



**Shafi v Mombasa Ocean Agency (K) Limited (Cause E125 of 2023)  
[2025] KEELRC 175 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 175 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E125 OF 2023  
M MBARŪ, J  
JANUARY 30, 2025**

**BETWEEN**

**MASOUD HAIDAR SHAFI ..... CLAIMANT**

**AND**

**MOMBASA OCEAN AGENCY (K) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The respondent employed the claimant as a cook assistant on 5 January 2019. He was allocated duties within Mombasa and many other parts of the world. His salary was \$641, equivalent to Ksh.96, 470.50 per month. He worked until 31 October 2022, when the respondent unprocedurally terminated his employment.
2. The claim is that on 5 May 2022, the claimant sustained an injury while at work on board the ship FV Euskdi Alai. On 7 September 2022, the claimant was examined by a doctor at Victoria Port in Seychelles, who recommended surgery.
3. On 1 October 2022, the claimant left the ship and returned to Kenya for medical attention. On 31 October 2022, the claimant went to the respondent's premises in Mombasa, and the manager, Idd Musa, asked him to surrender all the respondent's property and his home because his services were no longer needed. No reasons were given for the termination of employment.
4. The claim is that during his employment, the claimant was not paid his house allowance or his statutory remittances to NSSF and NHIF. There was no overtime compensation for the extra hours at work. This resulted in unfair termination of employment because there was no notice before termination of employment, and the respondent failed to provide valid reasons or take the claimant through the due process.

The claimant is seeking the following;



- a. Notice pay Ksh.96,470.50;
  - b. House allowances for 45 months at 15% Ksh.651,175.88;
  - c. Unpaid leave for 3 years Ksh.202,587.84;
  - d. 12 months compensation Ksh.1,157,646;
  - e. Unpaid NHIF for 45 months Ksh.22,500;
  - f. Service pay for 2 years ksh.144,705.75;
  - g. Costs of the suit.
5. The claimant testified that he was a cook for the crew ship FV Euskadi Alai and travelled to many parts of the world on fishing expeditions. He cooked for the crew and also assisted in pulling fish from the ocean when the catch was too large.
  6. On 5 May 2022, while on duty, the claimant sustained an injury to his lower abdomen. On 7 September 2022, when the ship docked in Seychelles, he was examined by the doctor, who recommended surgery for the injury. On 1 October 2022, the Captain and first officer granted him written approval to leave the ship and go home for surgery.
  7. The claimant testified that upon reaching home, he travelled to Zanzibar in Tanzania, where he underwent a surgical procedure. On 31 October 2022, he reported to work in Mombasa and met the manager, Idd Juma, who informed him that his services were no longer required. No reasons were given. Terminal dues were not paid.
  8. Upon cross-examination, the claimant testified that his contract dated 10 November 2021 was for four (4) months. The extended contract was for four months from 5 May 2022, ending on 5 September 2022.
  9. The claimant testified that he was working on the vessel and required medical attention. He explained this to the Captain, who had taken him to the hospital in Seychelles. The injury occurred on 5 May 2022 while they were parking food in the vessel. A fellow crew member hit him in the abdomen and had to undergo surgery, which was done in Zanzibar, Tanzania. The doctor advised him to rest for 6 months without hard work. He went to the respondent after 6 months to resume his duties but was paid Ksh.80 000 and later told that another person had taken his position. During hospitalization, the respondent paid for the medical bills.
  10. On 1 October 2022, he left the vessel upon approval by the Captain. The respondent paid his salary for 4 months and then stopped. Under his contract dated 11 November 2021, there was no benefit of annual leave or house allowance.
  11. In response, the respondent admitted that the claimant was employed on 26 October 2020 and not 5 January 2019, as alleged. The claimant signed his contract on 24 October 2020, and he was to work as an assistant cook on the fishing vessel IZARO. In the contract, the salary was agreed at \$614 per month, which was above the ILO standards.
  12. The claimant was only employed on a needs basis. The employment contract was for 4 months from 24 October 2020 while on the IZARO Fishing vessel.
  13. The second contract was executed on 11 November 2021. The claimant was working as an assistant cook at the Euskadi Ali fishing vessel and paid \$648 for a duration of 4 months, which was paid in full.



