

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 153 OF 2020

(Before D. K. N. Marete)

NELLY AYAKO AMBULI..... CLAIMANT

VS

BABS SECURITY SERVICES LIMITED..... RESPONDENT

JUDGMENT

This matter came to court by way of a Memorandum of Claim dated 12th January 2020. It does not disclose any issue in dispute on its face.

The Respondent in a Response to claim dated 20th February 2024 opposes the claim and prays that it be dismissed with costs.

The Claimant in a Reply to Response to claim dated 11th April, 2024 rubbishes the defence and prays for judgment as sought in the Memorandum of Claim.

The Claimant's case is that on 11th December 2017, she was employed as a Human Resource Manager by the Respondent at a monthly salary of Ksh107,000.00. The other entitlement of the employment was National Hospital Insurance Fund (NHIF) medical cover, National Social Security (NSSF) Retirement Scheme, annual leave, sick leave and compassionate leave. She was put on probation for the first three (3) months and also the contract of employment provides for

one (1) month pay in lieu of notice for termination. They took this position and continued to serve the Respondent faithfully and diligently.

The claimant's other case is that the termination of my employment did not conform to the terms of the contract of employment or the Employment Act, 2007 in that;

- i) *The Claimant was neither informed of the accusations facing me nor given the opportunity to respond to the said allegations before the termination of my employment by the Respondent.*
- ii) *The Claimant was neither issued with a show-cause letter nor given audience before a disciplinary committee where she would have been granted audience to canvass the issues raised in a show cause letter.*
- iii) *The Claimant was never taken through a disciplinary process as envisaged by the Employment Act before the termination of my employment.*

The Claimant's further case is that on 22nd November, her services were abruptly terminated without any justification, basis or cause. This lacked compliance with the terms of the contract of employment in that;

- i) *The Claimant was neither informed of the accusation facing her nor given the opportunity to respond to the said allegations before the termination of his employment by the Respondent.*
- ii) *The Claimant was neither issued with a show cause letter nor given audience before a disciplinary committee where she would have been granted audience to canvass the issues raised in a show cause letter.*

- iii) *The Claimant was never taken through a disciplinary process as envisaged by the Employment Act before the termination of his employment.*

This was actuated by malice, untimely, unlawful and illegal and contrary to the Employment Act, 2007 and by regulation of wages and conditions of the Employment Act, 2007 and the Regulation Wages.

The Claimant's other case is that the Respondent has illegally and without cause or justification withheld the Claimant's dues despite exit clearance of her outstanding dues all amounting to Ksh52,000.00. This is besides statutory deductions as follows;

- a) *The Respondent has deducted from the Claimant the sum payable to NHIF of Ksh1,600.00 for 12 months and failed to remit the sum of Ksh19,200.*
- b) *The Respondent has deducted from the Claimant the sum payable to NSSF of Ksh200 for 12 months and failed to remit the sum of Ksh2,400.00*
- c) *The Respondent has deducted from the Claimant the sum payable to KRA (Pay A You Earn) PAYE of Ksh22,338 for 12 months and failed to remit the sum of ksh268,056.00*

She is therefore entitled to service pay in view of the non-remittance of contributions of the NSSF.

She prays thus;

- i) *That the Claimant be paid terminal benefits at the recommended rate of payment by law for all the period worked.*
- ii) *A declaration that the termination of the Claimant's employment was unlawful and against the rules of natural justice and contrary to the provisions of the constitution*

- and the Employment Act, 2007 and subject to twelve (12) months salary payment as damages.*
- iii) Claimant be paid all the illegally deducted statutory amounts that were not submitted and a certificate of service be issue.*
 - iv) Any other relief as this court deems fit to grant.*
 - v) Costs of the claim be provided for.*

The Respondent's case is a denial of the claim.

The Respondent denies that the Claimant is entitled to any of the reliefs sought and puts the Claimant into strict proof of the allegations.

The Respondent's further case is that the Claimant failed to perform their duties adequately or appropriately thereby occasioning run ins with the management and her immediate supervisor and therefore summary dismissed.

Further, the Respondent avers that the Claimant was summarily dismissed from work for neglecting to perform their work which was their duty to perform under contract and which she carelessly and improperly performed. This was despite being requested and accommodated by the Respondent.

Other aspects of the Respondent's case come out as follows;

- (i) That the Claimant was accorded a fair hearing during her appraisal and had all issues communicated to her and given an opportunity to respond and which she duly responded to in writing.

