REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

(Before Hon. Lady Justice Monica Mbarũ)

CAUSE NO. E107 OF 2025

GIDEON BRAN NYANGOJE.....CLAIMANT

VERSUS

IMANI COLLECTIVE LIMITED.....RESPONDENT

JUDGMENT

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

The Respondent employed the Claimant as a general intern from September to December 2021. Thereafter, he was employed as a warehouse and logistics officer from January to December 2023. Later, he was employed as the head of warehouse and fulfilment from January to 4th August 2025.

The claim is that the Respondent business was involved in the local production of handmade home décor and lifestyle products and then selling them to local and global markets.

Employment was regulated under written and oral terms. The last written contract was for a 9-month term starting in January 2025. Clause 3 of the written contract required the Respondent to sign the Claimant's duties.

The claim is that the Respondent assigned the Claimant additional duties above the contractual role. He was required to manage the website from July 2024, which included constant reviews and updating products and information. He was also required to update inventory at the Respondents' USA Tennessee Warehouse, which involved overseeing the movement of inventory to clients and preparing monthly reports.

The claim is that the Respondent would make payments to the Claimant via the Claimant's NCB bank account. However, salary payments were delayed for several months. Ksh. 57,000 was the paid per month for the official role as head of the warehouse, and Ksh. 15,000 was paid per month for managing the Kenyan website from July 2024, and $500 paid per month for managing the inventory for the USA Tennessee warehouse. The Respondent would pay $250 from September 2023 to December 2024, and later $500 from January to July 2025, upon review.

Following an email dated 31st July 2025, the Respondent informed the Claimant not to report to work on 1st August 2025 to allow for internal audit and investigations.

The Claimant was asked to return the computer and devices and report to work on 4th August 2025 for a one-on-one session with the founder and CEO.

The Claimant reported back to work as directed, but was summarily dismissed for the reasons that:

a) General non-compliance with the rules of the company.
b) Discourteous treatment of other employees, including harassment, coercion or intimidation.
c) Theft, misappropriation or damage of the company's or another property, including cash or merchandise.
d) Violating employment policy or procedure, whether contained in the handbook or not.

The notice of summary dismissal was dated 4th August 2025 and informed the Claimant that he would be paid Ksh. 119,366.67 as terminal dues. He only received Ksh. 122,062.

The claim is that the Claimant was not involved in any investigations or in any reports or findings shared with him. The internal audit was done in his absence before the alleged disciplinary hearing. The summary dismissal was publicized in a negative manner based on unsubstantiated claims, thereby damaging his employability.

The Respondent refuses to pay the due $500 for July 2025.

He claimed that he recently discovered that the Respondent made statutory deductions for HIF and NSSF, but they were never remitted for July 2022 to July 2025.

The Certificate of Service dated 26th September 2025 was issued in a defective form.

It does not disclose the position held and period of employment.

There was wrongful, unlawful ad unfair termination of employment. The Claimant was denied the right to a hearing, and the reasons given were not substantiated. He is claiming the following:

a) 12 months' compensation Ksh. 1,620,000.
b) Payment of terminal dues, including:
    i. House allowance for 3 years 7 months Ksh.75,562.50
    ii. $500 for July 2025.
c) Ksh. 138,640 deductions for NSSF and NHIF were not remitted.
d) General damages for violation of constitutional rights.
e) Costs of the suit.

The Claimant testified that he worked diligently for the Respondent until 1st August 2025, when he was directed to proceed with him to allow for an internal audit. He was not made aware that he was not to use his personal email address

for official work. He had used his personal email before being allocated the office email address.

The Claimant testified that, as the head of the warehouse, the Respondent failed to inform him of an ongoing audit. On 4th August 2025, he was called for a meeting, it was fast, and the Respondent asked him to sign various documents. He noted the rush and, hence, no point in questioning the procedures applied.
On 14th February 2025, the Claimant used his personal email to reset the password. This was to help him not forget the password. There was no workplace policy on the use of personal email addresses. Following the alleged internal audit, this was used at the disciplinary hearing before the Claimant had a chance to read the same. No negative reports had been brought to his attention. This resulted in constitutional violations, unfair termination of employment, devoid of due process.

