



**Mutinda v Canopy Life International (Cause E008 of 2024)  
[2025] KEELRC 367 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 367 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS  
CAUSE E008 OF 2024  
B ONGAYA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**DANIEL MUTINDA ..... CLAIMANT**

**AND**

**CANOPY LIFE INTERNATIONAL ..... RESPONDENT**

**JUDGMENT**

1. The claimant filed the memorandum of claim dated 02.04.2024 through KKOAA Advocates LLP. He prayed for orders against the respondent as follows:
  - a. A declaration that the termination of the claimant's employment was unlawful, unfair and invalid and in breach of the claimant's employment contract.
  - b. An order of payment by the respondent to the claimant for unlawful and unfair termination of the claimant's contract of employment of 12 months' salary being Kshs. 1,058,400/-. The amount was calculated as Kshs. 88,200 multiplied by 12, as special damages for breach of contract and unfair termination of the claimant's employment as per section 49(c) of the *Employment Act*.
  - c. An order for payment by the respondent to the claimant for the remaining period of the three-year contract of employment amounting to 27 months' salary and 15 days being Kshs. 2,424,077/- as compensatory damages for unlawful and unfair termination, bad faith dismissal and breach of the claimant's constitutional right to fair labour practices, calculated as follows:
    - i.  $\text{Kshs. } 88,200/- \times 27\text{months} = \text{Kshs. } 2,381,400/=$
    - ii. Adding compensation for the 15 remaining days since termination on 16.08.2023, by dividing the monthly salary (Kshs. 88,200) by 31 days to obtain the daily rate (Kshs. 2,845.2) then multiplying by 15 days, resulting in Kshs. 42,677/-.



- d. An order for payment by the respondent to the claimant for the three (3) years full contract medical cover for the balance of two (2) years valued at Kshs. 66,000/- per annum, being Kshs. 132,000/- (calculated by multiplying Kshs. 66,000 by 2) for unfair and unlawful termination.
  - e. Costs of this suit and interests at court rates; and
  - f. Any other relief that this Honourable Court may deem fit to grant given the circumstances.
2. The claimant's case was as follows:
- a. On 09.03.2022, the claimant received a formal employment offer to serve as Senior Finance & Operations Officer at the respondent organization. The letter indicated that the start period for the said position was 01.05.2022 and he was to go through a six (6) months' probation period. If his performance was satisfactory over the said period, he would then be issued a three-year employment contract.
  - b. The claimant was also entitled to medical insurance for inpatient treatment and reimbursement for outpatient medical costs.
  - c. Despite his probation ending on 01.11.2022, the claimant was not offered the contract as stated in the letter of offer. He was neither issued with a letter of extension for a further six (6) months' probation nor did he sign any letter granting consent for extension as stipulated in law.
  - d. At no time in his 10 months working for the respondent was he summoned and or disciplined on his work performance, dedication and moral integrity until the alleged termination of his contract on 16.08.2023. He in fact came up with proposals in July 2023 to enable the organization avoid falling into any financial crisis that will affect its operations and service delivery. This included offering the organization counsel regarding the effect of the Finance Bill, 2023.
  - e. As it was part of his job description to provide an explanation unbudgeted items for the respondent, on 07.07.2023 he forwarded a complete expense report for the team's June expenses and the respondent's Operations Director was to make the wire transfer. However, he was informed that the wire transfer had been terminated and the funds returned to the US account without any clear explanation.
  - f. The claimant received a show cause letter dated 11.08.2023, on alleged gross misconduct for lack of communication and willfully neglecting his duties. He submitted a response to the show cause letter dated 15.08.2023 and attended a disciplinary hearing on similar date.
  - g. On 16.08.2023, he received a notice for termination being summary dismissal from employment for gross neglect of duty. The said notice confirmed he had done six months' probation followed by a six-month extension and the respondent was offering him a payment for 75 days in lieu of notice.
  - h. Instead of the respondent adopting measures to counsel, inform him and ensure that the stipulated level of competency was attained within the mutually agreed six-month probationary period, it only raised concerns in March 2023 well into his contract, regarding the claimant's communication through the director.
  - i. The respondent wrongfully terminated his employment contrary to the law. The summary dismissal was characterized with bad faith and malice considering the manner in which the respondent carried out the alleged disciplinary process and as particularized in the Claim. That



the respondent's failure to conduct a comprehensive investigation to verify the allegations or representations of the claimant indicated a pre-determined decision to unfairly terminate his employment. The termination was therefore both procedurally and substantively flawed.

