



**Mwange v Promasidor (Kenya) Limited (Employment and Labour Relations Cause E398 of 2021) [2025] KEELRC 300 (KLR) (6 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 300 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E398 OF 2021**

**MN NDUMA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**FORD KAGONI MWANGE ..... CLAIMANT**

**AND**

**PROMASIDOR (KENYA) LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed suit on 21/2/2023 seeking maximum compensation for unlawful and unfair summary dismissal and payment of terminal benefits including:
  - a. Sum of Kshs. 104,910.00. being one month's salary in lieu of notice pursuant to section 36 Cap 226 of the Laws of Kenya, and clause 8 of the contract of employment;
  - b. The sum of Kshs. 1,258,920.00 being 12 months salary the balance of the contract outstanding at the date of summary dismissal or in the alternative
  - c. The sum of Kshs. 1,258,920.00 being 12 months' salary pursuant to section 49(c) Cap 229 of the Laws of Kenya
  - d. Insurance reimbursement in the sum of Kshs. 120,000.00
  - e. Kshs. 83,928.00 being leave days not taken in the year 2020 and 2021
  - f. Interest and costs of the claim.
2. The Claimant (CW1) adopted a witness statement dated 13/5/2021 as his evidence in chief and relies on exhibits '1' to '9' dated 13/5/2021. CW1 testified that he was employed by the Respondent in July 2013 under a fixed term contract that was renewable. That the Claimant served under different term contracts and at the time of his summary dismissal he was serving under a contract dated April 2020,



for a period of two years and was due to expire in April 2022. The Claimant has produced an earlier contract dated 2/2/2018 stating that the final contract was withheld by the Respondent.

3. The Claimant stated that he earned a monthly gross salary of Kshs. 104,910.00. That he worked diligently and his salary was reviewed upwards annually.
4. CW1 stated that he worked as a plant engineer and produced the job description before court as exhibit '4'.
5. That on 15/3/2021, the Claimant was summoned to a meeting by the Managing Director and the Human Resource Manager and at the meeting he was hastily handed a letter of suspension. That no discussion took place at the meeting.
6. CW1 said he had not received any warning and had done no wrong prior to this meeting.
7. CW1 said he was subsequently summoned to an investigation meeting in which the Respondent came up with a written statement which they wanted the Claimant to sign. CW1 declined to sign the statement because its contents were not truthful.
8. On 24/3/2021, CW1 said he was given a notice to show cause dated 24/3/2021 and was required to respond to it by 27/3/2021 though the letter was given to him on 26/3/2021.
9. CW1 stated that he requested at least 7 days to respond which was declined and he responded hastily to the charge. On 30/3/2021 he was invited to a disciplinary meeting on 31/3/2021. CW1 said he attended the meeting and no hearing took place at all. That the conveners simply looked at him and said they would communicate their decision to him. The Claimant received a letter of summary dismissal dated 1/4/2021.
10. CW1 said the dismissal was unlawful and unfair. That he had served the Respondent 7 years diligently. That he had started as a technician and ended up as Plant Engineer due to his good performance. CW1 said he was surprised by the callous action by the Respondent.
11. CW1 said the Respondent knew he had a special needs child and CW1 had topped up insurance medical scheme in the sum of Kshs. 120,000.00 which at the time of dismissal had not yet been utilized by the child. CW1 seeks refund of the amount. CW1 said the Respondent immediately stopped the insurance without reimbursement and the Claimant has been struggling to provide medical attention to his child, without a job.
12. That the Respondent had no valid reason to dismiss him from service and did not follow a fair procedure. That the allegation of creation, modification and falsification of quotations and delivery notes was not supported by any tangible evidence. CW1 said he did not cause money to be paid using false documents to suppliers and that he no longer owned a business the Respondent stated CW1 had failed to disclose to the Respondent.
13. That he had ceased to be a proprietor of the business in the year 2020 when the business experienced a downturn due to COVID-19 Pandemic. That he had sold off the company. That even when he ran the company it presented no conflict of interest with the Respondent's business.
14. That he claimed the reliefs sought including notice pay and leave pay and refund of insurance sum. The Claimant further claimed compensation for unfair dismissal and in the alternative to be paid for the remainder of the fixed term contract. That his lawyer issued a letter of demand to the Respondent which was ignored. The letter is before court.
15. The Claimant prays to be awarded as prayed.