In reply, the Respondent admitted that the Claimant was employed as head of warehouse and worked until 4th August 2025, when his employment was terminated through summary dismissal on account of gross misconduct. The claim was issued with a written notice dated 4th August 2025, detailing and explaining the termination of his employment. This was after a disciplinary hearing following internal audit investigations by the Risk assessment and audit report dated July 2025 revealed acts of gross misconduct. The Claimant was earning Ksh. 70,000 at the time of his employment termination. However, the

employer took additional payments that were not authorised by the Respondent. The Claimant admitted under paragraph 8 of the Memorandum of Claim that he was receiving Ksh. 15,000 and $500, about Ksh. 64,500 outside the contractual pay. These payments were unauthorised. The Respondent discovered these off-book payments during an Internal Audit conducted by David Gikonyo, which uncovered misappropriation of funds, leading to summary dismissal.

The response is that the Respondent has since paid the Claimant's terminal dues at Ksh. 122,062, which includes notice pay. The claims are frivolous and an abuse of the court process. The due process was followed in addressing the Claimant’s case, and a Certificate of Service has since been issued.

In evidence, the Respondent called Rukhasar Munir an advocate. She testified that the Claimant was not issued a notice to show cause before the disciplinary hearing on 4th August 2025. He was issued a notice to attend a meeting following an audit report that had not been shared until the disciplinary hearing. David Gikonyo conducted the audit, but he did not attend the meeting. The Claimant was asked if he wanted to bring another employee to the hearing, but he declined.

Munir testified that the Claimant had committed fraud and theft, which formed the basis for summary dismissal. He was paid his terminal dues, and the claims for house allowance and extra payments are not contractual, hence not justified.

At the end of the hearing, the parties agreed to file written submissions. Only the Claimant complied.

Determination

The Claimant's employment relationship was regulated under a written contract. The Claimant's case is that there were both oral and written contracts. The written contract allowed for a salary of Ksh. 57,000, while the oral contract gave other benefits, resulting in a gross salary of Ksh. 135,000.

The Respondent contested that there was only a written contract allowing a salary of Ksh. 57,000 only. The other payments were unsupported and not approved. The extra payments resulted from misappropriation of funds, theft and unjust enrichment through the office.

Under section 10(3) of the Employment Act (the Act), the employer has a duty to issue the employee with a written contract of employment. Any terms and conditions of employment should be reduced to writing. Where the employment is commenced through an oral contract allowed under sections 8 and 9 of the Act, such should only subsist for not more than two months. Thus, under section 10(3) of the Act, the employer has a legal duty to issue a written contract.

The Claimant was thus under a written contract as required under the Act.

Further, where parties review, amend, change, or otherwise affect the written contract, section 10(5) of the Act requires the employee's written consent. The changes to the employment contract that affect the employee positively or

negatively must be accepted in writing as held in **Muthui v Kenya Rural Roads Authority (Kerra [2022] KEELRC 4024 (KLR)** and **Okiya Omtata Okoiti & Nyakina Wyclife Gisebe v Bidco Africa & 6 others [2017] KEHC 8712 (KLR)**.

In this case, there is no written amendment or change to the Claimant's employment contract by the employer, the Respondent. The Claimant did not produce any record of his agreement to any changes to his contract.

The parties were bound under the written contract.

Through a notice dated 4th August 2025, the Respondent terminated the Claimant's employment by summary dismissal. The reasons given were that, following a leadership meeting held on the same day, the Claimant's role was reviewed because the organisation was undergoing alignment. However, the Claimant had been found to have committed gross misconduct as per the internal policy and code of conduct. The matters committed were still under investigation.

The Claimant testified that on 1st August 2025, he was sent home to allow for investigations. He was called back on 4th August 2025 at a meeting where he was advised to call another employee of his choice, but the events were rushed, and he was not able to. He signed the document issued because he noted a premeditated decision had been taken against him. He had no prior knowledge of the allegations made against him or any matter of alleged gross misconduct.

