



**Migwe v Muthaiga Country Club (Cause E377 of 2023)
[2025] KEELRC 938 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 938 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E377 OF 2023
L NDOLO, J
MARCH 27, 2025**

BETWEEN

IRENE WANJIRU MIGWE CLAIMANT

AND

MUTHAIGA COUNTRY CLUB RESPONDENT

JUDGMENT

Introduction

1. Irene Wanjiru Migwe, the Claimant in this case, worked for Muthaiga Country Club, in the position of Senior Human Resource Officer. Migwe brought this claim, following the termination of her employment on 12th May 2023.
2. The claim is contained in a Statement of Claim as amended on 15th May 2023. The Respondent filed a Statement of Response dated 24th July 2023.
3. The matter went to full trial where the Claimant testified on her own behalf, with the Respondent calling its Human Resource Director, Florence Okong'o. The parties subsequently filed written submissions.

The Claimant's Case

4. The Claimant was first employed by the Respondent in the year 2018. She worked in the position of Senior Human Resource Officer for five (5) years until 12th May 2023, when her employment was terminated.
5. The Claimant claims to have been notified of the termination of her employment by a WhatsApp message, giving the reason that she had failed to respond to the Respondent's proposal for mutual separation. At the time of leaving employment, the Claimant earned a monthly salary of Kshs. 196,200.



6. Prior to this, the Claimant had received a letter dated 5th May 2023, titled ‘Disengagement of Employment’ making an offer for mutual separation, which offer was to lapse on 12th May 2023.
7. The Claimant lays a claim of unfair termination, accusing the Respondent of investigating her for alleged misconduct, without notifying her, contrary to the Respondent’s own Human Resource Policies and Procedures Manual.
8. The Claimant was suspended on 3rd March 2023, on allegations of issuing employment contracts with disparities, failure to do background checks, non-compliance in renewal of permits, and failure to provide support to employees in matters of injury on duty.
9. On 7th March 2023, the Claimant wrote to the Respondent’s Human Resource Committee, expressing her apprehension about the fairness of the process, led by the Human Resource Director, who was her supervisor. According to the Claimant, this letter did not elicit any tangible response.
10. On 16th March 2023, the Claimant was issued with a notice to show cause, to which she was required to respond within 72 hours. The Claimant submitted her response on 24th March 2023 and on 27th March 2023, she was invited to a disciplinary hearing, scheduled for 31st March 2023.
11. The Claimant complains that the disciplinary hearing notice was not only contrary to the Respondent’s Human Resource Policies and Procedures Manual, but was also in violation of the Claimant’s right to fair administrative action, for the following reasons:
 - a. The hearing notice gave the Claimant only 3 days to prepare for the hearing, contrary to the Human Resource Manual, which stipulates notice of not less than 5 working days;
 - b. The notice was in violation of the Claimant’s right to fair administrative action, for want of adequate prior notice;
 - c. Contrary to the Human Resource Manual, the hearing notice did not give the Claimant written details of the nature of the alleged misconduct;
 - d. The notice was in violation of the Claimant’s right to fair administrative action, for want of details of the allegations against her;
 - e. Contrary to the Human Resource Manual, the hearing notice did not provide the Claimant with any relevant information, including statements taken from fellow employees.
12. The Claimant faults the composition of the Disciplinary Panel; stating that contrary to the Respondent’s Human Resource Policies and Procedures Manual, which stipulates that the person who undertook the investigation should not sit as a member, the hearing was presided over by the Human Resource Director, who had suspended the Claimant, undertook the investigation, and issued her with the notice to show cause, the mutual separation and termination letters.
13. The Claimant terms the disciplinary process as opaque, complaining that no further particulars of the allegations levelled against her were provided and no witnesses were called.
14. On 9th May 2023, the Claimant received a letter titled ‘Disengagement of Employment’, stating that the Disciplinary Committee had found her in breach of her duties and responsibilities, which warranted termination. The letter however offered the Claimant mutual separation. According to the Claimant, she was issued with a termination letter dated 12th May 2023, before the lapse of the 7-day window given in the letter of mutual separation.



15. The Claimant's case is that the termination of her employment was unlawful and unfair. She therefore claims the following:
- a. A declaration that the disciplinary process, leading to the termination of her employment, violated not only the Claimant's constitutional rights to fair administrative action, fair labour practices and fair trial, but also the Respondent's Human Resource Policies and Procedures Manual;
 - b. A declaration that the termination of the Claimant's employment contained in the letter dated 12th May 2023, amounted to unfair termination and/or wrongful dismissal within the meaning of Sections 43 and 45 of the *Employment Act*;
 - c. An order or reinstatement of the Claimant to her employment without any loss of benefits;
 - d. An order of permanent injunction restraining the Respondent from terminating the Claimant's employment, discriminating or victimising her on the basis of the impugned disciplinary process;
 - e. Damages for violation of the Claimant's constitutional and labour rights;
 - f. Damages for unfair termination equivalent to 12 months' salary;
 - g. Salary arrears;
 - h. One month's salary in lieu of notice;
 - i. Payment for 75 accrued leave days;
 - j. Costs plus interest.