- j. The claimant argued that he discharged his duties with reasonable and legitimate expectation that he would continue working for the respondent until conclusion of his three (3) years' contract. He was notably never furnished with any human resource policy guidelines or handbooks delineating the values or expectations upon commencing employment with the respondent or at all.
  - k. Since the claimant was deemed to have been constructively confirmed as an employee of the respondent as at the last date of probation extension on 01.11.2022, he was consequently entitled to compensation for 12 months' salary for unfair and unlawful termination, plus payment for the remaining duration of the three-year employment contract (27 months and 15 days).
3. The respondent's response to memorandum of claim dated 25.04.2024 was filed through Mutungi Kithinji & Company Advocates. The respondent's case was as follows:
- i. The terms and conditions of the claimant's employment were detailed in the Letter of Offer dated 09.03.2022 together with the institution's values and expectations.
  - ii. Although the claimant did not sign a three-year contract immediately after his probation period, the respondent continued to treat him as an employee, paid all his statutory dues and provided him all the benefits other employees similarly enjoyed.
  - iii. The claimant's tenure of employment had numerous instances of chronic failure to properly communicate and neglect of his duty. The admitted financial crisis in July 2023 was wholly attributable to his neglect to respond to emails of the Operations Director of the donor organization on a budget item 48 despite repeated reminders. The same caused unnecessary cash flow crisis to the respondent due to depleted funds in the operating accounts. He neglected to notify the campus director that the operating account of the respondent had been depleted and to request a cross-borrow to settle the deficit in the accounts.
  - iv. The claimant admitted to have submitted his departmental goals three months late beyond the set deadline. This delay negatively impacted the workflow schedules and programmatic engagement between the respondent and donor organizations between January and February of 2023.
  - v. Contrary to the claimant's averments, he neglected to give apt advice on the effects of the Finance Bill on the respondent's 2023 payroll budget.
  - vi. As a result of the claimant's neglect of duty, the respondent suffered embarrassment, loss and damage including – failing to meet its obligations due to a depleted operating account; exposure to liability for a dishonoured cheque on 14.07.2023; inability to pay its suppliers; and disabled procurement department; negative impact on its programmes with donor organizations.
  - vii. The claimant was granted an opportunity to be heard on the charge of lack of communication and wilful neglect of duties. His lateness in submitting a departmental report was not part of the offences subject of the disciplinary process he underwent. Due process was followed in arranging for and conducting the disciplinary hearing which the claimant attended with a



witness. The claimant's responses were fully considered before the respondent arrived at the decision to terminate his employment.

- viii. The claimant admitted his unresponsiveness, lack of communication, neglect of duty and the gravity of its impact on the respondent. The termination was therefore based on a valid and fair reason.
  - ix. The respondent was not obligated to have an internal disciplinary policy. In addition, the prerogative to extend a probationary period was solely upon it as an employer provided the cumulative period did not go beyond the statutory limit of 12 months. Alternatively, the claimant did not suffer any prejudice as the respondent fulfilled all its legal obligations to him as a probationary and full-time employee.
  - x. The respondent argued that as a probationary period is not synonymous with a performance improvement plan, it never had a continuing responsibility regarding the claimant's performance during his probation.
4. The claimant testified to support his case and the respondent opted to rely on the documents without calling a witness. The parties filed final submissions. The Court has considered all the material on record and returns as follows.
  5. To answer the 1<sup>st</sup> issue the Court returns that the parties were in a contract of service. The respondent employed the claimant by the letter of offer dated 09.03.2022 to the position of Senior Finance & Operations Officer. The start date was 01.05.2022 with 6 months probationary period. The 6 months were lapsing on or about 01.11.2022. The letter further stated thus "...If your performance is satisfactory over this period; you shall be issued with a 3 year employment contract." The consolidated monthly pay was agreed at Kshs.80,000.00 per month. The claimant accepted the offer by signing on 09.03.2022.
  6. To answer the 2<sup>nd</sup> issue, the Court returns that the termination of employment was by the letter dated 16.10.2023 following the disciplinary hearing of 16.08.2023 and effective 16.08.2023. The reason for termination was gross neglect of duty and with a 75 days' pay in lieu of notice – not upon contractual provision but upon the respondent's generosity as per the letter of termination. The reason was about delay in providing explanations on budget line 48 with depleted amounts and despite repeated reminders.
  7. The 3<sup>rd</sup> issue is whether the termination was unfair. The claimant confirmed that he received the notice to show cause dated 11.08.2023. One of the allegations was unresponsive and neglect of duty to provide the goals per the notice to show cause. He confirmed in his testimony that he had belatedly replied an email on 26.01.2023 after the donor made a follow up by email of 25.01.2023. On 26.01.2023 he promised to work on it the following week but did not do so until 02.02.2023 when he wrote that he was sorry he had not completed on the goals for 2023 and that he would work on it. He admitted he had failed on his earlier promise to work on it within a week and as at 02.02.2023 he had not accomplished the assignment. He confirmed he had delayed in submitting the work. The claimant testified that he received the notice to show cause; he attended disciplinary hearing with his witnesses who signed the minutes of the proceedings; and, that he confirmed that at the disciplinary hearing he had admitted to letting down the Director.
  8. The Court has considered the claimant's own testimony and returns that the procedure for termination was fair per sections 41 and 45 of the *Employment Act* and the reason for termination was valid and fair per sections 43 and 45 of the Act. The claim for unfair termination and all the reliefs sought are found unjustified. There is no established basis for claims upon alleged unexpired period of



contract because no three years' term contract issued and the claimant must have reverted to a monthly worker in the circumstances of the case. Further no evidence exist to show any thing attributable to the respondent that impaired the claimant to move on in gainful employment after the termination. The parties failed to conclude the three years' term contract as had been designed and in that consideration and to balance justice for parties, each to bear own costs of the suit.

Accordingly the respondent's case is upheld and judgment entered with orders as follows:

1. The memorandum of claim is dismissed with orders each party to bear own costs of the suit.
2. The Deputy Registrar to return the case file to Machakos Sub-Registry forthwith within three days.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 13<sup>TH</sup> FEBRUARY, 2025.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