## Response

16. The Respondent filed amended memorandum of defence dated 15/12/2021 and called RW1, Dorris Wambui Njoroge to testify in its defence. RW1 adopted a witness statement dated 10/6/2021 as her evidence in chief and also adopted a supplementary witness statement dated 15/2/2021. RW1 also relied on exhibit '1' to '12' dated 10/6/2021 in defence of the Respondent. Further exhibits '13' and '14' were produced by RW1 dated 15/12/2021. RW1 stated that she was a HR professional and had 20 years' experience. That she was employed by the Respondent at the time the Claimant was summarily dismissed. RW1 said she participated in the disciplinary hearing of the Claimant as the Human Resource Manager of the Respondent. That the then Managing Director was involved in the process also.
17. RW1 said that the Claimant faced 4 charges of misconduct. That Claimant was employed in July 2013 on a fixed term contract as a Technician and later worked as a Plant Engineer. That his contract was renewed a couple of times and the last contract was renewed on 4/7/2019 but not February 2020 for a period of two years.
18. RW1 admitted that Respondent suspended the Claimant by a letter dated 15/3/2021 to allow investigation to take place related to allegations of misconduct by the Claimant.
19. That the grounds for suspension were explained at a meeting held with the Claimant on 15/3/2021 and in writing by a letter dated 15/3/2021.
20. The Claimant was served with a notice to show cause dated 24/3/2021 in which the charges were laid out as follows:
  1. "Breaching the company's code of business conduct and your terms of employment by using company assets for personal benefit and/or for the benefit of other persons; using the company's assets, computer and equipment for outside business/illegal or unethical activities; creating, modifying and/or falsifying and presenting documents (including invoices, quotations and delivery notes) relating to supposed suppliers of the company; causing or aiding and abetting, the making of payments to supposed suppliers of the company, thereby leading to loss of company funds.
  2. Created, modified and/or falsified documents (including invoices, quotations and delivery notes) relating to supposed suppliers of the company. The supposed suppliers referred to include Gibcoll Enterprises, Koyitoror Merchants Limited and Lyne and Alia Engineering Limited.
  3. Used company time and the company laptop (and equipment) that has been assigned to you for work purposes to create, modify and/or falsify the above-mentioned documents.
  4. Caused or aided and abetted the making of payments to supposed suppliers of the company for fictitious supplies through your actions, including creating, modifying and/or falsifying, the above-mentioned documents and presenting them to the company for payment to be made knowing fully well that no supplies were delivered or were to be delivered by those supposed suppliers."
  5. Breaching the company's code of business conduct and your terms of employment through the non-disclosure of an interest.
  6. You are the proprietor of the Great Cave Spa, which was registered in April 2019. You have neither disclosed nor declared the foregoing interest to the company.



21. In short, the Claimant was accused of using company laptop to create, modify and falsify documents including invoices, quotations and delivery notes to false suppliers of the company hence breaching the company's business code of conduct and employment contract resulting in unlawful payments to the said suppliers to the loss and detriment of the Respondent.
22. The Claimant was accused also of being a proprietor of a company called The Great Cave SPA which was registered in April 2019 without disclosure to the Respondent.
23. RW1 said that the Claimant was given the Respondent's code of conduct which supplemented the contract of employment and so was fully aware of it.
24. That the transactions involved fraudulent procurement of spare parts and consumables. That a person named Simon Kiptum availed "brief case" companies which were used to supply fictitious services and equipment to the Respondent.
25. RW1 said she called the said Simon Kiptum vide his mobile number posing as an employee of the Respondent who was interested in committing fraudulent procurement. RW1 exchanged messages with the said Kiptum which messages were shared with the Respondent. That the said Kiptum voluntarily forwarded to RW1 editable invoices of four supplier companies which he recommended for use in a fraudulent procurement scheme involving supply of fictitious services.
26. This information was used to conduct the investigation that led to the charging of the Claimant and eventual dismissal.
27. That some members of staff were involved in this scheme and were detected vide the investigations that ensued. That the Claimant was charged and given show cause notice pursuant to the investigation. Stealth Africa Consulting Limited submitted to the Respondent an investigation report dated 23/3/2021 which related to the Claimant. The report was produced as an exhibit before court. RW1 said the report identified various alleged breaches by the Claimant. RW1 said Claimant was given 3 days to respond to the allegations since he was on suspension with full pay and had time to respond. The Claimant did not request in writing for additional time.
28. RW1 said that the written response by the Claimant was not satisfactory hence a disciplinary hearing was conducted on 31/3/2021. The notice to attend advised the Claimant of his right to be accompanied by a colleague of choice. The Claimant attended the hearing unaccompanied. RW1 said one Mark William presented the charges to the Claimant at the hearing and the Claimant was given opportunity to respond which he proceeded to do. Minutes of the proceedings were produced as exhibit in this matter.
29. RW1 said that the explanation given by the Claimant was not satisfactory and the employment the Claimant was summarily dismissed by a letter dated 1/4/2021. The Claimant was issued a certificate of service dated 19/4/2021.
30. RW1 said the Respondent responded to the letter of demand through its Advocates by a letter dated 18/5/2021.
31. That the claim has no merit and it be dismissed with costs.
32. RW1 stated further that the Claimant had a medical cover provided by the Respondent for the period September 2020 to September 2021 which covered the Claimant and his family members with inpatient limit of Kshs. 161,934.00. However, the Claimant opted to enhance the cover at his expense to a total premium of Kshs. 297,278.00. That upon termination all his benefits including the medical cover came to an end.



