



**Waweru v Optimise Outsourcing Limited (Cause E760 of 2023)  
[2025] KEELRC 1191 (KLR) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1191 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E760 OF 2023**

**J RIKA, J**

**APRIL 28, 2025**

**BETWEEN**

**JOHN BRIAN WAWERU ..... CLAIMANT**

**AND**

**OPTIMISE OUTSOURCING LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant filed his Statement of Claim, dated 19<sup>th</sup> September 2023.
2. He states that he was employed by the Respondent, on 6<sup>th</sup> June 2022 as an Assistant Management Accountant.
3. His letter of employment is dated 19<sup>th</sup> May 2022.
4. His salary was Kshs. 100,000 monthly. He served a probationary period of 6 months, ending 6<sup>th</sup> November 2022.
5. He was verbally dismissed by the Respondent on 25<sup>th</sup> August 2023. He was told that he would be sent a letter later, giving the reasons for dismissal.
6. He received a letter from the Respondent, dated 31<sup>st</sup> August 2023, detailing the reasons for dismissal.
7. He was alleged to have breached the terms of his consultancy engagement.
8. He states that termination breached his constitutional right under Article 41 on fair labour practices, and statutory rights under Sections 41, 43 and 45 of the *Employment Act*.
9. His prayers are: -



- a. Declaration that termination was in breach of the Claimant's rights to dignity, fair labour practices, fair administrative action, under Articles 28, 41 [1] and 47 respectively, of the Constitution.
  - b. Declaration that termination was unfair and unlawful under Sections 41, 43 and 45 of the Employment Act.
  - c. 12 months' salary in compensation for unfair and unlawful termination.
  - d. Damages for violation of the constitutional rights shown above.
  - e. Costs.
  - f. 1-month salary in lieu of notice at Kshs. 100,000.
  - g. Certificate of service to issue.
  - h. Pro-rata annual leave days.
  - i. Compensation for pain, suffering, mental anguish, emotional turmoil, decrease in quality of life caused by unfair termination.
  - j. Interest.
  - k. Any other suitable relief.
10. The Respondent filed its Statement of Response, dated 12<sup>th</sup> October 2023. It is conceded that the Claimant was employed by the Respondent as an Assistant Management Accountant, on 6<sup>th</sup> June 2022. He was earning a gross monthly salary of Kshs. 100,000 as stated.
  11. Between April and August 2023, the Claimant was shown to have clocked in 10 to 50 minutes late, in the biometric attendance register. Late reporting was discussed between him and management. He did not improve.
  12. He refused to complete review task assigned by the Finance Manager who was away on sick leave. The Finance Manager was compelled to invite a junior member of the team, for review.
  13. It was also discovered that the Claimant inappropriately shared sensitive company information, with 3<sup>rd</sup> parties.
  14. He was issued a letter to show cause, and invited for a meeting through Microsoft Teams. He was provided link for the meeting. He attended the meeting, on 26<sup>th</sup> July 2023.
  15. He admitted that he had shared confidential information with the former Head of Finance at the Respondent. He disclosed that he was in frequent contact with her. He said he did not intend to share the confidential information.
  16. He was speechless and was not able to provide an answer for his lateness, when shown the biometric data.
  17. He was invited for disciplinary hearing on 25<sup>th</sup> August 2023. Proceedings were recorded. He opted to proceed without a colleague of his choice.
  18. The charges were read out. The Claimant admitted that he shared confidential information with 3<sup>rd</sup> parties. His sole concern at this stage, was how much he would be paid in final dues.



