



**Macharia v Cobra Security Co Ltd (Cause E435 of 2020)
[2025] KEELRC 928 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 928 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E435 OF 2020
CN BAARI, J
MARCH 21, 2025**

BETWEEN

STEPHEN MACHARIA CLAIMANT

AND

COBRA SECURITY CO LTD RESPONDENT

JUDGMENT

1. The Claimant’s Statement of Claim is dated 19th August, 2020, and filed in court on 28th August, 2020. The Claimant prays that this court makes a declaration that his termination was wrongful, award him general damages of Kshs. 3,300,000/=, order that he be issued with a certificate of service, and the costs of the suit.
2. The Respondent lodged a Notice of Preliminary Objection which the court heard and dispensed with, dismissing the same. It further filed a defense to the Statement of Claim dated 29th October, 2020, denying the Claim.
3. The suit was first heard on 3rd April, 2024 with the taking of the Claimant’s evidence, who adopted his statement and produced his exhibits in the matter.
4. The Respondent’s case was subsequently heard on 1st October, 2024, when one James Ngwala testified in support of the Respondent’s case. He adopted his witness statement and produced documents filed on behalf of the Respondent.
5. Both parties filed submissions.



The Claimant's Case

6. The Claimant states that he was employed by the Respondent on 1st November, 2018 in the capacity of General Manager after being poached from Senaca EA Security, wherein, he worked faithfully and diligently and even introduced skills and ideas that were incorporated in the company's system.
7. It is his case that prior to his appointment at the Respondent's company, he was put on probation for a period of eight (8) months, and was confirmed into his position on 9th August 2019.
8. The Claimant states that on 1st October 2019, he proceeded on forced annual leave as required by the Respondent Company, and that on 24th October 2019, after resuming from his forced annual leave, he received a letter from the Respondent indicating that his services will be terminated. He confirms that the Respondent unlawfully and without any justification terminated his employment.
9. The Claimant avers that that prior to the aforesaid termination, the Respondent sent him a letter on 27th September 2019 while on duty, informing him to proceed on forced annual leave for sixteen (16) days effective 1st October 2019.
10. It is his position that the purported termination was unlawful, unfair, unwarranted as his employment was ended on terms that do not exist in the *Employment Act*, 2007.
11. The Claimant avers that the alleged termination was unfair, unlawful and wrongful within the meaning of Section 45 of the *Employment Act*, 2007, and International Labour Organization *Convention 158 of 1982*, in so far as the procedure followed was unfair.
12. The Claimant urges the court to allow his claim as prayed.

The Respondent's Case

13. The Respondent admits that the Claimant was their employee, employed as General Manager on 11th November 2018, but denies that it poached him from Senaca EA Security. It states that the Claimant applied for employment with the Respondent company in the normal way, and his allegations that he was poached are devoid of any truth or basis.
14. It is the Respondent's case that it indeed terminated the services of the Claimant, but denies that the said termination was unlawful and without justification. On the contrary, the Respondent states that it terminated the services of the Claimant due to neglect of his duty and poor performance.
15. The Respondent states that it followed the procedures as laid out in the contract and that the Claimant's final dues were paid upon termination. The respondent denies that the Claimant was forced to sign the termination letter, staff clearance certificate and the computation of the amount due to him as final dues.
16. The Respondent denies that the Claimant is entitled to general damages in the sum of Kshs3, 30 0,000 / = or any other sum, having terminated the services of the Claimant in accordance with the terms of the contract executed by both parties.
17. The Respondent prays that this suit be dismissed with costs.

The Claimant's Submissions

18. It is the Claimant's submission that he has proved that the termination of his contract of employment was unfair, unlawful and unwarranted. He submits that the Respondent has not discharged its burden of justifying termination, and therefore a case of unlawful termination of employment ensues. He



placed reliance in the case of *Barasa Paul Isaac V X For Security Solutions (Ke) L.T.D. [2015] eKLR* to buttress this position.

