



Wangui & 3 others v Prime Bridge Group Limited (Employment and Labour Relations Cause E391 of 2022) [2025] KEELRC 1124 (KLR) (26 March 2025) (Judgment)

Neutral citation: [2025] KEELRC 1124 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E391 OF 2022**

**DKN MARETE, J
MARCH 26, 2025**

BETWEEN

**MARGARET WANGUI 1ST CLAIMANT
JOSEPH GITAU 2ND CLAIMANT
DIANA NJERI 3RD CLAIMANT
BETTY SIKUKU 4TH CLAIMANT**

AND

PRIME BRIDGE GROUP LIMITED RESPONDENT

JUDGMENT

*****ARGUMENTS**

1. The Claimants instituted this suit through an undated Statement of Claim seeking relief for wrongful dismissal and unfair termination contrary to section 49 of the *Employment Act* No. 11 of 2007, unfair labour practices contrary to Article 41 of *the Constitution* of Kenya, unpaid salary for months worked, payment in lieu of notice pursuant to section 36 of the *Employment Act*, unremitted statutory deductions and a certificate of service as required under section 51 of the *Employment Act*, 2007
2. The 1st 2nd, 3rd and 4th Claimants, residents of Nairobi County, were employed by the Respondent in various capacities. The Respondent, a company registered under the Laws of Kenya, employed the 1st Claimant on 13th September 2021 under an oral contract with a gross salary of Kshs.133,056.21 but failed to pay her from the outset, leading to her constructive dismissal on 4th October 2021.
3. The 2nd Claimant was engaged on 1st March 2021 with a gross salary of Kshs.120,000 but was not paid for June and July, and upon demanding payment, was unlawfully dismissed on 23rd July 2021. The 3rd Claimant entered into a contract on 10th May 2021 with a gross salary of Kshs.115,000, served



through her probation period, but was summarily dismissed on 6th October 2021 without salary from June to October.

4. The 4th Claimant was recruited from Avmax Spares East Africa Ltd on 13th September 2021 under a contract providing for a gross salary of Kshs.275,913.36 but was not paid from the first month and was summarily dismissed on 17th November 2021. The Claimants allege the Respondent operated a sham workplace to exploit employees without pay, systematically dismissed them citing unsatisfactory performance without notice or hearing, denied them their employment entitlements, and refused to issue certificates of service.
5. The 1st Claimant sought Kshs.100,000 for salary arrears, Kshs.31,046.45 as notice pay, and Kshs.1,200,000 for unfair labour practices. The 2nd Claimant claimed Kshs.240,000 in salary arrears, Kshs.120,000 in notice pay, and Kshs.1,440,000 in compensation. The 3rd Claimant demanded Kshs.483,000.89 for salary arrears, Kshs.115,000 as notice pay, and Kshs.1,380,000 for unfair labour practices. The 4th Claimant sought Kshs.588,615.16 for unpaid salary, Kshs.64,379.36 as notice pay, and Kshs.1,686,924 in compensation.
6. The Claimants relied on *the Constitution* of Kenya 2010, the *Employment Act* 2007, and the *Evidence Act*, Chapter 80. They will adduce appointment and termination letters, written communications, demand letters, and responses from both parties. They prayed for a declaration that their dismissal was unlawful, unpaid salaries, salary in lieu of notice, 12 months' compensation, unremitted statutory deductions, issuance of certificates of service, costs, interest at court rates, and any other relief the Court may deem fit.
7. The 1st Claimant filed a Witness Statement dated 9th June 2022, stating that she was employed by the Respondent on 13th September 2021 as an Office Administrator, earning a salary of Kshs.100,000 per month. She reported to work daily and discharged her duties until 4th October 2021, when she was forced to leave employment due to non-payment of her September salary.
8. She informed the Respondent of her resignation through a WhatsApp message, which was acknowledged with a promise to process her dues. However, the Respondent's Director failed to communicate further despite her persistent follow-ups. After discussions with colleagues, she realized that the Respondent had set up a scheme to offer employment, exploit workers without pay, and then dismiss them without compensation.
9. She felt deceived and exploited by an employer who took advantage of her labour. She, therefore, prayed for salary arrears of Kshs.100,000 for the period worked, notice pay of Kshs.31,046.45, and compensation for unfair labour practices amounting to Kshs.1,200,000, together with interest and costs.
10. The 2nd Claimant filed a Witness Statement dated 11th March 2022, stating that he was employed by the Respondent through a contract dated 1st March 2021 as an Operations manager, earning a gross salary of Kshs.120,000, with a probation period of three months. He accepted the employment terms and commenced work on the same date.
11. After the probationary period, he was neither issued with a confirmation letter nor subjected to a performance review, warning, or show cause letter. From June 2021, the Respondent failed to pay his salary. Despite continuing to report to work until July 2021, he informed the Respondent in August 2021 that he could no longer attend work due to the non-payment of salaries, but received no response or assurance regarding the arrears.