The Respondent's Case

16. In its Statement of Response dated 24th July 2023, the Respondent admits that the Claimant worked as its Senior Human Resource Officer, earning a monthly salary of Kshs. 196,200.
17. In denying the Claimant's claim, the Respondent states that around March 2023, it was noted that the Claimant had been negligent in her key tasks as follows:
- a. Employees joining the Respondent between April and December 2022, had disparities in pay that did not correspond with the Collective Bargaining Agreement;
 - b. Background checks for employees joining the organisation from April to December 2022 were not done;
 - c. The Claimant had not renewed the workplace and tobacco licences;
 - d. The Claimant failed to assist employees who had been injured on duty.
18. The Claimant was suspended with pay to allow for further investigations. After the investigations, she was issued with a show cause letter dated 16th March 2023.
19. The Respondent states that in addition to the 72 hours given to the Claimant to respond to the allegations, she was allowed a further 4 days to respond to the show cause letter. The Respondent adds that the Claimant was granted access to her workstation, to enable her prepare her response. According to the Respondent, the Claimant had access to all material she required to respond.



20. The Respondent avers that vide the show cause letter dated 16th March 2023, the allegations against the Claimant were clearly stated. The Respondent points out that the period during which the affected employees joined employment was given and the licences which had not been renewed were stated. The Respondent maintains that the Claimant understood the allegations against her and was thus able to respond to the show cause letter.
21. The disciplinary hearing was initially scheduled to take place on 31st March 2023 but was rescheduled to 3rd April 2023, upon the Claimant's request. The Respondent avers that the Claimant was informed of her right of appeal to the Club Secretary.
22. The Respondent states that the Disciplinary Committee found that the Claimant's failure amounted to gross negligence that warranted dismissal. However, the Respondent at its discretion, made an offer to the Claimant on a 'without prejudice' basis, that included a proposed exit package. According to the Respondent, the Claimant did not accept the proposal and the communication is therefore inadmissible before the Court.
23. The Respondent avers that the termination of the Claimant's employment was carried out in line with the Employee Handbook, pointing out that the Human Resource Policies and Procedures Manual is a draft document that has not been implemented and is consequently not operational.
24. The Respondent further avers that the termination was in accordance with the law and the Claimant's contract of employment. The Respondent states that the Claimant was paid one month's salary in lieu of notice and was paid her final dues in full.

Findings and Determination

25. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

26. In adjudicating a claim of unlawful termination of employment, the Court is required to inquire into two aspects; first, whether the employer has established a valid reason for the termination and second, whether in executing the termination, due process has been observed.
27. Regarding the reason for termination, the standard is set out in Section 43 of the *Employment Act*, which provides as follows:
 43.
 - (1) In any claim arising out of termination of contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
 - (2) The reason or reasons for termination of contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.



28. This provision codifies what is popularly known as the ‘reasonable responses test’ whose beacons were established by Lord Denning in *British Leyland v Swift* (1981) IRLR 91 as follows:

“The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employer may not have dismissed him.”

29. In applying the ‘reasonable responses test’ in its decision in *Kariuki v The Trustees of Premier Academy Charitable Trust t/a Premier Academy* [2025] KEELRC 144 (KLR) this Court stated that:

“The hallmark of this test is that in assessing an employer’s action, the Court must guard against supplanting the employer’s decision with its own. In other words, the Court does not ask what action it would have taken had it been in the employer’s shoes. All the Court asks is whether the decision taken by the employer is one that an ordinary reasonable employer would have taken, and if the answer is in the affirmative, the employer’s decision should not be disturbed.”

30. In its written submissions dated 26th February 2025, the Respondent cited the decision in *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR where my brother Manani J stated thus:

“...In terms of section 43 of the *Employment Act*, an employer will be deemed to have a substantive justification for terminating a contract of service if he/she genuinely believed that the matters that informed the decision to terminate existed at the time the decision was taken...what the law is concerned with here is whether the circumstances surrounding the decision to terminate would justify a reasonable man on the street standing in the same position as the employer to reach a similar decision as him/her regarding the termination...”

31. The termination of the Claimant’s employment was formalised by letter dated 12th May 2023, stating as follows:

“Dear Irene,

Re: Termination Of Employment

We refer to the above matter and our letter dated 5th May 2023.

We have received no response to our letter of mutual separation. As such the same has now lapsed.

As earlier informed, it was the disciplinary committee’s findings that your actions amounted to gross negligence of your duties as per your job description. The Club has decided to give you normal termination in accordance with clause 8 of your Letter of Appointment and terminate you effective immediately by payment of one month’s salary in lieu of notice.

The Club will also pay the following in accordance with the terms of your employment contract:



- a. Your salary up to and including 12th May 2023.
- b. 65 days leave days not taken.

Your final dues will be paid as detailed above after clearance with the club and returning all club property in your possession. You will also be issued with a certificate of service.

I take this opportunity to thank you for the service to the Club and wish you every success in your future.

