



Ochieng v County Government of Homa Bay & 2 others (Cause E082 of 2024) [2025] KEELRC 532 (KLR) (26 February 2025) (Judgment)

Neutral citation: [2025] KEELRC 532 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E082 OF 2024
NZIOKI WA MAKAU, J
FEBRUARY 26, 2025

BETWEEN

KENNETH OMONDI OCHIENG CLAIMANT

AND

COUNTY GOVERNMENT OF HOMA BAY 1ST RESPONDENT

COUNTY PUBLIC SERVICE BOARD HOMA BAY 2ND RESPONDENT

OFFICE OF THE GOVERNOR HOMA BAY COUNTY 3RD RESPONDENT

JUDGMENT

1. In his suit, the Claimant herein avers that on 30th December 2021, he was appointed as the Chief County Officer for Roads, Transport, and Infrastructure in Homa Bay County. He avers that his appointment, made by the Homa Bay County Public Service Board (the 2nd Respondent), was on a 36-month contract with a monthly salary of Kshs. 267,800/-. The Claimant avers that he served in this position with diligence until 8th November 2022 when he was issued with a show-cause letter alleging tender irregularities and unethical conduct. The letter required him to respond within seven (7) days, failing which disciplinary action would be taken against him. The Claimant averred that he tendered his response on 13th November 2022, providing a comprehensive explanation addressing the allegations. He avers that however, on 23rd November 2022 he was placed on compulsory leave, followed by an interdiction on 23rd December 2022, during which period he was placed on half salary.
2. The Claimant averred that despite being placed on half salary the Respondents denied him salary entirely. Furthermore, he alleged that the Respondents replaced him without explanation, a move he affirmed violated Articles 47, 50(1), and 236 of the *Constitution*, as well as the terms of his contract. Consequently, he filed this suit seeking the following remedies:
 1. A declaration that his termination of employment was irregular, unlawful, unfair, wrongful, capricious, unreasonable and untenable in law and contrary to the provisions of the law by



failing to give valid and compelling reasons for exercise of their power and for the benefit of the people of the County of Homa Bay in particular and the people of Kenya in general.

2. A declaration that the act of the Respondents in relieving him of his duties was in breach of his constitutional rights under Articles 27(1) (2) and (3), 28, 41, 47 and 50, 200 and 236 of the Constitution of Kenya and that the same is null and void for all intent and purposes and in breach of the contract in force between himself and the Respondents.
 3. A sum of Kshs. 3,213,600/- being damages of 12 months' gross salary for unfair termination.
 4. A sum of Kshs. 267,800/- being payment for 1 months' salary in lieu of notice.
3. Despite filing a memorandum of appearance dated 6th December 2024, the Respondents did not file a response to the claim, and the case proceeded undefended.
 4. The Claimant testified on 9th December 2024 and subsequently filed written submissions in support of his case.

Claimant's Submissions

5. The Claimant submits that his termination was unlawful and in violation of the rules of natural justice. He submits that he was not afforded a hearing and was replaced without any reference to him following his interdiction, and that he was not even issued a termination letter. He submits further that the Respondents failed to adhere to the mandatory provisions of sections 41, 43, and 45 of the Employment Act. In support of this position, he relies on the statutory imperatives outlined in sections 41 and 45(1) and (2) of the Employment Act and cites several authorities that reinforce this. Among the cases cited is the decision of the Court of Appeal in Jared Aimba v Fina Bank Limited [2016] eKLR, where it was held:

“However, under section 45 and 41 of the Employment Act, termination for a valid reason or on grounds of misconduct is supposed to be accompanied by a fair process involving notification of the employee of the grounds and affording the employee an opportunity to be heard prior to termination.”

6. Regarding the claim and reliefs he is entitled to, the Claimant submits that he has sufficiently demonstrated that his termination was both unfair and unlawful. He cites the case of Elizabeth Kioko v Beyene Haire Warde & another [2018] eKLR where the court held that:

“Having won on a case of unlawful termination of employment, she becomes entitled to the relief sought.”

7. In conclusion, the Claimant submits that the Respondents have failed to justify the grounds for his termination, contrary to section 47(5) of the Employment Act. Accordingly, he urges the Court to rule in his favour.
8. The Court has considered the evidence adduced in support of the case as well as the submissions filled in coming to this determination. The Claimant was not accorded due process as he was merely suspended after being placed on interdiction and half pay. He was never called for a hearing nor was he given reasons for the constructive dismissal meted out to him as no dismissal letter was served upon him. The Claimant had been engaged by the Respondent as the Chief County Officer for Roads, Transport, and Infrastructure in Homa Bay County. This appointment was made by the Homa Bay County Public Service Board (the 2nd Respondent). It was a 36-month contract with a monthly salary of Kshs. 267,800/-. When the Respondent issued the Claimant with a show cause



letter on 8th November 2022 alleging tender irregularities and unethical conduct, the Claimant was required to respond within seven (7) days, failing which disciplinary action would be taken against him. The Claimant tendered his response on 13th November 2022 providing a comprehensive explanation addressing the allegations following which he was placed on compulsory leave on 23rd November 2022, followed by an interdiction on 23rd December 2022, during which period he was placed on half salary. Despite the placement of half pay, it seems the Respondents declined to pay the Claimant hence his approach to Court in October 2024.

9. Having found the termination was unfair and unlawful, what remedies would the Claimant be entitled to? He was entitled to half salary for the period of suspension and despite there being an obligation to pay, the Respondents failed to pay. He claims only one month's salary in lieu of notice and seems to have abandoned the claims in respect to non-payment of half salary. He seeks compensation as well and the Court being mindful of the provisions of section 49(1) of the *Employment Act* will have to give compensation bearing in mind the manner of termination and the non-payment of half salary for an indefinitely long period before the Claimant finally understood he was no longer the employee of the 1st Respondent.
10. The Claimant had served the Respondents for a year and a month before the termination ensued. He had a 3 year contract which meant he lost approximately 2 years of service and earning. In the case of *Liz Ayany v Leisure Lodges Limited* [2018] eKLR, the Court (Ongaya J.) held that the termination of employment on account of poor performance or misconduct is governed by section 41 of the *Employment Act*. The learned Judge held that:

...where the Act has made a clear minimum and mandatory provision governing the employment relationship such as section 41 of the Act and a situation so governed accrues, the parties are bound by the statutory provision. In such circumstances, the employer has no option and cannot unilaterally invoke a contractual provision to deny the employee the protection as afforded under the mandatory statutory provision. [Emphasis supplied]
11. Granted the Respondent decided to disregard the provisions of section 41 of the *Employment Act* which mandated it to conduct a hearing in terms of the law, I find and hold that an award of 12 month's compensation would suffice for the improper and unlawful termination. This sum will serve as the Claimant's compensation for the egregious dismissal. He will also get his one month's salary in lieu of notice. The Claimant will also have the costs of the suit.
12. In the final analysis I enter judgment for the Claimant against the Respondents jointly and severally:-
 - a. Kshs. 267,800/- being one month in lieu of notice.
 - b. Kshs. 3,213,600/- being 12 month's salary as compensation.
 - c. Costs of the suit
 - d. Interest at court rates on the sum in (a) and (b) above from the date of judgment till payment in full.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 26TH DAY OF FEBRUARY 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

