



REPUBLIC OF KENYA



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

**Maina v Takaful Insurance of Africa Limited (Employment and Labour Relations Cause E872 of 2021) [2025] KEELRC 76 (KLR) (23 January 2025) (Judgment)**

Neutral citation: [2025] KEELRC 76 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E872 OF 2021**

**MN NDUMA, J  
JANUARY 23, 2025**

**BETWEEN**

**DAVID KARIUKI MAINA ..... CLAIMANT**

**AND**

**TAKAFUL INSURANCE OF AFRICA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 26/10/2021 against the Respondent seeking the following reliefs: -
  - a. A declaration that upon completing 3 months' probation period on 14<sup>th</sup> January 2021, and no extension of the period having been issued to the Claimant at the time, the Claimant was a permanent employee with effect from 14<sup>th</sup> January 2021.
  - b. A declaration that the Claimant suffered unfair, wrongful and unlawful dismissal from employment.
  - c. The Respondent be ordered to pay the Claimant the following sums:
    - i. One month salary in lieu of notice Kshs. 180,000.00
    - ii. Compensation for unlawful termination (180,000 x 12 months) Kshs. 2,160,000.00
    - iii. Costs of the suit
    - iv. Interest on (i) and (ii) above from the date of filing the suit until payment in full at court rates.
  - d. An order that the Respondent do issue the Claimant with a certificate of service and references befitting his status.
2. The Respondent filed statement of response dated 14/7/2022 in which it denied all the particulars of claim and reliefs sought save for admitting that the Claimant was its employee as a Systems



Administrator. The Respondent admitted that it issued the Claimant with an employment contract dated 7<sup>th</sup> October 2020 and the effective date of reporting was 14/10/2020.

3. It is not in dispute that the contract of employment had a probation clause no. 4 which read as follows: -

“You will be on probation for a period of three (3) months, or such extended period as may be deemed necessary by the management of the company. Please note that your confirmation of employment will depend on satisfactory progress during the probationary period.”
4. The Claimant (CW1) testified under oath and adopted a witness statement dated 19/10/2021 as his evidence in chief.
5. CW1 testified that her monthly salary was Kshs. 180,000.00, a matter not placed in dispute. That in terms of the contract each party could terminate the employment by giving one month notice or payment in lieu of one month notice.
6. CW1 stated that he commenced work as scheduled on 14/10/2020 and was placed on a 3 months’ probation which period would lapse on 14/01/2021.
7. That he worked diligently and continuously for the three months’ probation period. That during this period the Respondent was satisfied with his performance and he had no adverse record such as a warning letter.
8. That the three months’ probation period came to an end and the period was not extended in writing or at all.
9. That the Claimant did not receive a letter of confirmation upon expiry of the three months’ probation period. However, the Claimant continued working in terms of the contract of employment and received salary as scheduled.
10. That on or about the 16/4/2021, three months after expiry of the probation period, the Claimant received a letter backdated to 19/3/2021 allegedly extending the probation period which had long lapsed.
11. CW1 testified that the action by the Respondent was a nullity since the Claimant had already been constructively confirmed to the position he held the probation having not been extended before the three months period expired.
12. The said letter purported to extend the probation period for a further three (3) months from 9/3/2019 to end on 19/6/2021.
13. The said letter purported to have extended the period to give the Claimant an opportunity to improve in areas detailed in the pre-confirmation evaluation report.
14. The Claimant stated that he was not given the purported pre-confirmation evaluation report. The Claimant stated that his supervisor ICT Manager frustrated his work and was keen to see his employment terminated since he was not happy with the Claimant’s recruitment from day one. That the ICT manager treated the Claimant as a competitor instead of his subordinate staff hence the purported extension of probation period.
15. The Claimant stated that he was not evaluated during the probation period and was not involved in the preparation of the said pre-confirmation evaluation document.



