgment accordingly.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 23RD DAY OF APRIL, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Ms. Nyanchera h/b for Mr. Magambo for the Claimant
Mr. Karue h/b for Ms. Njeri Gacheru for the Respondent
Ms. Esther S- C/A

ORIGINAL