



REPUBLIC OF KENYA



KENYA LAW
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**Bundi v Kiaraho (Employment and Labour Relations Cause
E748 of 2022) [2025] KEELRC 671 (KLR) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 671 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E748 OF 2022**

HS WASILWA, J

MARCH 6, 2025

BETWEEN

PETER NJONJA BUNDI PETITIONER

AND

JACKIE KIARAHO RESPONDENT

JUDGMENT

1. The Claimant instituted this suit by Memorandum of Claim dated 6th September 2022, seeking redress for unfair termination of employment, termination in lieu of notice, and unfair and illegal labour practices. The Claimant, Peter Njonja Bundi was employed by the Respondent, Jackie Kiaraho, the director of Jadav Gardens in Tigoni, Limuru Sub-county.
2. The Claimant was employed from 1st April 2015 to November 2020 as a private security guard at Jadav Gardens, a recreational facility. The Respondent had agreed to pay the Claimant a monthly salary of Kshs 16,000 but only paid him Kshs 10,000 for the entire duration of employment.
3. The Claimant worked 12-hour shifts daily, from 6:00 a.m. to 6:00 p.m including weekends and public holidays, without paid rest or annual leave. Despite raising concerns about these conditions, the Respondent dismissed them, asserting that the Claimant was a casual worker and, therefore, not entitled to such benefits.
4. On or about 24th October 2020, the Claimant was arrested by officers from Tigoni Police Station on the Respondent's command for an alleged theft that occurred at the premises outside his shift hours. The Claimant was held in custody for six days before being released after investigations established he had no involvement.
5. Following his release, the Respondent instructed him to stay away from work and failed to pay him wages for that month. The Respondent disregarded the Claimant's requests for his dues, ultimately terminating his employment without lawful justification. The termination was unfair and contrary to



- Sections 35 and 41 of the [Employment Act](#), which prescribe due process, including prior notice and a fair hearing before termination.
6. The Respondent's actions violated Section 37 of the [Employment Act](#), which provides that a casual worker who has worked continuously for a period exceeding one month shall be deemed a permanent employee entitled to all benefits under the Act. The Respondent also violated Section 28 of the Act by failing to grant the Claimant paid annual leave and weekly rest days, despite requiring him to work weekends and public holidays for five years.
 7. Furthermore, the Claimant worked 12-hour shifts daily, contrary to the statutory 9-hour work limit, in violation of both Kenyan labour laws and international labour standards, including the International Labour Organization (ILO) Conventions. The Respondent failed to comply with the [Private Security Regulation Act](#), 2019, by underpaying the Claimant below the minimum wage of Kshs 27,993 as prescribed in the Wages General Order, 2018.
 8. The Respondent also failed to issue the Claimant with a written or oral notice before terminating his employment, contrary to statutory requirements. As a result, the Claimant seeks a declaration that he was an employee protected under the [Employment Act](#) and not a casual labourer. He further seeks a declaration that his constitutional right to fair labour practices under Article 41 of the [Constitution](#) of Kenya, 2010, was breached.
 9. The Claimant prays for Kshs 48,000, being three months' salary in lieu of notice; Kshs 80,000 as compensation for lack of paid annual leave for five years; Kshs 300,000 as compensation for underpayment, being the difference between his agreed salary and the statutory minimum wage for private security guards; Kshs 138,580 as compensation for working on Sundays at a daily rate of Kshs 533 for 52 Sundays per year for five years; Kshs 63,999 for working on public holidays, calculated at double the daily rate for 12 holidays per year over five years; Kshs 754,336 for overtime worked, calculated based on an hourly rate of Kshs 43.96 at 1.5 times the regular rate, amounting to 44 overtime hours per week over five years; Kshs 40,000 as service pay at the rate of 15 days' salary per year worked; and Kshs 192,000 as compensation for wrongful dismissal, calculated at 12 months' salary based on the agreed monthly salary of Kshs 16,000. The total claim amounts to Kshs 1,616,915. The Claimant also seeks costs of the suit and any other relief the Honourable Court may deem fit.
 10. The Claimant filed his Witness Statement dated 6th September 2022, stating that he is a male adult residing in Kiambu County. He was employed by the Respondent on 1st April 2015 as a night security guard and worked until 3rd November 2020, when his employment was unfairly terminated on allegations of failing to prevent a felony on 10th October 2020.
 11. He was retained at a monthly salary of Kshs. 10,000, which remained unchanged throughout his employment. He reiterated that the particulars of his claim to be as demonstrated in his Memorandum of Claim. He prays that the Court finds his termination unfair and without justifiable cause and that he be compensated as outlined in his Memorandum of Claim.
 12. The service was effected by sending a soft copy of the documents via the Respondent's mobile phone number 0727539846. She confirmed that the message displayed two grey ticks, indicating successful delivery to the Respondent. A screenshot of the message was attached as evidence. She affirmed that the contents of the affidavit were true.
 13. The Claimant filed a further Affidavit of Service dated 16th April 2024, sworn by Grace Wanjiku Mwaura, an Advocate of the High Court of Kenya. She stated that on 11th April 2024, she personally served upon the Respondent a Statement of Claim, Verifying Affidavit, Witness Statements, and Documents in support of the claim dated 8th October 2022. The documents were physically served at