- The employment relationship terminated on 15 September 2022, when he was paid all his terminal dues.
14. By 31 October 2022, the claimant was no longer an employee of the respondent.
  15. By 5 May 2022, the claimant was at Mombasa under his contract dated 5 May 2022. The employment was to commence on 6 May 2022 on board an Ethiopian Airlines Plane on 7 May 2022 from 9.30 am to arrive in Mahe, Seychelles, at 2.20 pm.
  16. The claimant was onboard Euskadi Alai as a cooking assistant from May 2022 to 10 September 2022, for 128 days; on 18 August 2022, he complained of groin pain on the high seas. On 7 September 2022, when they arrived in Port Victoria, the Captain allowed him to see a doctor, and surgery was recommended. The vessel owner fully paid the hospital bill incurred in Seychelles. The claimant returned to the vessel and performed his duties until 10 September 2022, when his 4-month contract ended.
  17. The claimant underwent an operation on 4 October 2022 in Pemba, Zanzibar. He recovered, and on 22 October 2022 and 28 October 2022, he performed light duties but declined to pursue another contract due to his health. The respondent paid all the medical costs, and he was paid an additional \$300 on 21 November 2022.
  18. In November 2023, the claimant was examined by a doctor, Rogath Lema, who revealed that the claimant had ischemic heart disease (IHD) and systemic haematological hemolytic disorder and that he could not perform his duties.
  19. The claims made are not justified. The claimant was provided with accommodation while on the vessel. There was no termination of employment as alleged. The contract dated 5 May 2022 ended because it was intended to run from 6 May to 10 September 2022, and the claimant was paid his dues of \$1,364.80 in full by Eusdadi Alai.
  20. In evidence, the respondent called Musa Namasaka Idd, the managing director and Dr. Rogarth Lema.
  21. Musa testified that he is in charge of the respondent, and his work ensures compliance with statutory licenses and permits for the employment of bridge officers in vessels. He is regulated under maritime regulations, and the wages paid are according to ILO standards.
  22. The respondent offered the claimant his first contract with the Izaro Fishing vessel as an assistant cook for 4 months and \$614 per month from 24 October 2020. He was offered another contract dated 11 November 2021 at the Euskadi Alai fishing vessel and paid \$641 per month for the 4 months of the contract. He was offered another contract dated 5 May 2022 in the same vessel and paid \$648 per month from May 2022 to 10 September 2022. He worked for a total of 128 days.
  23. Musa testified that on 18 August 2022, the claimant complained of pain in the goring area and informed the ship Captain. On 7 September 2022, the vessel arrived at Port Victoria in Seychelles, where he was seen by a doctor and surgery recommended. The medical expenses were paid in full. He returned to the vessel and continued with his duties. He later got operated on, on 4 October 2022 in Zanzibar and declined to take another contract, ending his employment with the respondent. The claimant was paid his dues at \$1,363.80 at the end of his employment with Euskadi Alai.
  24. Dr Rogarth testified that he examined the claimant after his surgery and established that he was suffering from a hernia and the illness could not have been caused during work. He suffered from IHD and systemic haematological hemolytic disorder, which was communicated to the respondent. The claimant can resume his duties as he has healed well, although the doctor who operated on him recommended only taking light duties.