Indeed, under section 44(3) of the Act, an employer may terminate employment where the employee breaches a fundamental term of the employment contract.

In this regard, section 44(1) allows summary dismissal without notice or with less notice where a fundamental breach of the contract of employment is noted.

> ***(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.***

However, the employer must meet the mandatory provisions of section 41(2) of the Act while addressing the provisions of section 44 of the Act:

> ***(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.***

However, gross the employee's misconduct, the sanction of summary dismissal is regulated. Notice must be issued to the employee, however short. The employee must be allowed to call another employee of his choice.

The court takes it that, following the Claimant being sent away on 1st August 2025 to allow for investigations, David Gikonyo, the head of finance and administration, was appointed with a mandate to conduct a comprehensive internal risk assessment and professionalize the Respondent's operations and controls. He conducted an audit, payroll management and internal controls. He established various variances and failures by the Claimant.

According to Munir, who testified for the Respondent, the audit by David Gikonyo established the Claimant's various failures, including the use of a personal email account to share the Respondent's data and information, contrary to the given policy. The Claimant admitted in court that he used his personal email address and account to save passwords. However, this use of a personal email address and account was not authorized by the employer.

In **Bolo v SBM Bank Limited [2024] KEELRC 2485 (KLR),** the court addressed at length the rationale why employees should restrict themselves to the use of official work email addresses, especially in sharing sensitive information and data affecting the business operations. In the case of **Angela Wokabi Muoki v Tribe Hotel Limited (2016) eKLR** and **Chris Oanda v Kenya Airways Limited, Cause No. 2517 of 2017,** the court has emphasized that a work email and all material at work are the property of the employer, and an employee cannot claim privacy over such property. Where policy requires the employee to use the work email address exclusively, the employee must not

use a personal email address to share or transfer data, even if justified. Where the employee thus shared the employer data to a personal email address, the nature of such information being work-related and comprising sensitive information, such is in breach of the employment contract contrary to section 44(3) of the Act, which allows for summary dismissal.

In this case, the Claimant was summoned to a meeting. He admitted that he had shared information, data, and passwords in his personal email. The need to call another employee of his choice became immaterial.

The court notes that the allegations against the Claimant were gross, and he admitted that he had indeed used his personal email address to share the Respondent's information and data, including passwords. Upon his admission, the Respondent had no duty to proceed under section 41 of the Act as held in **Mwavali v Vipingo Beach Limited [2024] KEELRC 2736 (KLR).**

In **Gati v Kenya Literature Bureau [2025] KEELRC 2587 (KLR),** the court held that upon an admission of misconduct or gross misconduct, the employer is at liberty to issue a sanction against the employee.

In this case, the Claimant cannot justify his claim that there was a constitutional or rights violation resulting in the unfair termination of employment. Such a

case does not arise upon admission of use of a personal email account and address to post data and information of the employer, the Respondent.

Termination of employment was justified.

On the claims made, compensation and general damages are reliefs not available to the Claimant.

On the claim for a house allowance at 15% of the salary paid, the Claimant was under a written contract. The salary paid is not below the minimum wage. Under the liberty to negotiate terms and conditions of employment, including remuneration, the Claimant was not a protected employee. House allowance at 15% s not due.

On the claim for $500 not paid in July 2025, as outlined above, the parties were regulated under a written contract that allowed a gross salary of Ksh. 57,000 only.

On the claim for Ksh. 138,640 in NSSF and NHIF deductions not remitted; these are due to the statutory bodies, not the employee. Under section 35(5) of the Act, the Claimant could only claim service pay, which is not pleaded.

On the Certificate of Service, such should be issued pursuant to the provisions of section 51 of the Act. The Respondent shall amend and re-issue the Claimant with a Certificate of Service.

Accordingly, the claim is found without merit and is hereby dismissed. Save, a Certificate of Service shall be issued pursuant to the provisions of Section 51 of the Employment Act.

Each party shall bear its costs.

Delivered in open court at Nairobi, this 23rd day of April 2026

M. MBARŨ

JUDGE

In the presence of:

Court Assistant: Catherine and Omar

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