

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E1074 OF 2023**

**CHARLES ODUK**

**OWINO.....CLAIMANT**

**VERSUS**

**CAS CONSULTANTS LIMITED....**

**.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant filed this suit through a Memorandum of Claim dated 21<sup>st</sup> December 2023, alleging unlawful/unfair termination and non-payment of terminal dues. He seeks the following reliefs against the Respondent: -
  - a) A declaration that the termination of the Claimant's employment constituted an illegal, unlawful, and unfair termination;
  - b) Payment of a sum of KES. 1,463,461.60, which ought to have been the Claimant's lawful and final dues as per the following breakdown:-
    - i) Salary arrears that accrued between February 2019 and June 2020 - KES. 605,000/=;

- ii) Salary arrears that accrued in January 2021 and February 2021 - KES. 180,000/=;
  - iii) Salary arrears that accrued between January 2023 and May 2023 - KES. 270,000/=;
  - iv) Severance pay at the rate of 15 days for each of the Claimant's 5 complete years of service with the Respondent ( $15/26 \times 90,000 \times 5$ ) - KES. 311,538.50;
  - v) 18 days' pay, being payment in lieu of notice ( $18/26 \times 90,000$ )- KES. 62,307.70; and
  - vi) 10 accrued but untaken leave days ( $10/26 \times 90,000$ )- KES. 34,615.40.
- c) Compensation for illegal, unlawful, and unfair termination - equivalent to 12 months' salary - Kes. 1,080,000/-
  - d) General damages for unfair labour practices;
  - e) An order that the Respondent should issue a certificate of service pursuant to section 51 of the Employment Act, 2007;
  - f) Costs of this suit.
  - g) Interest on the salary arrears referred to in prayer (b)
  - h) Interest on (c) above at court rates from the date of Judgment until payment in full.
2. The Respondent filed a Memorandum of Reply to the Claim dated 22<sup>nd</sup> February, 2024, denying the Claimant's claim.
3. The Claimant's case was heard on 14<sup>th</sup> May, 2025, when the Claimant testified in support of his case, adopted his

witness statement dated 21<sup>st</sup> December, 2023, and a supplementary witness statement dated 26<sup>th</sup> February, 2024. He further produced his list and bundle of documents and supplementary list and bundle dated 21<sup>st</sup> December, 2023, and 26<sup>th</sup> February, 2024, respectively, as exhibits in the matter.

4. The Respondent's case was subsequently heard on 4<sup>th</sup> November, 2025, when the Respondent's witness, Mr. Caleb Ogado, testified in support of the Respondent's case. He too adopted his witness statement dated 19<sup>th</sup> December, 2024 as his evidence in chief.
5. Both parties filed submissions, which have been duly considered.

### **The Claimant's Case**

6. The Claimant's case is that he was employed by the Respondent as an Inspector of Works for the Mombasa Mariakani Lot 1 – Digo Road – Kwa Jomvu project, starting 1st March 2017, under a written contract dated 2nd March 2017.
7. The Claimant states that the contract provided that the employment term ran from 1<sup>st</sup> March 2017 to 31<sup>st</sup> August 2019, at a monthly salary of KES 90,000. He avers that he was entitled to 21 working days of annual leave and that termination of employment was subject to a two-month notice period.

8. The Claimant asserts that he performed his duties diligently, providing quality and dedicated service, and that no concerns were ever raised on his performance or conduct. He further states that from February 2019, the Respondent unilaterally reduced his salary without consultation, paying him below the agreed amount until June 2020, when his salary was restored to KES 90,000. The Claimant contends that the Respondent's action amounted to an unfair labour practice and resulted in salary arrears totaling KES 605,000 for the period between February 2019 and June 2020.
9. The Claimant states that around 24<sup>th</sup> December 2020, the Respondent's Project Surveyor, William McAwiti, verbally instructed him not to report to work after 31<sup>st</sup> December 2020. He avers further that he was given no explanation regarding the instruction, and did not receive any written communication confirming the directive or clarifying his employment status. It is his case that he was not assigned any duties in January and February 2021 and was not paid his salary for those months.
10. The Claimant contends that the Respondent's actions in failing to assign duties and pay his salary for January and February 2021 amounted to an unfair labour practice, resulting in salary arrears of KES 180,000. He further states that there was no communication from the Respondent until 4th March 2021, when he was issued with a new letter of offer appointing him as a Roads Inspector for the Mau Mau

Lot 2 project in Murang'a County (Project 2), and owing to his circumstances, he accepted and signed the offer on the same date.