25. At the end of the hearing, both parties agreed to file written submissions.
26. The claimant submitted that the respondent's witness admitted that he was one of their employees who was injured while at work. There was no evidence to prove that the claimant refused to renew his contract. The respondent has not issued the claimant any notice of non-renewal of the contract. Further, the respondent's witness, Dr. Lema, admitted that the claimant could resume employment after being operated on. The respondent did not notify the labour office about the claimant's alleged failure to report to work. In *Josephine M. Ndungu & others v Plan International Inc (2019) eKLR*, the court held that Under section 47(5) of the *Employment Act*, the burden of proving unfair termination lies with the employee. The said burden is discharged once he establishes a prima facie case that the termination did not fall within the fall corners of the legal threshold set out by section 45 of the Act. In *Muthaiga Country Club v Kudheiha Workers [2017] eKLR*, the court held that the employees discharged their burden of proof by asserting that their employment was unfairly terminated. This brought into play Section 43(1) and 47(5) of the Act, places the burden upon the employer to prove the alleged reasons for termination of employment and justify the grounds for the termination of the employment.
27. The respondent failed to prove that the claimant deserted his duties or that he made any effort to get in touch with the claimant thereafter. The respondent also failed to justify the grounds for the claimant's employment termination as held in *William Gituma Gateere v RAA Limited [2020] eKLR*. The employer cannot be an observer or sit on the fence when an employee commits any act of misconduct. The law permits and requires an employer to take action and bring the matter to a close.
28. There is also no evidence to indicate that the respondent provided the claimant with a fair hearing. Additionally, the claimant worked for the respondent without any leave days. Further, the respondent did not remit his NHIF and NSSF contributions as stipulated by the law.
27. In the case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] eKLR*, the court held that before an employer can exercise their right to terminate the contract of an employee, there must be valid reason or reasons that touch on grounds of misconduct, poor performance or physical incapacity. In the case of *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR*, the court held that for a termination to pass the fairness test, there must be shown that there was substantive justification for the termination and procedural fairness. The Court in *Everline Manuni v Mudete Tea Factory [2018] eKLR* held that a contract having been renewed continuously for over ten (10) years, the claimant acquired a legitimate expectation that the contract would continue being renewed and that if, for any reason, the contract was not to be renewed, she would be given adequate notice of the non-renewal.
28. The respondent submitted that it had maintained the claimant on a need basis. The respondent's witness, Musa Namasaka Idd, testified that the claimant was only offered three employment contracts, each lagging after for or 4 months. The employment contracts were dated 24 October 2020, 11 November 2,021 and 5 May 2022. The respondent further submitted that the employment contract had a start and end date.
29. Doctor Rogarth I. Lema testified that the claimant was suffering from a hernia that could not have been caused during his work. The claimant also suffered from Ischemic Heart Disease (IHD) and Systemic Hematological Hemolytic Disorder. This was communicated to the responding company's managing director, who kept looking for work for the claimant, but his health hindered him from taking any of the work at the fishing vessels.



30. The claimant's last employment contract binding the parties was to last for only four months, from 6 May 2022 to 10 September 2022, when he disembarked the fishing vessel. The claimant was paid all his terminal dues, and the ship captain fully catered for the medical consultation and treatment he underwent in Seychelles and Tanzania. An extra US\$ 300 was given to the claimant by the said Ship Captain. In *Kiage Peter Wa Mochama & another v Standard Chartered Bank Limited* [2016] eKLR, the court relied on the case of *Rift Valley Textiles Limited -v- Edward Onyango Oganda*, Civil Appeal No. 27 of 1992, and held that where a contract of service includes a period of termination of employment, the damages suffered are wages for the period of notice and where a notice period is provided in the contract of employment, then an employer need not assign any reason for giving the notice to terminate the contract
31. The claimant stated during cross-examination that the fishing vessel had sleeping quarters, which were sufficient for all those on board. He is, therefore, not entitled to the claim for house allowance. Further, the claimant's basic salary of US\$648.00 per month included everything. The respondent produced documents showing that the claimant was paid his terminal dues with a bonus of US\$ 300. In *Grain Pro Kenya Inc. Ltd v Andrew Waitthaka Kiragu* [2019], the court held that the letter of appointment and employment contract had a consolidated wage. In *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR, the court held that Section 47 (5) of the Act provides for the procedure to be followed in matters of complaints of unfair termination as follows:
- “
- “(5) For any complaint of unfair termination of employment or wrongful dismissal, the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer.” [Emphasis added]
- So that, the appellant in this case had the burden to prove, not only that his services were terminated, but also that the termination was unfair or wrongful.”
32. The claim for unpaid NHIF cannot be sustained as the claimant was on board an international fishing vessel. The claimant failed to demonstrate that his employment contract was terminated.