19. He was advised of his right of appeal. Appeal was to be lodged within 7 days. He was not desirous of lodging an appeal, and the Respondent issued him the letter of summary dismissal, dated 31<sup>st</sup> August 2023.
20. The Claim was filed within a record time of 3 weeks, without first referring the dispute to the Labour Office.
21. The Respondent urges the Court to dismiss the Claim with costs.
22. The Claimant and the Respondent's People and Culture Manager Paul O'Toole, gave evidence, and rested the respective cases, on 4<sup>th</sup> July 2024. The Claim was last mentioned on 13<sup>th</sup> November 2024, when the Parties confirmed filing and exchange of their closing submissions.
23. The Claimant relied on his 2 witness statements on record, and documents exhibited as [1-22]. He restated his employment history and details, as summarized from his Statement of Claim, above. He was dismissed verbally. He denied that he was issued letter to show cause, and given a hearing.
24. He was called to a meeting to explain a transaction he was involved in. The meeting was transformed into a disciplinary hearing. The issue of clocking in and out, was raised at the meeting. He explained that in general, he worked 9 hours a day, and had discretion on reporting and leaving times.
25. He was asked about sharing out confidential information with a former Employee. He conceded that he was in contact with her, and that she was his friend. He was being asked to prepare journals to avoid payment of VAT, which he thought was illegal. The Respondent is an outsourcing company. The Claimant worked for the principal Employer, based in the UK. He had reservation about posting in the journal to avoid payment of VAT. He asked the Head of Finance to give him written instructions. The Head of Finance, his supervisor was based in the UK. VAT was payable, when a customer made deposit. The Head of Finance wanted VAT to be recognized, after sale.
26. Cross-examined, the Claimant told the Court that the E&LRC does not deal with VAT disputes. He did not have tax expertise. He did not join the principal Employer to the Claim,
27. All meetings preceding termination were virtual. His supervisor assigned him a task, which he did not carry out. Failure on the part of the Claimant to carry out the task, amounted to insubordination.
28. He received invitation for one-on-one meeting on 26<sup>th</sup> July 2023. He was asked about the incomplete task and clocking. He confirmed that he had conversation with a 3<sup>rd</sup> party, concerning the Respondent's business. The 3<sup>rd</sup> party was not his Employer, and had no authority to instruct the Claimant, in performance of his duty. He did not know if the proposal by the Head of Finance on VAT, was legal. He called for written instructions.
29. He was given the charges and reasons for termination.
30. He wrote to the Respondent, asking to be supplied with a letter of termination. It was supplied. He filed the Claim 3 weeks after termination.
31. Redirected, he told the Court that the Respondent employed him, acting as a supplier of labour, to the UK company. Termination was carried out by the Respondent in Kenya. The letter of summary dismissal did not give late reporting for duty, as a reason justifying termination. The reason given was breach of confidentiality. The 3<sup>rd</sup> party he was alleged to have shared confidential information with, had recruited him as an Employee. He attended 2 meetings, both without adequate notice and agenda. He did not receive any formal invitation to any meeting.



32. Paul O'Toole relied on his witness statement and documents [1-10] in his evidence. He confirmed that the Claimant was employed by the Respondent for about 1½ years. He communicated with a former Employee of the Respondent, sharing confidential information. This was the main issue.
33. Anthony told Paul that he had received a message from the former Employee Kat, wondering why the Claimant was sharing the Respondent's confidential information, with 3<sup>rd</sup> parties. Paul asked Anthony to sit down with the Claimant on 26<sup>th</sup> July 2023, and have a discussion on the subject. The Claimant did not change.
34. It was determined that he is taken through a disciplinary hearing. The Claimant was heard. He was not remorseful, and gave no reason for what he did. He breached the rules of confidentiality. The Respondent decided to terminate his contract.
35. Cross-examined, Paul told the Court that he did not have any document, showing that the Claimant was advised on his right of appeal. The Respondent did not share with him its Human Resource Policy. The right of appeal was not shown in the letter of employment.
36. Ms. Wambui, Accounts Assistant attended the first meeting, on 26<sup>th</sup> July 2023. Anthony oversaw the meeting. Paul convened the second meeting. The notice to the Claimant was about 20 minutes. It was via e-mail.
37. He was not notified about the agenda.
38. The issue about clocking and lateness arose on the floor of the disciplinary hearing. This issue was not included in the letter of termination. He did not know why Ms. Wambui attended the meeting.
39. The Claimant leaked confidential information to Kat, a former Employee of the Respondent. He conceded he contacted her. He probably did not discuss the task he had been assigned, with Kat.
40. He worked for 9 hours. The Respondent sources its products from China. A customer would make a pre-order. VAT issue was not the main issue; breach of confidentiality was the issue. The Respondent supplied the UK company with labour. The contract had exceptions to the confidentiality rule, What the Claimant shared, was not within the exceptions.
41. Redirected, Paul emphasized that termination was on account of breach of confidentiality. He was engaged in insubordination, on the issue of VAT.
42. The issues are whether termination of the Claimant's contract was procedurally fair; whether it was founded on valid reason; and whether he merits the prayers sought.