the Respondent's residence in Runda Estate, specifically at 51 Mimosa Close. They were received at the gate by a security officer identified as Ben. She affirmed that the contents of the affidavit are true to the best of her knowledge, information, and belief.

Claimant's Written Submissions

14. The Claimant filed written submissions dated 19th February 2025 in support of the Statement of Claim dated 6th September 2022. The Claimant relied on the claim, witness statements, list of documents, demand letter dated 19th February 2023, notice to compel attendance dated November 2020, and an undated contract to establish entitlement to the reliefs sought.
15. The Claimant was employed as a security guard by the Respondent at Jadav Gardens, Tigoni, beginning on or about 1st April 2015 as a casual employee and continued to work in that capacity until November 2020. The Respondent provided the Claimant with a contract, which she refused to acknowledge or sign, but continued to pay a salary of Kshs 10,000 per month at her discretion.
16. The Claimant worked a 12-hour shift from 6:00 PM to 6:00 AM without the requisite protective garments, paid rest, or annual leave. When he raised concerns about the working conditions, the Respondent threatened to terminate his employment, asserting that he was merely a casual labourer. On 24th October 2020, the Claimant was summoned to work during the day, arrested, and charged with failing to stop a crime.
17. He was held incommunicado at Tigoni Police Station for six days before being released. Upon release, he was instructed not to report to work and was denied his salary for November 2020 and termination dues in lieu of notice. Despite serving demand letters, including one dated 13th May 2021 from Njenga Wanyoike and Associates Advocates, the Respondent neither responded nor entered an appearance after being served with the claim and mention notices.
18. The Claimant submitted that Section 37 of the *Employment Act*, 2007 applied to his employment, as he had worked continuously for more than three months. He relied on *Esther Njeri Maina v Kenyatta University* [2020] eKLR, where the court held that an employee performing the same tasks on a continuous basis for over three months could not be classified as a casual worker.
19. Further reliance was placed on *Nanyuki Water and Sewerage Company Limited v Benson Mwiti Ntiritu & 4 Others* (2018), where the Court of Appeal affirmed that Section 37 of the *Employment Act* applies to convert casual employment into a contract of service with monthly wages. The Claimant asserted that his employment ceased to be casual upon working for five continuous years and therefore qualified for protection under the *Employment Act*.
20. He further submitted that his termination was unfair under Section 45(1) of the *Employment Act*, which provides that no employer shall unfairly terminate an employee. Section 45(2) states that termination is unfair if the employer fails to prove that it was based on valid and fair reasons related to the employee's conduct, capacity, or operational requirements and that it followed due process.
21. The Claimant was unlawfully arrested for a crime he did not commit, dismissed without being tried or convicted, denied a disciplinary hearing, and not given notice of termination. The failure to comply with Section 45 rendered his termination unlawful. The Claimant sought reliefs as follows: a declaration that he was an employee protected under the *Employment Act* and not a casual laborer; a declaration that his constitutional right to fair labor practices was breached; Kshs 48,000 for three months' salary in lieu of notice; Kshs 80,000 for lack of paid annual leave for five years; Kshs 300,000 for underpayment based on the Wages General Order (2018), which set the statutory minimum salary for private guards at Kshs 15,000 per month, meaning he was underpaid by Kshs 5,000 per month for



