



**Kimutai v County Government of Kericho (Cause E020 of 2023)  
[2025] KEELRC 964 (KLR) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 964 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO  
CAUSE E020 OF 2023**

**J RIKA, J  
MARCH 28, 2025**

**BETWEEN**

**DAVID KIPKOECH KIMUTAI ..... CLAIMANT**

**AND**

**THE COUNTY GOVERNMENT OF KERICHO ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, dated 9<sup>th</sup> October 2023.
2. The Statement of Claim does not bear the Claimant's name, which is against the basic rules of pleading.
3. The accompanying verifying affidavit, and subsequent pleadings however, clearly identify the Claimant, and in the interest of justice, the Court shall overlook the omission, and delve into the merits of the Claim.
4. He avers that he was employed as the Economic Advisor to the Governor, by the Respondent, on 16<sup>th</sup> January 2023.
5. He was issued a letter to show cause by the Respondent, on 4<sup>th</sup> September 2023. He was alleged to have absented himself from office.
6. He replied on the same date, denying the allegation. He received a letter of termination, dated 19<sup>th</sup> September 2023.
7. Although he received this letter, he pleads that his claim is for among other orders, an order restraining the Respondent from terminating his contract, until his expected date of retirement, 10<sup>th</sup> September 2027.



8. Alternatively, he prays that he is compensated for unfair and unlawful termination at the equivalent of salaries he would have earned, until 10<sup>th</sup> September 2027. He prays for costs, interest and any other suitable relief.
9. The Respondent filed a Statement of Response date 6<sup>th</sup> February 2024. Its position is that the Claimant was employed by the Respondent, as pleaded. His contract was terminated by the Respondent fairly, on account habitual absenteeism. The Respondent states that the prayer for injunction restraining the Respondent from terminating the contract, is not awardable, termination having already taken place.
10. The Claim was scheduled for hearing on 11<sup>th</sup> December 2024. The Claimant informed the Court that the Respondent was issued a hearing notice on 3<sup>rd</sup> December 2024, but had opted to keep away from the hearing.
11. The Claimant relied on his witness statement and documents [1-4], in his evidence. He repeated his employment history with the Respondent, and his terms and conditions of service. He recapped the circumstances of his departure from the Respondent. He earned a monthly salary of Kshs. 121, 430.
12. He was not paid terminal dues. Although he does not specifically plead any sum, he told the Court that he is praying for Kshs. 2,676,039 in compensation, underpayment, gratuity, and salary for 18 days.

**The Court Finds: -**

13. Parties agree that the Claimant was employed as the Economic Advisor to the Respondent's Governor.
14. The letter of appointment is dated 16<sup>th</sup> January 2023. It indicates that the Claimant would work for 5 years from date he reports to duty, up to and including 10<sup>th</sup> June 2027.
15. He was entitled to basic salary of Kshs. 121,430, house allowance of Kshs. 25,000 and commuter allowance of Kshs. 16,000. His gross monthly salary was Kshs. 162,430.
16. Clause 8 of the contract states that the Claimant was entitled to gratuity at the rate of 31% of the monthly basic salary, which would be paid monthly, to a Retirement Benefits Scheme of his choice.
17. Clause 18 entitled Parties to 1- month salary in lieu of a written notice of termination.
18. There is a letter of termination on record, and the Claimant's prayer for a permanent injunction, restraining the Respondent from terminating his contract, is redundant and without foundation, termination having taken effect, and is hereby declined.
19. Although he was not specific in his Statement of Claim, he told the Court in his evidence that he seeks payment of gratuity.
20. Gratuity under his contract was not payable directly to him, but to a Retirement Benefits Scheme of his choice. The notice of termination issued upon him on 19<sup>th</sup> September 2023 however, informed the Claimant that the Respondent would pay him gratuity at 31% of his basic salary for the period worked.
21. The notice was for 1-month, expiring 18<sup>th</sup> October 2023. The Claimant was an Employee of the Respondent for 10 months, beginning 16<sup>th</sup> January 2023 to 18<sup>th</sup> October 2023.
22. There is no reason for the Court to deny the prayer for gratuity as offered at 31% of Kshs. 121,430, over a period of 10 months worked, at Kshs. 376,433.
23. He was issued 1-month written notice of termination, on 19<sup>th</sup> September 2023, which ended on 18<sup>th</sup> October 2023. His prayer for unpaid salary of 18 days, was not articulated in his pleadings and evidence, and is declined.