16. That on 23/6/2021, the Claimant received notice of termination dated 22/10/2021. The said letter stated falsely, according to the Claimant that the Respondent had conducted the performance evaluation during the probation period and the performance of the Claimant was unsatisfactory.
17. The Claimant was given 7 days' notice of termination from 23<sup>rd</sup> June 2021 to lapse on 30<sup>th</sup> June 2021.
18. The Claimant reiterated that no evaluation of his performance was conducted as stated or at all.
19. That the termination was a breach of the contract of employment, was for no valid reason, did not follow a fair procedure and same was unlawful and unfair.
20. The Claimant prays for the reliefs sought.
21. The Claimant was cross-examined by Mr. Burugu Advocate for the Respondent at length during which the Claimant reiterated that he was not evaluated during the 3 months' probation period and was not issued with a letter of extension of probation or confirmation on permanent terms upon expiry of the initial three months period.
22. The Claimant stated that his supervisor, Mr. Abdul Sheikh did not have any sitting with him for evaluation.
23. The Claimant stated that the emails from the supervisor to him and other staff was not a warning letter. The Claimant admitted that the supervisor complained that the Claimant had laxity in his work and that he had at one time reported to work late. The Claimant however, emphasized that no disciplinary action was taken against him nor was a formal appraisal of his work conducted. The Claimant stated that he had complained verbally to the Human Resource Manager about the frustration he got from his immediate supervisor. The Claimant stated that he did not see any communication from his line manager recommending his confirmation. That he only saw the letter before court. The Claimant stated that the line manager had listed performance items to be discussed between the Claimant and the line manager in an appraisal exercise but that exercise did not take place at all.
24. The Respondent called Sylvia Kimuge in its defence. RW1, adopted a witness statement dated 21/3/2023 as her evidence in chief and produced a bundle of exhibits marked '1' to '9'. He was the Human Resource Manager of the Respondent.
25. RW1 stated that a number of performance evaluation were carried out on the Claimant and the Claimant's performance was consistently found to be unsatisfactory. That due to the unsatisfactory performance the Respondent did not confirm the Claimant's employment beyond the probation period and the Claimant was informed of this development in writing. That the employment was terminated and terminal dues paid. That the Claimant was given 7 days termination notice and so the claim for payments in lieu of notice was misplaced. That the termination followed a fair process since the Respondent afforded the Claimant sufficient opportunity to improve his performance with numerous exchanges of correspondence and several performance reviews being conducted. That the termination was not associated with any friction between the Claimant and the ICT manager, the line supervisor.
26. RW1 produced the Human Resource policy manual and clause 5.0 titled induction and probation provides just like the contract between the Claimant and Respondent that: -

“A probation period of not less than 3 months is applicable to all new regular staff from the date of reporting for duty. Confirmation of employees shall be based on performance



and disciplinary record. Probation may be extended but not for a period of more than 6 months.”

27. RW1 also produced the recommendation progress confirmation report dated 19/3/2021 which had input from the head of department dated 1/2/2021 wherein the head of department states: -

“Despite the average rating of the staff, we have managed to iron out the issues he had due to poor communication and laxity at work. The staff is fit for confirmation.”
28. The Human Resource Manager however recommended extension of probation and closer review period.
29. The Chief Executive Officer then recommended extension of probation period for 3 months to give opportunity to improve on the highlighted areas. The CEO signed on 19/3/2024.
30. The document has no input from the Claimant at all on the face of it. The supervisor report produced by RW1 is dated 14/4/2021.
31. Under cross-examination, RW1 confirmed that the initial three months’ probation period was due to lapse on 14/1/2021. RW1 confirmed also that performance appraisal had to be signed by both the employee and supervisor. RW1 however did not produce any appraisal report signed by both the Claimant and supervisor. RW1 also admitted that the Claimant did not attend the scheduled training during probation period. RW1 also confirmed that the letter dated 19/3/2021 extending probation was issued long after expiry of the 3 months’ probation period. RW1 confirmed that the letter of extension of probation was received by the Claimant on 16/4/2021 despite that the initial 3 months’ probation ended on 14/1/2021. RW1 confirmed also that the Claimant was not subjected to any disciplinary hearing before termination of employment. RW1 also confirmed that the claimant was not given 30 days termination notice stating that termination was during extended probation period and so he was required to serve 7 days probation notice. RW1 said that the suit had no merit and it be dismissed.