### **Determination**

33. The claimant's case is that the respondent employed him as an assistant cook from 5 January 2019 at \$641 per month, but his employment was terminated on 31 October 2022. He sustained an injury on 5 May 2022, leading to surgery. When he left the vessel on 1 October 2022 for treatment, the respondent terminated his employment on 31 October 2022 without notice, hearing, or payment of his terminal dues.
34. The respondent's case is that the claimant was on a four-month contract. His last contract ran from 6 May 2022 to 10 September 2022, and he was paid \$1,364.80 in terminal dues. The claimant became sick while at work. He was treated at Port Victoria in Seychelles, and the vessel owner paid the treatment costs.
35. The respondent filed work records as required under Section 10(6) and (7) of the *Employment Act*. Part of the records filed included the following;
- a. The claimant's employment contract dated 24 October 2020 to work on the IZARO vessel from 26 October 2020 for 4 months;



- b. Salary payment for days worked from 26 October 2020 to 20 February 2021;
- c. Claimant's contract dated 11 November 2021 for 4 months;
- d. Payment vouchers for work from 12 November 2021 to 6 March 2022 on Euskadi Alai;
- e. Claimant's employment contract dated 5 May 2022 on Euskadi Alai for 4 months;
- f. Salary payment vouchers for 6 May to 10 September 2022.

The employment of the claimant with the respondent and placement with various third parties was defined and definite. Each employment period was under a term contract with terms and conditions thereof.

- 36. Employment under a fixed-term contract is lawful and legitimate. Under the contract term, the employer has no legal duty to issue notice, give reasons, or call the employee to a disciplinary hearing. The execution of a term contract is to give a definite start and end date.
- 37. In the case of Transparency International - Kenya v Omondi [2023] KECA 174 (KLR), the court held that under a fixed-term contract, the employer has no obligation to give employee reasons for non-renewal of fixed-term contracts unless there is such an obligation created in the expiring contract. This position is reiterated in the case of Keen Kleeners Limited v Kenya Plantation and Agricultural Workers' Union [2021] KECA 352 (KLR) that once a fixed term contract is at an end, the employer has no obligation to justify termination on other grounds beyond the lapse of the fixed period.
- 38. In this case, the claimant's last contract with the respondent ended on 10 September 2022.
- 39. While the claimant was unwell aboard Euskadi Alai, the Captain allowed him to attend the hospital, and the bills were paid. Terminal dues were paid in full, and there is evidence to confirm such payments.
- 40. The allegations that employment was terminated on 31 October 2022 are post-term contracts. The claimant took time to attend medical treatment outside the jurisdiction in Zanzibar, and upon return, he cannot justify a claim that his employment was unfairly terminated. There is evidence of payment for work done.
- 41. Notice pay and compensation are not due for the claims made. The employment contract ended on the agreed terms and conditions. There is no case of unfair termination of employment.
- 42. On the claim for house allowance, section 31 requires that the employee be housed by the employer or provided with a house allowance. The claimant was on board the vessels where he was working. He cannot justify a claim outside the allowed accommodation.
- 43. In any event, the claimant was earning a salary of \$641, approximately Ksh.96,470 per month, above the minimum wage protected under the Wage orders. A claim for payment of house allowance is to seek unjust enrichment.
- 44. The claimant had staggered contracts with the respondent on the claim for NSSF and NHIF payments of Ksh.22, 500 for the 45 months of service. These were not continuous, and each had terms and conditions attached to them. Statutory payments are not due to the employee but to the statutory body.
- 45. Alternative claims for service pay are allowed when the employer fails to remit statutory dues. However, the payment of service pay under Section 35 of the [Employment Act](#) is not prorated. It applies to a full year of service. The claimant was under term contracts running for 4 months. These were not continuous or running for 2 years as alleged.



46. The claims are without proper foundation. The claimant should meet costs due to the respondent.

**ACCORDINGLY, THE CLAIM IS HEREBY DISMISSED. COSTS TO THE RESPONDENT.**

**DELIVERED IN OPEN COURT AT MOMBASA ON THIS 30 DAY OF JANUARY 2025.**

**M. MBARŪ**

**JUDGE**