12. Consequently, he sought alternative means of livelihood, ensuring that he did not compete with or prejudice his employer's interests. In October 2021, he received a termination letter indicating that his employment had been terminated effective 23rd July 2021, with a promise that his arrears would be settled in the next scheduled payment, which never materialized.
13. During the months of June and July 2021, he received no salary, and the Respondent failed to remit statutory deductions for the period between March and May 2021. He, therefore, prayed for salary arrears for June and July 2021, notice pay of Kshs.120,000, compensation for unfair labour practices amounting to Kshs.1,440,000, together with interest and costs.
14. The 3rd Claimant filed a Witness Statement dated 10th March 2022, stating that she was employed by the Respondent through a contract dated 10th May 2021 as a Procurement Officer, earning a gross salary of Kshs.115,000, with a probation period of three months. She reported to work on the same date and was tasked with purchasing aircraft consumables, a new line of business.
15. Her duties were later revised to include sourcing clients and quotations, but no inventory was ever held for resale, and no funding was provided. She received her first salary in mid-June, three weeks late. In August, the Respondent claimed to be negotiating with an investor to supply goods on credit, but the supplier rejected the terms, citing the company's inability to qualify for credit.
16. At this point, the 3rd Claimant had not received her June salary. Despite numerous inquiries about her outstanding salaries, the Respondent offered various excuses regarding bank delays. Due to rent arrears, she was unable to commute to work and informed the Respondent, but received no response. She continued working remotely, handling applications for the Kenya Civil Aviation Authority and liaising with Sales and Marketing until 6th October 2021, when she was summarily dismissed while still working on a contract.
17. Her dismissal letter cited failure to meet expectations, yet she had never been subjected to a performance review, warning, or show cause letter. Her probation period was also never formally extended. By the time of termination, she had not received her salary for June to October 2021, with no justification. After inquiries, she learned that her colleagues had also not been paid and were similarly dismissed after demanding their arrears.
18. She believed that the Respondent orchestrated a scheme to exploit employees without pay and later terminated them on allegations of poor performance. She, therefore, prayed for salary arrears of Kshs.483,000.89 for four months and six days, notice pay of Kshs.115,000, compensation for unfair labour practices amounting to Kshs.1,380,000, together with interest and costs.
19. The 4th Claimant filed a Witness Statement dated 31st March 2022, stating that she was employed by the Respondent as a Sales and Marketing Manager through a contract dated 13th September 2021, with a net salary of Kshs.200,000. At the time, she was employed by Avmax Spares East Africa and had to resign to take up the new role. She reported to work on 13th September 2021 and discharged her duties until 17th November 2021, when she was summarily terminated on allegations of failing to meet the employer's expectations.
20. Despite her contract stipulating that she would be paid in arrears at the end of every month, she never received any salary. Upon termination, she inquired from her colleagues and learned that the employer had engaged in a pattern of offering contracts, failing to pay salaries, and terminating employees upon demand for payment, citing poor performance.
21. She was never placed under a performance improvement program, nor was she issued with a caution or show cause letter regarding her alleged underperformance. She contended that it was unfair for her



to leave stable employment only for the Respondent to default on the contract from the first day, causing her to suffer loss of earnings. She, therefore, prayed for salary arrears of Kshs.588,615.18 for two months and four days, notice pay of Kshs.64,379.36, compensation for unfair labour practices amounting to Kshs.1,686,924, together with costs and interest.

