



**Gitonga v Mariakani Cottage Hospital (Cause E503 of 2023)
[2025] KEELRC 1183 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1183 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E503 OF 2023**

J RIKA, J

APRIL 28, 2025

BETWEEN

ROBERT MBUE GITONGA CLAIMANT

AND

MARIAKANI COTTAGE HOSPITAL RESPONDENT

JUDGMENT

1. The Claimant filed his Statement of Claim, dated 26th June 2023.
2. He states that he was employed by the Respondent as an ambulance driver, for a period of 3 years.
3. The contract commenced on 1st March 2018.
4. It was renewed for another 3 years, commencing 1st March 2021.
5. The Respondent suspended him on 12th September 2022, on the allegation that he left the hospital in the Respondent's vehicle, without permission.
6. The allegation was untrue, and was aimed at terminating the Claimant's contract prematurely, without paying him his full salary.
7. He was owed Kshs. 350,000 at the time of suspension.
8. He prays for arrears of salary at Kshs. 320,400; notice at Kshs. 25,000; compensation for unfair termination at Kshs 150,000; service dues for 5 years, at Kshs. 62,500 – total Kshs. 557,900. He prays for costs and interest.
9. There is evidence on record that the Respondent was served with the Summons, but neither entered appearance, nor filed a response.



10. The Claim was heard and closed on 13th June 2024. It was last mentioned on 9th December 2024, when the Claimant confirmed filing of his closing submissions.
11. He restated the contents of his Statement of Claim, in his evidence. He exhibited documents filed with the Statement of Claim. He was suspended. The Respondent had not been paying his salary in full. His salary was Kshs. 25,000 monthly, inclusive of house allowance.
12. He told the Court that termination was on 12th September 2022, the date he was suspended. He was advised he would be contacted after suspension, but was not contacted. It was not true that he disappeared with the Respondent's car. He would sign a gate pass on leaving the Respondent's premises, whenever he drove the Respondent's car.
13. He deemed his contract to have been unfairly terminated. He presented the Claim, because he was not recalled

The Court Finds: -

14. In the absence of any pleadings, evidence and documents from the Respondent, the Court has no reason to doubt the Claimant's position.
15. He has exhibited documents showing that he was employed by the Respondent as an ambulance driver. His contract was for 3 years, lapsing in 2021. It was renewed for another 3 years, which would have lapsed in 2024.
16. He was suspended on 12th September 2022, on the allegation that he had driven off in the Respondent's car, without permission. The letter of suspension is exhibited. He was suspended without pay, and was told that the Respondent would not pay his house rent for the month of March 2022.
17. He states that he was advised he would be recalled, but was not recalled. There is no evidence that he was recalled, subjected to further disciplinary process, and formally dismissed. He was right in his thinking, that suspension was intended to be termination. The Respondent did not establish valid reason in terminating the Claimant's contract, or follow a fair procedure, in accordance with Sections 41, 43 and 45 of the *Employment Act*.
18. Termination was unfair.
19. The prayers for salary arrears at Kshs. 320,400 and notice at Kshs. 25,000 –total Kshs. 345,400, are granted.
20. His contract had a clause on payment of gratuity at the rate of 15 days' salary, for each completed year of service. He worked 4 complete years 2018-2022. His salary was Kshs. 25,000 monthly, which would yield gratuity [claimed as service] at Kshs. 50,000. He is granted gratuity at Kshs. 50,000.
21. He pleads compensation for unfair termination at Kshs. 150,000. He did not elaborate how this was worked out. Based on his monthly salary of Kshs. 25,000, the sum claimed is equivalent of 6 months' salary. He had worked for 4 years, 6 months, and had about 2 years to completion of his contract. He did not cause or contribute to the circumstances leading to termination of his contract. Compensation equivalent of 6 months' salary as prayed, is reasonable. He is allowed the prayer for compensation, equivalent of 6 months' salary at Kshs. 150,000.
22. He is granted costs, and interest 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 arrears of salary at Kshs. 345,400; gratuity at Kshs. 50,000; and compensation for unfair termination equivalent of 6 months' salary at Kshs. 150,000 – total Kshs. 545,400.
- 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 NAIROBI, THIS 28TH DAY OF APRIL 2025.

JAMES RIKA

JUDGE