24. He told the Court that he was claiming underpayments. He did not clarify what was underpaid in relation to his contract. No specific figure was given to the Court. No labour or human resource instrument, governing the basic minimum salary payable to a County Governor's Economic Advisor, was brought to the attention of the Court, to support the claim for underpayment.
25. Was termination fair and lawful? It was for the Respondent to give evidence, to establish the reasons, justifying its decision to terminate the Claimant's contract, well before the date it was meant to lapse, the 10<sup>th</sup> September 2027.
26. The Respondent alleged that the Claimant was a habitual absentee. It alleges to have issued a letter to show cause to the Claimant, on 21<sup>st</sup> August 2023.
27. There is a Memo from the Chief of Staff Edgar Towett to the Secretary County Public Service Board Charles Chirchir, recommending that the Claimant's services be discontinued, by giving him 1-month notice of termination.
28. The Memo is dated 14<sup>th</sup> August 2023, before the letter to show cause issued, on 21<sup>st</sup> August 2023. The Chief of Staff had decided that the Governor, was not receiving economic, financial and fiscal advice from the Claimant, even before the Claimant had been asked to show cause.
29. The Chief of Staff went on to prepare what is titled as "report of disciplinary hearing held on 11<sup>th</sup> September 2023."
30. There is no evidence that a disciplinary hearing took place, with or without the Claimant. There is no evidence that the Claimant was invited for disciplinary hearing, and advised on his procedural rights, under Section 41 of the *Employment Act*.
31. There is no evidence of any disciplinary committee that was constituted to hear the Claimant.
32. The Chief of Staff just went to his own office and generated a report, crafted to resemble a disciplinary report, complete with his own recommendation, that the Claimant's contract is terminated through a written notice of 1-month.
33. This recommendation was the same recommendation generated by Chief of Staff way back in his Memo dated 21<sup>st</sup> August 2023.
34. The entire disciplinary process was a charade, driven by the Chief of Staff alone.
35. Notably, the Chief of Staff was the Claimant's supervisor. He initiated the charges, carried out the sham disciplinary process singly, issuing memos, recommendations, letter of termination and notice of termination, without regard to any standards of fairness.
36. Procedure was entirely shambolic, and there was no semblance of validity of reason, justifying termination.
37. The Respondent did not even appear in Court, to exhibit and defend the documents it filed before the Court.
38. Termination was unfair and unlawful, under Sections 41, 43 and 45 of the *Employment Act*.
39. The Claimant merits compensation. He told the Court that, he is a peasant farmer, a resident of Kericho County. He has not secured gainful employment after the Respondent terminated his contract. He is not shown to have caused or contributed to the circumstances leading to termination. He worked for about 10 months, from January to October 2023, when the notice of termination took



effect. He was promised terminal benefits by the Respondent, but there is no record of any payment made. He expected to work until 10<sup>th</sup> September 2027. He was denied a service period of 4 years.

40. He is granted equivalent of 10 months' gross salary in compensation for unfair and unlawful termination, at Kshs. 1,624,430.
41. Costs to the Claimant.
42. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

In sum it is ordered: -

- a. It is declared that termination was unfair and unlawful.
- b. The Respondent shall pay to the Claimant, gratuity at Kshs. 376,433 and compensation for unfair and unlawful termination, equivalent of 10 months' salary at Kshs. 1,624,430 – total Kshs. 2,000, 863.
- c. Costs to the Claimant.
- d. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 28<sup>TH</sup> DAY OF MARCH 2025.**

**James Rika**

**Judge**

B.N. Kiptoo & Company Advocates for the Claimant

Ken Ochieng & Company Advocates for the Respondent