- (ii) That part of the Claimant's duties was to ensure that all statutory deductions are done on time and payments done. She was thus in charge of ensuring that all her statutory deductions were deducted and remitted and her present claim is thus a clear demonstration of her dereliction of duties that she was to perform.
- (iii) The Respondent avers that it always paid all deducted payments on time with the relevant authorities and puts the Claimant to strict proof to the contrary.
- (iv) The Respondent further avers that the Claimant was paid her full dues upon termination, was compensated for any overtime worked including public holidays and puts the Claimant to strict proof to the contrary.
- (v) The Respondent further avers that this claim is an afterthought and shall contend that the unsubstantiated and generated accusations in the paragraphs are an attempt by the Claimant to ruin the reputation of the Respondent as she was even issued with a certificate of service after clearing with the Respondent.

The Claimant denies paragraph 5 of the Response to Claim alleging performance as the reason for dismissal and puts the Respondent to strict proof. The Claimant further avers that in breach of applicable law;

- a) *No hearing was conducted before she was terminated on 22nd November 2018 with effect from 23rd November 2018, giving her only one day notice without any payment in lieu of the statutory notice.*
- b) *No records of any hearing before termination are produced.*

- c) *In any event, no proof of the alleged poor performance, or of any remedial mechanism such as Performance Improvement Policy/Plans (PIP) are produced, and*
- d) *No appeal mechanism in the dismissal process was disclosed or availed to the Claimant, all rendering her termination unfair for which the Claimant holds the Respondent fully liable.*

The Claimant further denies paragraph 6 of the Response to Claim and that the Claimant puts the Respondent to strict proof of the alleged negligence. The Claimant further avers that;

- a) *The Respondent's own recommendation letter dated 24th November, 2018 is positive on all accounts, which is not compatible with any negligence alleged.*
- b) *The Respondent trusted the Claimant to lead an ISO Certification Team in February 2018, which could not have been the case were she negligent as alleged.*

Again, the Claimant denies Paragraph 8 of the Response to Claim and the Claimant puts the Respondent to strict proof. The Claimant avers that;

- a) *She duly forwarded the HR documents on statutory deductions but the management team neglected, failed and or refused to make the payments as and when they fell due.*
- b) *Further, the Respondent failed to particularize any alleged dereliction of duty by way of producing the records of statutory payments showing the comparison between status of statutory deductions before, during and after the Claimant's employment.*
- c) *Specific to this case, the Respondent failed to remit the following statutory dues of provide the requisite statutory forms;*

- (i) *Despite deducting PAYE from the Claimant, the Respondent failed to issue the P9A Form and failed to remit income tax to KRA for the period between December 2017 to November 2018.*
- (ii) *The Respondent failed to effect NSSF payments for the year 2018 for the months of February and March, then June through to November.*

The issues for determination therefore are;

1. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
2. Whether the Claimant is entitled to the reliefs sought.
3. Who bears the costs of this cause.

The 1st issue for determination whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant in their written submissions dated 28th January, 2026 reiterates their case of unprocedural, unfair and unlawful termination of employment in that;

- (i) She was not informed of the accusations facing her or awarded an opportunity to respond to such allegations before termination of employment.
- (ii) No Show Cause letter was issued nor was she given an audience or hearing before a disciplinary committee.
- (iii) She was never taken through a disciplinary process as is required of by the Employment Act, 2007.
- (iv) The Respondent has not produced any evidence of a record of any disciplinary proceedings partaken before termination of employment.

The Claimant further submits that the Respondent failed to adduce evidence in support of the various allegations over the Claimant's performance as well as the payroll. They are obligated to keep records of these matters if they indeed existed and substantiate the same to court. This was not done, or at all. Besides, the following anomalies rendered the termination of employment substantively and procedurally unlawful. These are as follows;

- a) *No proof of the alleged poor performance, or of any remedial mechanism such as Performance Improvement Policy/Plans (PIP) are produced by the Respondent, as is legally required.*
- b) *No hearing was conducted on any of the allegations over her performance or payroll matters cited in the termination letter before the Claimant's employment was terminated on 22nd November, 2018.*
- c) *No records of any hearing before termination, are produced before the court.*
- d) *No appeal mechanism in the dismissal process was disclosed or availed to the Claimant.*

Particularly, the Respondent's own documents contradict its unproven allegations of poor performance against the Claimant because;

- a) *The Respondent's own recommendation letter dated 24th November, 2018 is positive on all accounts and confirms that she excelled in her responsibilities. It further recommends her highly for future appointments. This recommendation is not rationally compatible with any allegation of negligence or poor performance of duties in the termination letter.*
- b) *Nothing in the performance evaluation reports done between January to July 2018 showed negative findings against the Claimant in the discharge of her duties.*

- c) *Again, the single letter dated 6th August, 2018 by the Respondent on job performance was fully answered and responded to by the Claimant in detail on 25th August, 2018. Since the employer took no further escalating action towards hearing or any disciplinary process or action after receiving the Claimant's response letter, the employer was deemed satisfied by the Claimant's written explanations about her positive performance.*
- d) *The Respondent trusted the Claimant to lead an ISO Certification Team in February 2018, which could not have been the case where she negligent as alleged. This fact is pleaded in paragraph 3(b) of the Claimant's Reply to Response to Claim, and is not challenged in any of the Respondent's documents.*