### **Determination**

32. The court has carefully considered the evidence adduced by CW1 and RW1 together with the submissions by both parties and has delineated the following issues for determination:
  - a. Whether the termination of the employment of the Claimant was lawful?
  - b. Whether the Claimant is entitled to the reliefs sought.
33. From the totality of evidence before court, it is clear that the Claimant was employed on 14/10/2020 on a three months’ probation period which period could be extended if deemed necessary by management. It is clear that the three months’ probation period ended on 14/1/2021 and by that date the Respondent had not extended the probation period in respect of the Claimant in writing or otherwise. It is also very clear that the Claimant continued to work in the appointed position until he received a letter dated 19/3/2021 on 16/4/2021 which letter purported to extend the probation period for a further period of three months.
34. A proper construction of clause 4 of the contract of employment read together with the Human Resource Policy Manual of the respondent leads to the inevitable conclusion that the Respondent was bound to notify the claimant of any intended extension of probation period during and or on the expiry date of the initial three months’ probation period.



35. The Respondent having failed to extend the said probation period as above and allowed the Claimant to continue working in the appointed position for a further period of more than three months gave the Claimant legitimate expectation that he had already been confirmed to his position as appointed on 14/10/2020 and the Respondent was thus estopped by its own conduct from purporting to issue a letter of extension of the already expired three months' probation period more than three months down the line.
36. The court finds that as at the date the employment of the Claimant was terminated on 22<sup>nd</sup> June 2021, sections 36, 41, 43 and 45 of the Employment Act, 2007 applied to his contract of employment.
37. The Respondent could therefore only terminate the employment of the Claimant upon giving him at least one month notice in terms of section 36, upon issuing the Claimant with a notice to show cause why his employment could not be terminated for misconduct or poor work performance and providing the Claimant with opportunity to be heard on the alleged misconduct or poor work performance, in terms of section 41 of the Act.
38. Furthermore, the Respondent was under obligation to prove that it had a valid reason to terminate the employment of the Claimant upon failure by the Claimant to sufficiently exonerate himself in terms of section 43(1) and (2) as read with section 47(5) of the Employment Act 2007.
39. The court finds that the Respondent did not provide any sufficient evidence to discharge the onus placed on it under section 43, 47(5) and 45 of the Act.
40. Accordingly, the Claimant has satisfied the court that his employment was terminated upon completion of his probation period for no valid reason and without following a fair procedure.
41. The termination of the Claimant's employment was thus unlawful and unfair and the Claimant is entitled to payment in lieu of one month notice and to compensation in terms of section 49(1) (c) and (4) of the Act.
42. In this respect, the Claimant lost unlawfully legitimate expectation to continue serving in his position and earning a decent monthly salary of Kshs. 180,000.00 paid to him by the Respondent. The Claimant also lost prospects of career progression and added benefits. The court finds that the Claimant did not contribute to his unlawful termination, the Respondent having failed to demonstrate it had lawfully evaluated the performance of the Claimant during the 3 months' probation period and so did not prove any poor work performance on the part of the Claimant. The Claimant suffered loss and damage and was not compensated for the loss. The Claimant was not paid terminal benefits due to him. The Claimant had relocated to USA to look for greener pastures upon termination of his employment.
43. Following the decision of this court in Mary Philomena Onaya – Odeck versus Technical University of Kenya [2017] eKLR, and the case of Daniel Mutuku Njuguna versus Kenya Institute of Mass Communication [2021] eKLR, which cases depict similar circumstances as the present case and all factors above, the court awards the Claimant the equivalent of five (5) months' salary in compensation for the unlawful and unfair termination of employment.
44. In the final analysis, judgment is entered in favour of the Claimant as against the Respondent as follows:
  - a. Kshs. 180,000.00 in lieu of one-month notice.
  - b. Kshs (180,000.00 x 5), Kshs, 900,000.00Total amount Kshs. 1,080,000.00



- c. Interest at court rates from date of judgment till payment in full.
- d. Costs of the suit.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF JANUARY 2025**

**MATHEWS NDUMA**

**JUDGE**

**Appearance:**

Thiongo for the Claimant

Burugu for Respondent

Mr. Kemboi – Court Assistant