11. The Claimant states that under the new contract, the employment term was 26 months, from 4<sup>th</sup> March 2021 to 30<sup>th</sup> March 2023, and the monthly salary remained KES 90,000, and the leave was also retained at 21 working days.
12. The Claimant maintains that he performed his duties diligently in this new role, with no concerns raised regarding his performance or conduct.
13. The Claimant further states that in January 2023, the Respondent again unilaterally reduced his salary without consultation and subsequently failed to pay his full salary for April and May 2023. He contends that this also constituted an unfair labour practice and resulted in salary arrears of KES 270,000 for the period from January to May 2023.
14. He further states that although his contract was due to expire on 3<sup>rd</sup> May 2023, he continued working beyond that date on the same terms, effectively converting the employment into an indefinite contract. The Claimant also avers that on 17<sup>th</sup> May 2023, he received an email from the Respondent's representative, Evelyn Njoki, attaching a termination letter dated 3<sup>rd</sup> May 2023, which indicated that his employment was being terminated due to reduced workflow and suspension of works.

15. It is his case that he was given one month's notice, with his last working day set as 31<sup>st</sup> May 2023; and was further informed that any salary arrears up to May 2023 would be paid. It is his position that the backdating of the termination letter constituted an unfair labour practice.
16. The Claimant asserts that the reasons given for his termination were unrelated to his performance, conduct, or capacity, but were instead due to the Respondent's operational challenges and inability to provide work. He therefore concludes that the termination was a redundancy.
17. The Claimant further contends that a lawful redundancy process required mandatory steps, including issuance of a prior notice of intended redundancy to him, notifying the County Labour Officer in Murang'a, conducting consultations with affected employees, and proof of a fair selection criteria.
18. The Claimant avers that the Respondent failed to comply with all these requirements, and as a result, he maintains that his termination on 31<sup>st</sup> May 2023 was illegal, unlawful, and unfair, entitling him to compensation.
19. On cross-examination, the Claimant told the court that in 2017, 2018, and 2019, he went on leave and had cleared all his leave days. He avers that he worked throughout 2017, 2018, and 2019 and that, although all employees were affected by the salary deductions, no reasons were given.

20. It is his testimony that he was not issued a termination letter in December, 2020, but did not report to work in January, 2021. He states that under the new contract, he worked in Muranga from March 2021 to May 2023. He states that although his latter contract was to lapse on 3<sup>rd</sup> May 2023, he worked until 31<sup>st</sup> May 2023.

21. The Claimant prays that the court allow his claim and grant him the relief sought.

### **The Respondent's Case**

22. The Respondent states that the Claimant's employment was based on a fixed-term contract. It states that the Claimant was engaged as a Roads Inspector for the Mau Mau Road Lot 2 project in Murang'a County, section, under a contract running for 26 months, from 4<sup>th</sup> March 2021 to 30<sup>th</sup> March 2023, with an extension subject to further negotiations, performance, and the availability of work.

23. The Respondent further avers that during site meetings held on 1<sup>st</sup> and 21<sup>st</sup> March 2023, staff were informed of the intention to terminate services due to reduced workflow by the contractor. It states that in a subsequent meeting held on 27<sup>th</sup> March 2023, employees with accrued leave days were directed to proceed on leave, and records from the Resident Engineer's office indicate that the Claimant had already taken all his accrued leave days.

24. The Respondent states that a 28-day suspension notice was issued by the Contractor on 24<sup>th</sup> April 2023, leading to the

stoppage of works. It further asserts that salary payments were processed and debited from its bank account, but any salary that was not received by the Claimant was due to failed transactions caused by an invalid account, which the Claimant allegedly failed to disclose.

25.The Respondent states that the failed payments went unnoticed as the bank did not issue an electronic notification of the reversal, and denies underpaying the Claimant or varying his salary without consultation. The Respondent therefore denies engaging in any unfair labour practices and disputes liability for the claimed salary arrears of KES 605,000.

26.The Respondent maintains that any changes affecting employees were communicated through the Project Director. It further avers that between June 2019 and May 2020, it faced severe cash flow challenges due to delayed payments from its main client, the Kenyan Government, and the impact of the COVID-19 pandemic, and as a result, the Board of Directors resolved to manage the situation in a way that would minimize harm to employees while keeping the company operational, it opted to pay salaries in instalments, with a commitment to clear all arrears, which it avers it has since been implemented.

27.The Respondent further contends that employees who did not accept the temporary salary adjustments were free to leave, but the Claimant chose to remain in employment. It

avers that once financial conditions improved, full salaries were reinstated from June 2020 until the Claimant's exit. The Respondent further states that the Claimant's earlier contract (Mombasa Mariakani Lot 1) ran from 1<sup>st</sup> March 2017 to 31<sup>st</sup> August 2019, after which he signed a letter confirming availability for the subsequent Mau Mau Road Lot 2 project.

