



**Abdi v Wajir County Assemble Service Board (Cause E096 of 2023)
[2025] KEELRC 294 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 294 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E096 OF 2023
DKN MARETE, J
JANUARY 29, 2025**

BETWEEN

ISMAEL HUSSEIN ABDI CLAIMANT

AND

WAJIR COUNTY ASSEMBLE SERVICE BOARD RESPONDENT

JUDGMENT

1. This matter was originated by way of a Claim dated 9th February, 2023. It does not disclose any issue in dispute on its face.
2. The Respondent in a Response to claim dated 20th November 2023 denies the claim and prays that the suit be dismissed with cost.
3. This matter is consolidated with ELRC Cause numbers E097 and E098 of 2023. This was done *stuo moto* due to the similarities in the matter and the parties conduct on the same during the court's proceedings.
4. The Claimant's case is that he was employed by the Respondent pursuant to a letter of appointment dated 27th June, 2018 on a contract terms of four years with effect from 2nd July, 2018.
5. The Claimant's other case is that he was retained in service and continued to earn a regular salary on month to month basis and also enjoyed annual increments. As at February, 2022 he earned Ksh.66,370.00 a month.
6. The Claimant's further case is that on 10th June, 2022 he was issued with a letter confirming his appointment on permanent and pensionable basis. This was effective immediately.
7. The Claimant's other case is that at the end of August, 2022, without notice or lawful cause the Respondent withheld his salary without lawful cause.



8. The Claimant avers that following his confirmation to permanent employment, he was afforded all privileges of a permanent and pensionable employee including salary increments as and when they fell due. It was his legitimate expectation that he would be at all times be treated fairly and subjected to due process.
9. The Claimant further avers that at the end of August, 2022 the Respondent without notice or lawful basis and also without adhering to due process withheld the Claimant salary for the month. On approaching the clerk to the Respondent, the clerk verbally informed him that his contract had lapsed and that his services were a longer required which actions were unfair, unprocedural and unlawful as follows;
 - a. The Claimant's dismissal was misconceived given that the Claimant was not employed on contract but was on permanent and pensionable terms.
 - b. The Claimant was dismissed without being subjected to due process.
 - c. The Claimant's salary was withheld illegally and without any basis at all.
 - d. The Claimant was not issued with any notification as to the adverse action that was taken by the Respondent.
 - e. The Claimant was not afforded any opportunity to make representations prior to the adverse action being taken.
10. He therefore prays for damages against the Respondent.
11. He prays as follows;
 - a. A declaration that the Claimant's dismissal was unfair, unprocedural and illegal.
 - b. Kshs.66,370 (Sixty-six thousand three hundred seventy shillings).
 - c. An order reinstating the Claimant to his position.
 - d. General damages.
 - e. Costs of the claim
 - f. Any other relief that this Honourable court may deem just.
12. The Respondents case is a denial of the claim, no more. This is in the form of what the law dubbbs a sham defence. This is a defence that is loud at denying the case but not offering their bargain, explanation of events or side of their story.
13. The issues for determination therefore are;
 1. Whether this court have jurisdiction to hear and determine this matter.
 2. Whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful.
 3. Whether the Claimant is entitled to the relief sought
 4. Who bears the costs of this cause.
14. The 1st issue for determination is whether this court have jurisdiction to hear and determine this matter. This is the grandiose of submission of the Respondent.



15. The Respondent on the other hand submits case of lack of jurisdiction of this court in handling the issues in dispute. On this she relies on the authority of *The Owners of Motor Vessel "Lilian S" v Caltex Oil Kenya Ltd [1989] KLR1*:

“Jurisdiction is everything. Without it, a court has no power to make one step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings ending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

16. This is further emphasized in the authority of *Samuel Kamau Macharia & another vs. Kenya Commercial Bank Limited & 2 others [2012] eKLR* where the court observed thus;

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

17. It is the Respondent’s case that this matter ought to have been filed before the magistrate’s court by virtue of section 9(b) of the Magistrate’s Court Act, 2015 and section 29(3) of the *Employment and Labour Relations Court Act* Cap 234B.

18. This submission is not sustainable. The constitutional and legal mandate of this court to deal with matters employment and labour has not been diluted by the legislative delegation to the magistrate’s court. The argument and submission collapses from the onset.

19. The 2nd issue for determination is whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful. The Claimant in his brief written submission dated 4th March, 2024 reiterates his case and submits a case of unlawful termination of employment.

20. The Claimant in further support of his case submits thus;

5. As earlier pointed out, the Claimant’s letter of appointment puts the Claimant on a six months probation from 2nd of October 2017. It is therefore not contested that he was first engaged on probationary terms. The probation term was supposed to end sometimes around 2nd of April, 2018.

6. We submit, ...that the Claimant’s appointment was confirmed as soon as the six months probation period ended.

21. The Claimant further submits that in his claim he pleaded that he knew of his termination when he went to enquire about his August 2022 salary, which had been withheld. That is when he was informed that his contract had lapsed. This has not been rebutted by the Respondent.

22. The Claimant further seeks to rely on the authority of *Lekomet -vs- County Government of Samburu, ELRC cause E027 of 2021* where the court in a similar scenario and circumstance observed as follows;

“The Respondent did not adduce any evidence to support its defence. It is obvious that where the Respondent fails to adduce evidence in support of his defence, the defence filed remain mere allegations and the evidence by the Claimant is unrebutted...”

23. Again, the Claimant submitted and sought to rely section 112 of the *Evidence Act* which lays the burden of disproving the Claimant’s assertion of withheld salary on the Respondent. This is so because



the Respondent is under duty to keep records of employment safely. Therefore, as soon as the Claimant pleaded to be unpaid for August 2022, the Respondent should have provided the evidence of payment of the salary. This duty was not discharged.

24. The Claimant's case overwhelms that of the Respondent. In the absence of a tangible defence and in view of the Claimant's case and submissions, this matter tilts in favour of the Claimant. I therefore find a case of unlawful termination of employment and hold as such. This answers the 2nd and primal issue for determination.
25. I am therefore inclined to allow the claim and order relief as follows.
- i. A declaration be and hereby issued that the dismissal of the Claimant's employment by the Respondent was wrongful, unfair and unlawful.
 - ii. The Claimant be and is hereby reinstated back into employment forthwith with loss of benefits and other emoluments.
 - iii. The Claimant is ordered to report on duty on 30th January, 2025 at 800 hours.
 - iv. Twelve (12) months compensation for unlawful termination of employment Ksh.66,370 x 12Kshs.796,440.00
 - v. The costs of the claim shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 29TH DAY OF JANUARY 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Mwangi holding brief Mr. Ingutya instructed by Arthur Ingutya & Co. Advocates for the Claimant.

Mr. Anunda instructed by Hassan Osman & Associate Advocates for the Respondent.