Sincerely,

(signed)

Florence Okongo

Human Resource Director”

32. This letter discloses the reason for termination of the Claimant’s employment as gross negligence in the performance of her duties. The termination letter was preceded by a show cause notice dated 16th March 2023, requiring the Claimant to render an explanation on the following accusations:
 - a. Contracts issued to employees joining the organisation in April-December 2022 with a lot of disparities;
 - b. Background checks not done for 50 employees joining the organisation from April-December 2022;
 - c. Non-compliance to renewal of workplace permit and tobacco licenses;
 - d. Failure to provide support to employees on matters of injury on duty.
33. The show cause notice which made reference to the Employee Handbook (2017), required the Claimant to respond within 72 hours. There is however evidence that at a meeting held on 18th March 2023, the Claimant requested for and was granted an extension of 4 days to respond to the allegations levelled against her. The record of this meeting also shows that the Claimant would be allowed access to materials that she would require to prepare her response.
34. In her detailed response dated 24th March 2023, the Claimant stated that there were no salary disparities but added that there might have been historical salary anomalies and inconsistencies that needed to be addressed holistically.
35. On the issue of background checks, the Claimant stated that majority of the affected staff were former members of staff, trainees or casual staff.
36. Regarding the matter of lapsed workplace and tobacco licences, the Claimant’s response is that she forwarded the renewal procedure of the workplace licence to her supervisor. She claims to have been unaware of the need for a tobacco licence until she was prompted by the Food and Beverage Manager, upon which she visited City Hall where she obtained acquisition details.
37. The Claimant denies the allegation of failure to support employees on work injury claims.
38. In concluding her response, the Claimant stated the following:
 - a. There may have been some few omissions done on my part, but they were not deliberate.
 - b. I was doing double roles, that is my normal day to day duties and responsibilities as well as handling those of the former HR Director Lilian, from April 2022 to December 2022.



- c. I did my level best during the said period and gave my all.
39. In her cross examination by Counsel for the Respondent, the Claimant was taken through several instances where there were significant discrepancies between salaries in individual staff contracts as against those provided for in the applicable Collective Bargaining Agreement (CBA). The Claimant admitted having signed off these contracts and did not offer any justification for the higher salaries awarded to employees, as against the benchmark provided under the CBA.
40. The Claimant also admitted having failed to carry out some background checks, with respect to employees recruited by the Respondent. Additionally, she conceded that there were lapses in renewal of workplace and tobacco licences. She told the Court that without the workplace licence, work injury claims could not be processed.
41. What emerges from the foregoing, is a catalogue of serious missteps on the part of the Claimant, whose ramifications spelt grave exposure to the Respondent. To my mind, these missteps constituted a valid reason for termination of the Claimant's employment and I am therefore satisfied that the requirements of Section 43 of the *Employment Act* were satisfied.
42. Regarding the question of procedural fairness, Section 41 of the Act provides as follows:
- 41.
- (1) Subject to Section 42(1) an employer shall, before terminating the employment of an employee on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during the explanation.
- (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1) make.
43. According to the evidence on record, the Claimant was issued with a show cause letter to which she duly responded, after which she was invited to a disciplinary hearing. Her request for extension of time was granted and she was allowed access to documents required for preparation of her defence.
44. In her written submissions dated 20th January 2025, the Claimant pursued the argument that the charges levelled against her were unclear and devoid of particulars. The Court was not persuaded by this argument; first, the charges were specific enough to enable the Claimant to respond; second, she was allowed access to the documents necessary for preparation of her response, which enabled her to prepare a detailed response; and third, there was no evidence of any unanswered request by the Claimant to the Respondent.
45. The Claimant also took issue with the composition of the Disciplinary Panel. In particular, she complained about the presence of the Human Resource Director, whom she described as complainant, investigator, prosecutor and judge. In making her case in this regard, the Claimant sought to rely on a draft Human Resource Policies and Procedures Manual.
46. On its part, the Respondent asserted that the draft Manual was not operational and the guiding document was the Staff Handbook. The Claimant was unable to confirm that the Manual she sought



to rely on had been operationalised and the Court agrees with the Respondent that the operational policy document was the Staff Handbook.

47. In her testimony before the Court, the Respondent's Human Resource Director, Florence Okong'o explained that she conducted the initial investigations in her capacity as the Claimant's Head of Department and later sat in the Disciplinary Panel as a representative of the Human Resource Department. She told the Court that she was the only one who could represent the Department in that regard.
48. The Court was satisfied with the explanation by Okon'go regarding the apparent double role played by her in the disciplinary process. Further, the Court did not find any whiff of prejudice occasioned to the Claimant as a result of this arrangement.
49. On the whole, I find nothing to suggest that the procedural fairness requirements of the law were compromised.
50. Flowing from the foregoing, the Claimant's claim of unlawful and unfair termination of employment is without basis and is dismissed.
51. According to the termination letter, the Claimant was paid salary for days worked plus leave pay for accrued days. The claims thereon are therefore without basis and are disallowed.
52. Finally, the Claimant's entire claim fails and is dismissed with costs to the Respondent.
53. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF MARCH 2025

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JUDGE

Appearance:

Mr. Kamau for the Claimant

Mr. Githiri for the Respondent