five years; Kshs 138,580 for working on Sundays at Kshs 533 per day for 52 Sundays per year for five years; Kshs 63,999 for working on public holidays at double the daily rate for 12 holidays per year for five years; Kshs 754,336 for overtime, as he worked 84 hours per week instead of the statutory 60 hours, calculated at an hourly rate of Kshs 43.96 multiplied by 1.5 for the overtime hours worked over five years; Kshs 40,000 as service pay at the rate of 15 days' salary for each year worked; and Kshs 192,000 as compensation for wrongful dismissal, equivalent to 12 months' salary, based on a monthly salary of Kshs 16,000 divided by 30 days. The total amount sought was Kshs 1,616,915.

22. The Claimant relied on *Togom v Radar Limited* (Employment and Labour Relations Appeal E003 of 2023) [2024] KEELRC 112 (KLR) (1 February 2024) (Judgment) in support of the reliefs sought.
23. The Claimant's statement of claim, written statement, and witness statements of James Mwendia and Oyugi Otwere confirmed that he worked as a night guard at Jadav Gardens for five continuous years before his employment was abruptly terminated following his arrest. Upon release, he was instructed not to return to work, effectively terminating his employment. The Respondent failed to enter an appearance or file any response despite being served with all court documents. This claim therefore proceeded ex parte in absence of the respondents.
24. Having considered the pleadings, evidence, and submissions before this Court, I find that the Claimant was an employee of the Respondent within the meaning of Section 37 of the *Employment Act*, 2007, and was unlawfully and unfairly terminated contrary to Section 45 of the *Employment Act*. The Respondent failed to provide a valid reason for termination or adhere to due process, thereby violating the Claimant's rights under the law.
25. The suit was undefended as the Respondent neither entered appearance nor filed any response despite being duly served with court documents on two occasions. The Claimant filed an Affidavit of Service dated 16th April 2024, sworn by Advocate Grace Wanjiku Mwaura, confirming that the Respondent was personally served with the Statement of Claim, Verifying Affidavit, Witness Statements, and supporting documents at 51 Mimosa Close, Runda Estate on 11th April 2024, where they were received by a security officer named Ben.
26. Additionally, the Claimant filed another Affidavit of Service dated 20th November 2023, in which the same Advocate affirmed that she served the Respondent with the Statement of Claim, Verifying Affidavit, Witness Statements dated 6th September 2023, and a Memorandum of Appearance via the Respondent's mobile number 0727539846, with delivery evidenced by two grey ticks. Despite proper service, the Respondent failed to participate in the proceedings.
27. Accordingly, judgment is entered in favor of the Claimant as follows:
 1. A declaration that the Claimant was an employee protected under the *Employment Act* and not a casual labourer.
 2. A declaration that the Claimant's termination was unlawful and unfair.
 3. Payment of the following sums:
 - i. 1 months salary in lieu of notice 16,000/-.
 - ii. Compensation for lack of paid annual leave for one year Kshs 16,000/-
 - iii. Underpayment for five years: Kshs 300,000/-
 - iv. Compensation for working on Sundays for three years: Kshs 83,148/- remainder is time barred.



- v. Compensation for working on public holidays for three years: Kshs 38,397/-.
 - vi. Overtime pay for three years: Kshs 452,601.6/-.
 - vii. Service pay for five years: Kshs 40,000/- as pleaded.
 - viii. 6 months' salary for wrongful dismissal: Kshs 86,000/-
4. The total amount awarded is Kshs 992,146.6/- less statutory deductions.
 5. The Respondent shall issue the Claimant with a Certificate of Service as required under Section 51 of the *Employment Act*, 2007.
 6. The awarded sum shall attract interest at court rates from the date of judgment until payment in full.
 7. The Claimant is awarded costs of the suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