28.The Respondent denies that William McAwiti had authority to instruct the Claimant not to report to work, arguing that he was merely a fellow employee, and that any such instruction, if acted upon, was unauthorized and not attributable to the Respondent.

29.The Respondent instead argues that the Claimant failed to resume duty after the 2020–2021 festive season, amounting to absconding from work.

30.Finally, it maintains that the Claimant's employment was fixed-term and dependent on the availability of work, a fact he maintains was known to the Claimant at all material times.

31.On cross-examination, RW1 admitted that the Respondent did not pay the full salaries in the period June 2019 to May 2020. He contends that the Claimant's contract expired in August 2019, but he continued working without an official contract.

32.RW1 further confirmed that the Respondent did not write to formally terminate the Claimant's contract between December, 2020 and February, 2021. He states that the meetings he referred to in his statement were held, but the minutes from those meetings are not before the court, and neither is the list of attendance.

33.It is RW1's position that suspension of works was communicated on 24<sup>th</sup> April, 2023, and that staff were aware. He confirmed that leave records are not before the court and that salary arrears for January 2023 to May 2023 of Kes. 270,000 were not paid.

34.RW1 further states that the Claimant's contract was terminated on 31<sup>st</sup> May, 2023, although his contract ought to have ended on 3<sup>rd</sup> May, 2023. He avers that he was given 28 days' termination notice because there was no work and no operations at the site.

35.RW1 confirmed that the Claimant's certificate of service was available for collection.

36.The Respondent prays that the Court finds the termination justified and lawful, and accordingly dismisses the Claimant's claim in its entirety with costs.

### **Analysis and Determination**

37.I have considered the pleadings herein, the witnesses' oral testimonies, and the rival submissions. The issues that fall for determination are: -

- i. Whether the Claimant's termination amounted to redundancy, and if so, whether the termination was fair;
- ii. Whether the Claimant is entitled to the claimed monetary reliefs.

**Whether the Claimant's termination was a redundancy, and whether it was unfair and unlawful**

38. In respect of his first contract with the Respondent, the Claimant contends that around 24<sup>th</sup> December 2020, the Respondent's Project Surveyor, William McAwiti, verbally instructed him not to report to work after 31<sup>st</sup> December 2020. He avers further that he was not given any explanation regarding the instruction, and did not receive any written communication confirming the directive or clarifying his employment status. It is his case that he was also not assigned any duties in January and February 2021 and was not paid his salary for those months.

39. On the second contract, he contends that although his contract was due to expire on 3<sup>rd</sup> May 2023, he continued working beyond that date on the same terms, until 17<sup>th</sup> May 2023, when he received an email from the Respondent's representative, Evelyn Njoki, attaching a termination letter dated 3<sup>rd</sup> May 2023, which indicated that his employment was being terminated on account of reduced workflow and suspension of works.

40.The Respondent, on its part, argues that the Claimant was on a fixed-term contract and contends that his contract ought to have ended on 30<sup>th</sup> March or 3<sup>rd</sup> May 2023.

41.The evidence before the court, however, shows that the Claimant continued working until 31<sup>st</sup> May 2023, when his services were terminated on account of reduced workflow/suspension of works.

42.The Respondent does not deny that the Claimant continued working beyond the time provided in his employment contract, which, from the available evidence, was to end on 30<sup>th</sup> March, 2023. Where an employee continues working beyond a fixed-term contract, the relationship may convert to an indefinite term, or at the very least require lawful termination on the simple basis that a legitimate expectation would have been created.

43.In ***Registered Trustees of the Presbyterian Church of East Africa & Another v Ruth Gathoni Ngotho [2017] KECA 194 (KLR)***, the Court held that continued service beyond a fixed-term contract without formal renewal may create legitimate expectation or require compliance with termination procedures.

44.In my considered view, the fact that the Respondent continued assigning the Claimant work after 30<sup>th</sup> March, 2023, and even wrote a termination letter later in May, 2023, goes to say that the contract was no longer intended to be

fixed term and for which reason the termination procedures should have been adhered to.

45. On the Claimant's claim that he was terminated by reason of redundancy, the Respondent confirmed that the termination of the Claimant's contract was on account of suspension of works.

46. Termination due to lack of work is substantively a redundancy, and not an ordinary termination. In ***Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 Others [2014] KECA 403 (KLR)***, redundancy was defined as termination arising from the employer's operational requirements, including reduced workload.

47. In the premise, I reach the conclusion that the Claimant's termination was on account of redundancy, not by mere expiry of his contract.