Claimants' Written Submissions

22. The Claimants filed written submissions dated 30th October 2024, stating that the issues for determination were whether an employment relationship existed between them and the Respondent, whether they were on probationary terms at the time of termination, whether the Respondent's labour practices were lawful and whether they were entitled to the remedies sought.
23. They relied on Section 43(1) of the *Employment Act*, which places the burden on the employer to prove valid reasons for termination, failing which it is deemed unfair under Section 45. Section 45(2) provides that termination is unfair if the employer fails to prove that the reason was valid, fair, and related to the employee's conduct, capacity, or operational requirements and that fair procedure was followed.
24. Section 41 outlines the procedural requirements before termination on grounds of misconduct, poor performance, or incapacity, including explaining the reasons in a language the employee understands and allowing representation. This was affirmed in *Monica Munira Kibuchi & 6 Others v Mount Kenya University; Attorney General (Interested Party) (Petition 94 of 2016) [2021] KELRC 2310 (KLR)*, where the court held that probationary employees are entitled to procedural safeguards under Section 41. Labour rights are part of the Bill of Rights under Article 41 of *the Constitution*, and limitations on these rights must be justifiable under Article 24.
25. The Claimants further submitted that constructive dismissal, though not expressly provided for in the *Employment Act*, has been established through case law. In *Coca Cola East & Central Africa Limited v Maria Kagai Ligaga (Civil Appeal 20 of 2012) [2015] KECA 394 (KLR)*, the Court of Appeal defined constructive dismissal as occurring when an employee resigns due to the employer's intolerable conduct, which constitutes a fundamental breach of contract.
26. The employer's actions must indicate an unwillingness to be bound by the contract. The burden is on the employee to prove that the resignation was justified due to the employer's conduct, which must be fundamental and unilateral, rendering the work environment intolerable. The Claimants submitted that the Respondent's failure to pay their salaries and its scheme of terminating employees upon demand for payment constituted both constructive and summary dismissal.
27. The Claimants further submitted that they were all employed by the Respondent in various positions in 2021. Section 2 of the *Employment Act* defines an employee as a person employed for wages or a salary, while a contract of service is defined to include both oral and written agreements.
28. The 1st Claimant provided evidence, including a WhatsApp message from the Respondent's CEO forwarding her termination, a demand letter dated 19th November 2021 and a response from the Respondent's former advocates, Wamae & Allen, dated 15th December 2021, proving the existence of an employer-employee relationship.
29. The 2nd, 3rd and 4th Claimants also produced their contracts and termination letters, which the Respondent failed to rebut. Section 10(7) as read with Section 9(2) of the *Employment Act* places the evidential burden of proving employment terms on the employer, which the Respondent failed to discharge.
30. The Claimants relied on *Fred Okemwa v Yang Shun & China National Aero Technology International Engineering Corporation (Cause 517 of 2015) [2019] KEELRC 1718 (KLR)*, where the court held