The Respondent in their written submissions dated 10th December, 2025 reiterates their case of lawful termination of employment. They cite various instances of wilful neglect of the Claimant's duties which were communicated to herself vide a letter dated 6th August, 2018 as follows;

- i) *The Claimant failed and refused to take disciplinary action against employees with gross misconduct. On 31/07/2018 and 02/08/2018, the Managing Director of the Respondent visited it's Client for the provision of security services, SEKU University, where he noted that the staff in charge had absconded duty for quite some time and that he had been fraudulently receiving money for fuel on a weekly basis which he diverted and used for personal means;*
- ii) *The Claimant failed and refused to facilitate the of transfer one employee from Kirinyaga University to Kababii University, a decision which was agreed upon and*

made, in a meeting by the Respondent's management and the Claimant causing the Respondent to suffer extra financial costs;

- iii) The Claimant fraudulently misappropriated funeral monies which had been channelled to her for the necessary arrangements of one of the Respondent's deceased employee. The Claimant unconscionably withheld the monies under her care at the expense of the bereaved family;*
- iv) The Claimant, without consultation or direction of her superiors, delegated sensitive duties to her juniors which greatly influenced the poor quality of her work. In a meeting with the Respondent's Managing Director on 24/07/2018, it was pointed out that the Claimant had delegated very sensitive tasks to interns;*
- v) The Claimant was not a team player and had several misunderstandings with numerous employees which necessitated the convening of reconciliatory meetings between the Claimant and her fellow employees. One of the highlighted instances in the letter to the Claimant from the Respondent dated 25/08/2018, is where the Claimant, in her capacity as HRM in a management meeting in a hotel in Kiambu Road, issued a threat to her fellow employees in the presence of other staff.*

The Respondent's seeks to rely and submits on section 44(3) and 44(4)(c) of the Employment Act,2007 which vests an employer with power to dismiss an employee summarily when their conduct fundamentally breaches the contract of service. Wilful neglect to perform ones duties or careless and improper performance of the same also constitutes such default and renders the employee material for summary dismissal.

The Respondent in all submits that the Claimant has not proved her claim on a balance of probabilities and cites the authority of **Pius Machafu Isindu vs Lavington Security Guards (2017) KECA 225 KLR** where the court espoused the standard of proof expected of the parties in the event of a termination of an employment contract.

On a test of a balance of probabilities and preponderance of evidence, the Claimant's case overwhelms that of the Respondent. From the onset, the Respondent sets out a sham defence that merely denies the claim and does not bring out the substance of a defence. This is against the ample evidence of the Claimant in stating a case of unlawful termination of employment.

The Claimant has established a case for unlawful termination of employment. This is because no credible reason was established by the Respondent in support of the decision to terminate the employment. Section 43 of the Employment Act, 2007 requires that an employer must prove valid reasons for such termination of employment which was not the case in this situation. On this, the Claimant seeks to rely on the authority of **Jane Samba Mukala vs Ol Tukai Lodge Limited (2013) KEELRC 794 (KLR)** where the tenets of Section 41 of the Employment Act, 2007 as to substantive and procedural fairness were upheld. I therefore find a case of unlawful termination of employment and hold as such.

The 2nd issue for determination is whether the Claimant is entitled to the reliefs sought. She is. Having succeeded on a case of unlawful termination of employment, she becomes entitled to the reliefs sought.

Despite the win on an award of the reliefs sought, the claims for non-remittance of NSSF, NHIF and PAYE fail. This is because the claimant has not adduced any evidence in support of the claims. A reliance on the provisions of Sections 10 and 74 of the Employment Act, 2007: the employer's duty of keeping records of employment does not in itself suffice to sustain a case for these claims.

I am therefore inclined to allow the claim and order relief as follows;

- (i) A declaration be and is hereby issued that the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.
- (ii) One (1) months salary in lieu of noticeKsh.
107,000.00
- (iii) Six (6) months salary as compensation for unlawful termination of employment
Ksh, 107,000.00 x 6
.....Ksh642,000.00
- (iv) Compensation for 7.75 days untaken leave, Ksh. 107,000.00 x 7.75/30
.....Ksh.27,642.00
- Total of claimKsh.776,642.00**
- (v) The costs of the claim shall be borne by the Respondent.
- (vi) Interest at court rate from the date of this judgment of court till payment in full.

Delivered, dated and signed this **17th** day of **April** 2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Evans Ochieng instructed by Sheikh & Co. Advocates for the Claimant
2. Muthoni holding brief for Gicheru instructed by DGW & Co. Advocates for the Respondent.