**Whether the termination of the Claimant's employment by redundancy was fair**

48. Section 40 of the Employment Act sets mandatory conditions for termination of employment on grounds of redundancy. The law requires that notice of the intended redundancy be issued to both the employee and the Labour Officer, that consultations be held with the affected employee, that the employer adhere to a fair selection criterion, and that all dues owed to the employee be paid.

49. The Respondent did not at all lead evidence or even purport to have attempted this mandatory procedure prior to issuing the Claimant with the letter terminating his services.

50. Throughout the hearing, there was no mention of notices, consultations, or reference to a selection criterion, save for RW1's reference to meetings whose minutes and attendance registers were not produced in evidence.

51. In ***Thomas De La Rue (K) Ltd v David Opondo Omutelema [2013] KECA 492 (KLR)***, the Court emphasized that redundancy must strictly comply with Section 40, and failure renders termination unfair.

52. In the end, I find and hold that the Respondent failed to comply with mandatory redundancy procedures, rendering the termination procedurally unfair.

53. On the substantive fairness of the termination, the reason given was reduced workflow and suspension of works, which ideally is a valid ground for the declaration of redundancy. Sections 43 and 45 of the Employment Act, however, require that the employer must prove valid and fair reasons.

54. The Respondent did not lead any evidence to prove that indeed work was suspended or that work had been reduced at all, which would have justified the termination.

55. Substantive justification was therefore not proved, leading me to hold the termination unfair both procedurally and substantively.

### **Whether the Claimant is entitled to the claimed monetary reliefs**

#### **Salary Arrears**

56. The Claimant claims salary arrears for the period between February 2019 and June 2020 of KES 605,000.

57. RW1 admitted that salaries were not fully paid in the period of the claim, and did not lead evidence to show that the arrears were settled at a later date.

58. Financial difficulty is not a legal justification for non-payment of debts. In ***Bank of Africa Kenya Limited v Put Sarajevo General Engineering Co. Ltd & 2 Others***, the court affirmed that contractual obligations must be honoured despite financial hardship.

59. The claim is found to have merit and is allowed as prayed.

#### **January - February 2021 (KES 180,000)**

60. The Claimant confirmed that he did not work during this period on the basis that he was advised not to report to work. The Respondent denied that the person the Claimant purported to have told him not to report to work had authority to do so, and averred that the Claimant relied on unlawful instructions.

61. I therefore find the claim lacking a basis for the reason that no service was rendered. It is dismissed.

### **January - May 2023 (KES 270,000)**

62. RW1 expressly admitted non-payment of the amount herein. The same is merited and is allowed as prayed.

### **Severance Pay**

63. Since termination of employment was for reason of redundancy, the Claimant is entitled to payment of severance pay. Severance is, however, only payable for the duration of the second contract as the terms of the initial contract were superseded by the second, and this is a position the Claimant confirmed in his cross-examination.

64. The claim is therefore valid and is allowed.

### **Notice Pay**

65. The Claimant received only about 12 working days' notice, instead of the contractual 30 days, on account of the backdated notice. The claim is thus merited and is allowed.

### **Accrued Leave**

66. The Respondent produced no leave records, despite a statutory duty under Section 74. The Claimant, however, admitted on cross-examination that he utilized all his leave days. This claim thus fails on that account.

### **Compensation**

67. Having held the Claimant's termination unfair, entitles him to compensation pursuant to Section 49(1)(c) of the Employment Act, 2007.

68. Considering the Claimant's length of service with the Respondent, the reasons the Respondent argues led to his termination, and his chances of securing comparable alternative employment, I deem an award of 6 months' salary sufficient compensation for the unfair termination.

69. Finally, Section 51 entitles an employee to a Certificate of Service irrespective of the grounds for termination.

70. In whole, the Claimant's Claim succeeds and orders granted as herein below: -

a) A declaration that the Claimant's termination is unfair and unlawful.

b) That the Respondent shall pay the Claimant:

i. Salary arrears for February 2019 to June 2020-  
KES. 605,000/=

ii. Salary arrears for January 2023 and May 2023  
KES. 270,000/=

iii. Severance pay at the rate of 15 days for each of the Claimant's 2 complete years of service KES. 90,000/-

iv. Payment in lieu of notice - KES. 62,307.70

v. Six (6) months' salary as compensation for unfair termination at Kshs. 540,000/-

vi. Costs of the suit.

c) An order that the Respondent issue the Claimant a certificate of service within 14 days of this Judgment.

71. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF APRIL, 2026.**

**C. N. BAARI**  
**JUDGE**

**Appearance:**

Mr. Lepski h/b for Mr. Omondi for the Claimant

Mr. Makori present for the Respondent

Ms. Esther S- C/A