**The Court Finds: -**

43. It is important from the outset, to note that the parties were in an employment relationship, not a consultancy relationship.
44. The Respondent, in its Statement of Response repeatedly refers to the Claimant as a Consultant, and to the contract concluded between the parties as a consultancy agreement. The letter of summary dismissal refers to the Claimant's salary as consultancy fee.
45. The contract signed by the parties however, is clear that it was an employment contract, entered into pursuant to the *Employment Act*, 2007.
46. The terms and conditions of employment; the commencement date and duration of employment; the remuneration payable; and the date the Claimant left employment, are not contested. It is



- not contested that the Respondent employed the Claimant on behalf of a UK company, and that termination was initiated by the Respondent at Nairobi.
47. Procedure: The Claimant's position is that he was not heard. He was called to a meeting to explain a transaction he was involved in. The meeting was transformed into a disciplinary hearing. He was not notified about the agenda. The notice to attend the hearing was about 20 to 30 minutes.
  48. While the Court formed the view that there was a semblance of a hearing, which was recorded by the Respondent, it is clear that the hearing was not in conformity with the minimum statutory standards of fairness, contemplated under Sections 41 and 45 of the *Employment Act*.
  49. Paul O'Toole, agreed with the Claimant, on most of the flaws identified by the Claimant, on the procedure adopted by the Respondent. He agreed that the first meeting, characterized as show cause meeting, was indeed a routine meeting. It was one of the weekly meetings the Claimant ordinarily held with Anthony Gray.
  50. The second meeting, characterized as a disciplinary hearing meeting, was convened by Paul. He told the Court that the Claimant was issued a 20 minutes' notice of the hearing. The notice was e-mailed. The issue concerning clocking and lateness to work, was raised on the floor of the meeting. Paul did not even know why a colleague of the Claimant, an Accounts Assistant, attended the meeting.
  51. Sections 41 and 45 of the *Employment Act* require that an Employee is given adequate notice of the hearing, and sufficient time to prepare. The charges must be clearly communicated and not crafted on the floor of the disciplinary hearing. The Employee must be informed of his right to be accompanied to the hearing by a colleague, or trade union representative of his choice. He and his colleague, or trade union representative, must be allowed to make representations at the disciplinary hearing. Whatever representations they make, must be taken into account by the Employer, before a decision is made.
  52. Procedural fairness under Section 45 [4] [b] of the *Employment Act*, requires that in all circumstances of the case, an Employer acts in accordance with justice and equity. Basic principles of justice and equity were not availed to the Claimant, in the process of terminating his contract.
  53. Procedure was unfair.
  54. Validation: The letter of summary dismissal dated 31<sup>st</sup> August 2023, advances one ground, in justifying termination- the Claimant's breach of the confidentiality clause.
  55. The confidentiality clause under contract was comprehensive, highlighting that in the course of his employment, the Claimant was prohibited from divulging, or communicating to any unauthorized persons, any confidential information, unless with the written agreement of the Managing Director.
  56. The other allegations concerning clocking seem to have fallen by the wayside, and as they did not form part of the reasons the Claimant left employment, evidence surrounding lateness to work, is not worth revisiting by the Court.
  57. The allegation on breach of confidentiality was that the Claimant had reached out to a former Head of Finance Kat, and sought her input, in a task he had been entrusted by his current supervisor, Head of Finance.
  58. Kat alerted the Head of Finance that the Claimant had contacted her, and shared company information with her, seeking assistance with the task assigned to him.