- that the failure by an employer to file a defence or produce work records left the Claimant's evidence unchallenged. They also cited Benard A. Kagasi v For You Chinese Restaurant (Cause 1580 of 2014) [2014] KEELRC 414 (KLR), where the court held that in the absence of a written contract, the court would adopt the Claimant's evidence under Section 10(7) of the *Employment Act*, 2007.
31. The Claimants further submitted that probationary contracts are defined under Section 42 of the *Employment Act*, which limits probation to a maximum of six months, extendable once for another six months with the employee's consent. The 1st Claimant had no probation terms, while the 2nd Claimant, employed on 1st March 2021, completed his three-month probation in June 2021 and was summarily dismissed on 23rd July 2021 after automatic confirmation of his employment.
 32. Similarly, the 3rd Claimant, employed on 10th May 2021, completed her probation in August 2021 and was summarily dismissed on 6th October 2021. The Claimants relied on Wasike v Nzoia Sugar Company Limited (Cause 90 of 2017) [2022] KEELRC 61 (KLR), where the court held that once the probationary period lapsed, the contract automatically converted to confirmed employment.
 33. They also relied on Francis Aboge Oduk v Hasbah Kenya Limited (Cause 539 of 2015) [2020] KEELRC 1741 (KLR), where the court found that an employee whose probation was not extended in writing was deemed confirmed. The 4th Claimant was the only one still on probation at the time of dismissal.
 34. The Claimants further submitted that the Respondent violated their constitutional rights, including Article 28 on human dignity, Article 29(d) and (f) on security of the person, Article 30 on freedom from servitude, Article 41 on fair labour relations, and Article 47 on fair administrative action. The Respondent's failure to pay salaries caused emotional and financial distress, forcing the Claimants into servitude and degrading conditions.
 35. They relied on Jonathan Spangler v Centre for African Family Studies (CAFS) (Cause 108 of 2015) [2017] KEELRC 1242 (KLR), where the court held that delayed salaries create anxiety, demoralization, and financial hardship, amounting to forced labour and servitude under Article 30 of *the Constitution*. The court found that continued work without pay, coupled with additional work assignments to avoid redundancy, amounted to forced labour and violated constitutional prohibitions against slavery and servitude.
 36. The Claimant's submitted that the 1st Claimant, Margaret Wangui, was employed on 13th September 2021 until 4th October 2021, when she was forced to leave employment due to the Respondent's failure to pay her salary and remit statutory deductions, amounting to constructive dismissal. Despite informing the Respondent of her resignation and the Respondent promising to settle her dues as evidenced in Exhibit 7 at page 10, no payment was made, causing financial hardship and emotional distress.
 37. It was submitted that failure to pay wages is a fundamental breach amounting to a repudiatory breach, entitling the employee to damages. Reliance was placed on Kenneth Kimani Mburu & Saidi Emmerich v Kibe Muigai Holdings Limited (Cause 337 & 339 of 2011) [2014] KEELRC 723 (KLR) (Employment and Labour) (29 January 2014) (Award), where the Court held that withholding an employee's salary for four months constitutes a fundamental breach, amounting to constructive dismissal and warranting compensation.
 38. It was submitted that the 1st Claimant is entitled to salary arrears of Kshs.100,000, salary in lieu of notice of Kshs.31,046.45, compensation for unfair labour practices of Kshs.1,200,000, plus interest and costs.