33. The insurance company declined to retain the children's cover upon termination upon request by RW1. That however, the cover for the children was prorated in the sum of Kshs. 135,345.00 paid by the Claimant and the Claimant utilized a sum of Kshs. 67,672.50 as at the time of termination leaving a balance of Kshs. 67,672.50.
34. The Respondent prays that all claims by the Claimant including the claim of Kshs. 120,000.00 in respect of the medical cover be dismissed for lack of merit.

### **Determination**

35. The parties filed written submissions which the court has carefully considered together with the evidence by CW1 and RW1 and the court has delienated the following issues for determination:
  - a. Whether the termination of the employment of the Claimant was for a valid reason(s) following a fair procedure?
  - b. Whether the Claimant is entitled to the reliefs sought.
36. The Claimant was summarily dismissed on 1/4/2021 during the tenure of his last 2-year fixed term contract with the Respondent dated 5/7/2019. At the time, the fixed term contract was remaining about two months to expiry. The contract was renewable just like previous contracts, held by the Claimant between July 2013 to the date of dismissal.
37. The Claimant in his testimony stated that he was falsely accused by the Respondent of abetting falsified procurement documents with a view to obtain payments from the Respondent to fictitious suppliers of products to the Respondent.
38. The Claimant further alleges that no tangible evidence was proved by the Respondent against him. That the Respondent did not provide him with adequate opportunity to defend himself. That the disciplinary process was flawed and not fair. That therefore the termination of his employment was unlawful and unfair.
39. The Respondent on the other hand has presented an investigation report which was relied upon by the Respondent to demonstrate that the Claimant was involved in the alleged fraudulent activities in collusion with other staff and 3<sup>rd</sup> parties.
40. Section 43(1) and (2) of the *Employment Act* 2007, places the burden on the employer to prove that it had a valid reason to dismiss the employee from the employment.
41. The Respondent has a further burden placed on it under section 47(5) of the Act to justify the dismissal by demonstrating that it was fair and just.
42. In order to discharge the above onus, the employer is also under obligation to show that it followed the provisions of section 41 of the Act by providing the employee with opportunity to present his defence once charges of misconduct have been presented to the employee. The employer is also obliged to rebut any allegations by the employee regarding any unlawful deviation from the procedure under section 41 of the Act.
43. The court has weighed the rival evidence presented by CW1 vis avis that by RW1 and is satisfied that the respondent has discharged the onus placed on it under sections 41, 43 and 47(5) of the Act by proving that it had valid reasons to dismiss the Claimant from employment and that it was justified to terminate that employment. Further, the Respondent ably rebutted the evidence adduced by the Claimant that the termination of his employment was wrongful and unfair.



44. The court has considered the Court of Appeal decision in the matter of Postal Corporation of Kenya versus Tanui [2019] eKLR in arriving at the decision that the employment of the Claimant was both lawful and fair as it was for valid reasons and that the Respondent had followed a fair procedure in dismissing the Claimant from employment.
45. Accordingly, the claim by the Claimant for compensation for unlawful and unfair summary dismissal lacks merit and is dismissed.
46. Furthermore, the claim for payment in lieu of one month notice has no merit also since the contract between the parties and section 44 of the *Employment Act*, 2007 permitted summary dismissal for good cause. The court finds that the Respondent had good cause to summarily dismiss the claim.
47. With regard to the claim of Kshs. 120,000.00 reimbursement with respect to the termination of a medical cover to which the Claimant had personally contributed to in addition to the payment made by the Respondent, the court finds that it was wrongful for the Respondent to tie the summary dismissal of the Claimant to the termination of the medical cover which had partly been paid for by the Claimant. The court finds that the Claimant proved this claim and awards the Claimant Kshs. 120,000.00 being reimbursement for lost benefit from the medical cover.
48. The Claimant has also proved that he had not taken leave in the year 2020 and 2021 and the Respondent has failed to rebut this claim. The court awards the Claimant Kshs. 83,928.00 in lieu of leave days not taken. For the avoidance of doubt, no other claim has merit except the above two.
49. Accordingly, judgment is entered in favour of the Claimant against the Respondent as follows:
- a. Kshs. 120,000.00 being reimbursement for lost benefit from the medical cover by the Claimant
  - b. Kshs. 83,928 in lieu of leave days not taken  
Total amount 203,928.00
  - c. Interest at court rates from date of judgment till payment in full.
  - d. Costs of the suit

**DATED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY 2025**

**MATHEWS NDUMA**

**JUDGE**

Appearance:

Mr. Khayega for Claimant

Mr. Omondi for Respondent

Mr. Kemboi – Court Assistant

