



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Njeru v Kevian Kenya Limited (Cause 174 of 2021)  
[2025] KEELRC 310 (KLR) (29 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 310 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 174 OF 2021  
DKN MARETE, J  
JANUARY 29, 2025**

**BETWEEN**

**STEPHEN MURIITHI NJERU ..... CLAIMANT**

**AND**

**KEVIAN KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Memorandum of Claim dated 22nd January, 2021. The issue in dispute is therein cited as;-Unfair termination and non-payment of termnal dues
2. The Respondent in an amended Respondent's statement of Defence emended on 23rd March, 2023 denies the claim and prays that it be demised with costs.
3. The claimant's case is that he was employed by the Respondent as a Group Human Resource Manager in Group 9 on 20th May 2019 at a consolidated salary of Kshs.300,000.00 payable monthly.
4. The Claimant's further case is that he served a 9 months' probation period diligently and was issued with a contract on 16th March, 2020, having had his probation extended twice.
5. The Claimant's other case is that the Respondent unlawfully, unilaterally and discriminatorily deducted his salary for the months of May to September, 2020 in blatant violation of his rights and the *employment Act*, 2007.
6. The Claimant further avers that he worked for the Respondent for about 15 months without any disciplinary record, with loyalty, dutifully and honestly but was terminated without being given reasons for his termination or being accorded a right to fair hearing in clear violation of *the Constitution* of Kenya and *Employment Act*, 2007.
7. The Claimant maintains that his dismissal by the Respondent was discriminatory, unfair, unlawful and wrongful. Further, the claimant's constitutional right to fair labour practices was violated and



contravened as a result of which he has suffered loss and damage entitling him to an award of damages entitling.

8. The Claimant posits that his dismissal was in bad faith and done with the sole purpose of humiliating him and therefore a quest for aggravated, compensatory and punitive damages.

9. He claims the following as deducted salaries during his stint of employment;

- a. March 2020.....Ksh.31,333
- b. May 2020 .....Ksh.75,000
- c. June 2020 .....Ksh.75,000
- d. July 2020 .....Ksh.75,000
- e. August 2020.....Ksh.75,000
- f. September 2020.....Ksh.75,000
- Total .....Ksh.406,333

10. He claims as follows;

- a. Damages equivalent to 12 months' salary .....Ksh3,600,000.00
- b. One Month's pay in lieu of notice .....Ksh.300,000.00
- c. Unlawfully deducted salary for 5 months.....Ksh.375,000.00
- d. Severance pay @ 15 days months.....Ksh.150,000.00
- e. Certificate of service.....Ksh.100,000.00
- Total .....Ksh.4,515,000.00

11. He prays as follows;

- a. A declaration that Claimant's dismissal from the Respondent's employment was unprocedural, unfair and unlawful and unconstitutional.
- b. Certificate of Service.
- c. A fine of Ksh.100,000.00 against the respondent for failure to comply with mandatory provision of section 51 of the *employment Act*, 2007.
- d. Deducted salary for Five (5) months (Kshs.375,000.00)
- e. Severance pay
- f. One (1) month salary in lieu of notice of termination.
- g. Punitive and aggravated damages.
- h. Compensation equivalent to twelve months wages.
- i. Costs of this suit.
- j. Interests on (d) and (h)
- k. Any other relief that the court may deem appropriate to grant.



12. The Respondent's case is that the Claimant was not a diligent worker.
13. Again, the Claimant's employment was not confirmed but on the contrary, he was given a new performance-based contract dated 16th March, 2020.
14. The Respondent's further denies the claim and avers as follows; There were no unlawful deductions of the Claimant's salary. The Claimant was given reasons for his termination of employment. The termination of employment was not discriminatory, unfair or wrongful. The termination was not discriminatory and she held meetings with employees to address matters affecting business during the Covid 19 pandemic. On 6th April, 2020, there was a staff agreement on a salary deduction due to the effect of the pandemic. The Claimant was issued with a two weeks' notice of termination as per his performance agreements dated 16th March, 2020. The salary deductions were lawful and known to Claimant
15. The issues for determination therefore are;
  1. Whether the termination of the employment of the grievant by the Respondent was wrongful, unfair and unlawful.
  2. Whether the Claimant is entitled to the relief sought
  3. Who bears the costs of this cause.
16. The 1st 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 written submission dated 26th March, 2024 reiterates a case of unlawful termination of employment as pleaded.
17. It is his case that his termination of employment was unfair and in contravention in that it contravened Article 50 and section 41(1) of *Employment Act*, 2007 in that his employment issue was not thrashed out in a fair manner at a public hearing before a court or other independent or impartial tribunal or body.
18. The Claimant further rubbishes his termination of employment in that no explanation or reasons for dismissal was offered to him in the presence of another employee or a shop floor union representative of his choice during this explanation.
19. The Claimant further wishes to rely on the authority of *Joseph Kinuthia Miguongo v Kenya Kazi Services limited* [2021] eKLR where the court held that in a case of dismissal, there must be a hearing and valid reasons must also be offered by the employer.
20. The Respondent's in her written submission dated 7th May, 2024 also reiterates her case of lawful termination of employment.
21. It is her case that due to the difficulty in getting the Claimant to perform and meet his performance targets, he was treated to an extension of probation for a further three months.
22. The Respondent submits that the Claimant's terms of service were converted into performance-based contract while a letter dated 16th March, 2020 and when this was not forthcoming, his services were terminated in accordance with the terms of contract.
23. The Claimant submits that the parties were bound by the terms of the performance-based contract and therefore the Claimant cannot be heard to raise the finger against the same.
24. It is evident from the Respondent evidence as enlisted in her bundle of documents that the Claimant's termination from employment was thorough and in accordance with the parties agreed terms of



contract. We cannot now sit to re-write or re-negotiate the parties contract. They are bound by the same. I therefore find a case of lawful termination of employment and hold as such. And this answers the 1st issue for determination.

25. The 2nd issue for determination is whether the Claimant is entitled to the relief sought. He is not. Have lost on a case of unlawful termination of employment he became disentitled to the relief sought.
26. I am therefore inclined to dismiss the claim with orders that each party bears their costs of the same.

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

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Ondimu Atera instructed by Morara Apiemi & Nyangito Advocates for the Claimant.

Miss Mwendwa holding brief for Kithinji Marete & Company Advocates for the Respondent.