39. The 2nd Claimant, Paul Muthoka, was employed from 1st March 2021 until July 2021, when he raised concerns about non-payment of salaries for June and July. Without response or assurance of payment, he sought alternative means of survival until October 2021 when he received a termination letter, which took effect on 23rd July 2024.
40. The Respondent alleged that he was in competition with them and had failed to meet business expectations, leading to summary dismissal. It was submitted that summary dismissal under Section 44 of the *Employment Act* must meet both substantive and procedural fairness, including the requirement under Section 41(2) for notification and a hearing.
41. It was contended that the 2nd Claimant was never issued with a notice to show cause or given an opportunity to respond to the allegations before termination. Reliance was placed on *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd (Cause 64 of 2012) [2013] KEELRC 920 (KLR) (6 December 2013) (Judgment)*, where the Court held that procedural fairness requires informing an employee of charges, allowing them to prepare a defense, and considering their representations before dismissal.
42. Further, it was argued that the 2nd Claimant was not subjected to a performance review, nor was he made aware of expectations he allegedly failed to meet. *Wasike v Nzoia Sugar Company Limited (supra)* was cited, where the Court held that termination on poor performance must be justified through clear criteria and an appraisal report. The 2nd Claimant sought salary arrears of Ksh.240,000, salary in lieu of notice of Ksh.120,000, compensation for unfair labour practices of Ksh.1,440,000, plus interest and costs.
43. The 3rd Claimant was also summarily dismissed on 6th October 2021 on the grounds of failing to meet business expectations. It was submitted that she was never placed under a performance improvement programme, issued with a notice to show cause, or given a performance review. It was argued that employers must subject an employee to a disciplinary process before placing them on a performance improvement plan.
44. Reliance was placed on *Muturia & 2 others v Co-operative Bank of Kenya Ltd & 2 others (Cause 1234 of 2017) [2023] KEELRC 1168 (KLR) (12 May 2023) (Judgment)*, which reiterated *Maina Mwangi v Thika Coffee Mills Limited (2012) eKLR*, stating that an employer must inform an employee of their poor performance, provide training and an opportunity for improvement, and engage the employee in an investigation before termination.
45. Further reliance was placed on *National Bank of Kenya v Samuel Nguru Mutonya (Civil Appeal 118 of 2017) [2019] KECA 404 (KLR) (Civ) (6 August 2019) (Judgment)*, which upheld *Jane Samba Mukala v Ol Tukai Lodge Limited (Industrial Cause 823 of 2010) (2010) LLR 255 (ICK) (September 2013)*, where the Court held that termination for poor performance requires an employment policy defining performance standards and proof of an evaluation system.
46. The 3rd Claimant sought salary arrears of Kshs.483,000.89, salary in lieu of notice of Ksh.115,000, compensation for unfair labour practices of Ksh.1,380,000, plus interest and costs.
47. The 4th Claimant was summarily dismissed on 17th November 2021 on similar grounds of poor performance. It was argued that this was retaliatory as she had been poached from her previous employer, as evidenced by Exhibit 9 at page 12, and was terminated immediately after demanding her unpaid salary in Exhibit 8. It was submitted that she resigned from a stable job to join the Respondent's company, only to be unfairly dismissed without substantive or procedural justice.



48. Jonathan Spangler v Centre for African Family Studies (CAFS) [2017] KEELRC 1242 (KLR) was cited, where the Court condemned the use of poor performance as a pretext for unfair labour practices. It was contended that the Respondent used employment as a scheme to exploit employees' labour without intending to pay them, amounting to fraud. The 4th Claimant sought salary arrears of Kshs.588,615.16, salary in lieu of notice of Ksh.64,379.36, compensation for unfair labour practices of Ksh.1,686,924, plus interest and costs.
49. It was further submitted that the Respondent failed to rebut the Claimants' claims or produce any proof of salary payments, making the allegations of non-payment unrebutted. The Respondent's failure to remit statutory deductions violated Section 19(1) of the Employment Act, which mandates employers to deduct and remit employee contributions. The Court was urged to compel the Respondent to settle the outstanding statutory remittances.
50. The Claimants contended that under Section 47(5) of the Employment Act, the burden of proving unfair termination lies with the employee, which is discharged by establishing a prima facie case that termination did not meet the legal threshold in Section 45. They argued that the 1st Claimant was constructively dismissed due to non-payment of wages, while the 2nd, 3rd and 4th Claimants were dismissed unfairly and unlawfully without due procedure.
51. The Claimants relied on Kenfreight (EA) Limited v Benson K Nguti (Civil Application 18 of 2016) [2018] KESC 61 (KLR) (Civ) (24 September 2018) (Ruling), where the Supreme Court held that remedies for unlawful termination under Section 49 of the Employment Act are discretionary. Notice pay was claimed under Section 35 of the Act, as supported in Manyaki v Njuca Consolidated Company Limited (Appeal E031 of 2023) [2023] KEELRC 2376 (KLR) (28 September 2023), (Judgment.)
52. The Claimants submitted that they fully performed their contractual duties and repeatedly requested their salaries without compliance from the Respondent. Given the employer's failure to rebut their claims and its acknowledgment of non-payment, the Respondent was liable to compensate them in full for outstanding wages, notice pay, unpaid statutory deductions, and additional damages at the Court's discretion.