19. It is the Claimant's submissions that failure to give reason as to why his contract of employment was terminated, makes the separation unfair and wrongful.
20. He submits further that performance is gauged on the basis of sufficient job output, acceptable quality, compliance with employer operating procedures, sufficient employee effort and ability to perform the job at the expected level.
21. It is his submission that the Respondent has not shown to have substantially complied with the mandatory procedural requirements set out in Section 43, 45 and 45(7) of the *Employment Act* in terminating his employment.
22. The Claimant submits that the Respondent admitted during cross examination that no notice to show cause why disciplinary proceedings should not be conducted against the Claimant was ever issued, and nor were any disciplinary proceedings conducted.
23. The Claimant urges this Court to find and hold that termination of his employment was procedurally and substantively unfair.

The Respondent's Submissions

24. It is the Respondent's submission that by signing the letter of appointment, both the Claimant and the Respondent intended to be bound by the terms therein. It submits further that the letter of appointment and the terms therein, constituted the contract between the parties.
25. The Respondent submits that the reason for the Claimant's termination were valid as they were about the Claimant's poor performance and inability to deliver, and which was conspicuous from the outset.
26. The Respondent submits that the Claimant was paid in accordance with his contract of employment, and no further payment or compensation is payable.

Analysis and Determination

27. I have considered the pleadings in the matter, the witnesses' testimonies and the rival submissions. The singular issue for determination is whether the Claimant was unfairly terminated.
28. Parties are in agreement that the Claimant was indeed terminated from the service of the Respondent, leaving only the question as to whether the termination was fair.
29. A termination/dismissal is unfair where the employer fails to adhere to the provisions of Sections 41, 43 and 45 of the *Employment Act*, 2007 when terminating an employee.
30. The foregoing sections present two issues, first is the question of procedural fairness under Section 41 and the second being substantive justification for the termination under Sections 43 and 45 of the same Act.
31. In the now famous case of *Walter Ogal Anuro v Teachers Service Commission [2013] eKLR*, the Court had this to say on the twin requirements:-

“For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment



of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.'

32. As was correctly submitted by the Claimant, the Respondent admitted during cross examination that no notice to show cause on why disciplinary proceedings should not be taken against him was ever issued, and nor were any disciplinary proceedings conducted.
33. The Respondent's position both in its pleadings, oral testimony and in its submissions, is that it followed the procedures as laid out in the contract of employment between the parties, and which it averred was binding upon the parties herein.
34. The Respondent did not at all purport to have tried complying with the provisions of Sections 41, 43 and 45 of the Employment Act. It simply admitted terminated the Claimant without a hearing and without notifying him of the grounds for the termination.
35. I would therefore have no difficulty finding the Claimant's termination both procedurally and substantively unfair, and so I do.
36. The Claimant sought payment of Kshs. 3,300,000 in general damages for the unfair termination, being his 12 months' salary.
37. Although the Respondent disputed that the Claimant's monthly salary was Kshs. 275,000/-, the letter of appointment produced by both parties in evidence dated 27th September, 2018 is clear on what the Claimant's gross salary was.
38. On the award, the court in the case of Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR) held that in determining an award of compensation, the court is to consider the 13 factors set out under Section 49 (4) of the Employment Act.
39. It is not denied that the Respondent lost numerous business opportunities during the tenure of the Claimant. It is also a fact that the Claimant's probation period was extended for a further two months.
40. All these in my view, point to poor performance on the part of the Claimant and which goes to confirm that he indeed, contributed to his own termination.
41. For the reasons foregone, I deem an award of six (6) months salary sufficient compensation for the unfair and unlawful termination, and which is hereby awarded.
42. Judgment is therefore entered for the Claimant as against the Respondent as follows:-
 - a. A declaration that the Claimant was unfairly terminated.
 - b. An order that the Respondent pays the Claimant 6 months' salary as compensation for the unfair termination at Kshs. 1,650,000/-
 - c. The Respondent shall bear the costs of the suit and interest until payment in full.
43. It is so ordered.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

C. N. BAARI

JUDGE

Appearance:



Mr. Kabue present for the Claimant

Mr. Mwangi Chege present for the Respondent

Ms. Esther S- C/A