59. The Claimant explained to the Respondent, an explanation that he repeated before the Court, that Kat was his friend. She had recruited him. He kept in contact with her, even after she had left employment. He did not intend to discuss confidential company information with her.
60. On cross-examination he conceded that Kat was not his Employer. He had conversation with her on the Respondent's confidential information. Kat had not issued him instructions on how the task given to him, should be performed.
61. The Court is persuaded that the Claimant was dismissed for valid reason. He breached the confidentiality clause in his contract of employment. It was irrelevant that Kat was his friend and his former boss. It was irrelevant that Kat recruited the Claimant. She was no longer an Employee of the Respondent, at the time the Claimant shared confidential information concerning the Respondent, with her.
62. Kat was at the time she was invited by the Claimant to look at the affairs of the Respondent, an unauthorized person. His disclosures to her, were unauthorized disclosures. She was a 3<sup>rd</sup> party, who was not allowed to receive confidential information concerning the Respondent, without the consent of the Respondent.
63. Section 43 of the *Employment Act* defines reason or reasons justifying termination, as matters that the Employer at the time of termination, genuinely believed to exist, causing termination.
64. The Respondent was in fact alerted about the leakage of confidential information by its recipient, Kat, former Head of Finance, friend and former supervisor to the Claimant. The Respondent had genuine reason to believe that the Claimant was in breach of the confidentiality clause.
65. Remedies: The Court does not think that the violations against the Claimant by the Respondent, can be elevated to violations of a constitutional nature, warranting constitutional remedies.
66. The violations are within the scope of the *Employment Act*, and the contract executed by the parties. There are adequate remedies under the *Employment Act*.
67. The prayer for declaratory order, regarding *the Constitution* [a] is declined.
68. Prayer [b] is allowed. It is declared that termination was unfair on account of procedure, under Section 41 and 45 of the *Employment Act*.
69. The Claimant's contract was open-ended. He was employed effective 6<sup>th</sup> June 2022. He completed a probationary period of 6 months. He was dismissed with effect from 25<sup>th</sup> August 2023 according to the letter of summary dismissal.
70. The effective date of termination [EDT] however, is the date when an Employee receives termination decision, which in the view of the Court would be 31<sup>st</sup> August 2023, assuming that the Claimant received the letter on the date it was written. Termination cannot be retrospective.
71. He worked for 1 year and 2 months. He caused, or contributed immensely, to the circumstances leading to termination of his contract. He breached the duty of trust and confidence, imposed on him by the confidentiality clause, in his contract of employment. He is granted prayer [c] of his Statement of Claim, equivalent of 3 ½ months' salary at Kshs. 350,000, in compensation for unfair termination.
72. Prayer [d] seeks damages for constitutional violations, which the Court has explained, are not implicated in this dispute. It is rejected.



73. Prayer [e] which in conventional pleadings comes at the end of the prayers, is on costs. Parties shall bear their own costs.
74. Prayer [f] is for notice. The Respondent has demonstrated that there was a valid reason, warranting dismissal of the Claimant summarily. He is not entitled to notice pay.
75. Prayer [g] for grant of certificate of service is allowed under Section 51 of the [Employment Act](#).
76. Prayer [h] on pro-rata leave, is not supported by evidence and is rejected.
77. Likewise, prayer [i] claiming compensation for pain, suffering, mental anguish, emotional turmoil and decrease in quality of life, has no support in evidence or the law. If the Claimant endured mental anguish, emotional turmoil and decrease in quality of life, it was because he opted to share his Employer's confidential information with Kat, in breach of his contract, causing or immensely contributing to, termination of his contract. The Court has granted him compensation as known to the [Employment Act](#), and a claim for other compensation, is misplaced and rejected.
78. The prayer for interest [j] is allowed. Interest shall be paid at court rate from the date of the Judgment.
79. Prayer [k] seeking any other orders, writs and/or directions is rejected.

In Sum, It is Ordered:

- a. It is declared that termination was unfair, on account of procedure.
- b. The Respondent shall pay to the Claimant equivalent of 3½ months' salary in compensation for unfair termination at Kshs. 350,000.
- c. Certificate of Service to issue.
- d. No order on the costs.
- e. Interest allowed at court rate, from the date of Judgment.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI, THIS 28TH DAY OF APRIL 2025.**

**JAMES RIKA**

**JUDGE**