Respondent's Case

53. The Respondent filed an application dated 19th January 2023 seeking leave for the law firm of M/s Wamae & Allen Advocates to cease acting on its behalf. The application was based on the grounds that the law firm was at a deadlock on how to proceed with the matter due to the Respondent's failure to respond to numerous correspondences seeking instructions.
54. The firm stated that, without proper instructions, it was unable to proceed further and that the Respondent's conduct indicated a lack of interest in being represented by the firm. The breakdown of the advocate-client relationship was cited as justification for the request, with the firm asserting that it was no longer in a position to continue acting for the Respondent. It was argued that, in the interest of justice, the firm should be granted leave to cease acting. The application was supported by the affidavit of Caxtone P. Kigata and any further grounds to be adduced at the hearing.
55. The Respondent's application was supported by an affidavit of even date sworn by Caxtone P. Kigata, an Advocate of the High Court of Kenya and a Partner in Wamae & Allen Advocates, who was duly authorized by the other Partners to swear the affidavit. He stated that the firm entered appearance on behalf of the Respondent on 18th August 2022 pursuant to summons issued in the matter, as evidenced by the Memorandum of Appearance dated the same day.



56. The firm undertook its professional obligation of updating the Respondent on the progress of the matter and sought instructions to draft a response to the claim, but despite email correspondence sent on 19th August 2022, the Respondent did not respond. A follow-up email dated 20th September 2022 reminded the Respondent of the need to adhere to professional courtesy by responding to the firm's communications, but no response was received.
57. Further, on 27th October 2022, the firm issued a Notice of Withdrawal of Appearance, which was also ignored. Despite numerous efforts to obtain instructions, the Respondent failed to provide guidance on how to proceed with the matter. The deponent stated that the Respondent's conduct indicated a lack of interest in being represented by the firm, leading to a breakdown of the advocate-client relationship.
58. Consequently, the firm was no longer in a position to continue acting for the Respondent. It was therefore urged that, in the interests of justice, the court grants leave for Wamae & Allen Advocates to cease acting for the Respondent. The affidavit was sworn based on facts within the deponent's knowledge, save for matters disclosed from other sources, and he prayed that the application be allowed as prayed.
59. The Respondent's case above cited, (paragraphs 53 -59) may sound irrelevant but is a demonstration of the Respondent's dis-interest in prosecuting the matter. It remains undefended whatsoever. This is despite service.
60. From the foregoing, a case of unlawful termination of the employment of the claimant ensues. The conduct of the Respondent, including non-payment of salaries and other misconduct formed a fundamental breach of the claimant contracts of employment. I therefore find a case of unlawful termination of their employment and hold as such.
61. On a finding of unlawful termination of employment, the claimants become entitled to the relief sought.
62. I am therefore inclined to allow the claim and order relief as follows;
 1. 1st Claimant
 - i. Salary arrears for one (1) monthsKshs.133,056.21
 - ii. One (1) months salary in lieu of noticeKshs.133,056.21
 - iii. One (1) months salary as compensation for unlawful termination of employmentKshs.133,056.21

Total of claimKshs.399,168.63
 2. 2nd Claimant
 - i. Salary arrear for two (2) monthsKshs.240,000.00
 - ii. One (1) months salary in lieu of noticeKshs.120,000.00
 - iii. One (1) months salary as compensation for unlawful termination of employmentKshs.120,000.00

Total of claimKshs.480,000.00
 3. 3rd Claimant



- i. Salary arrears for four (4) monthsKshs.483,000.89
 - ii. One (1) months salary in lieu of notice.....Kshs.115,000.00
 - iii. One (1) months salary as compensation for unlawful termination of employmentKshs.115,000.00
- Total of claimKshs.713,000.89

4. 4th Claimant

- i. Salary arrears for two (2) months and 4 days.....Kshs.588,615.00
 - ii. One (1) months salary in lieu of noticeKshs.200,000.00
 - iii. Two (2) months salary as compensation for unlawful termination of employmentKshs.400,000.00
- Total of claimKshs.1,188,615.68
- ii. Each party shall bear their cost of the claim.

DELIVERED, DATED AND SIGNED THIS 26TH DAY OF MARCH 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Odhiambo instructed by OG Law LLP for the claimant

No appearance for the Respondent.

