



**Koreche v SGS Kenya Limited (Cause 1959 of 2016)  
[2025] KEELRC 1486 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1486 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1959 OF 2016**

**CN BAARI, J  
MAY 22, 2025**

**BETWEEN**

**PATRICK AMIMO KORECHE ..... CLAIMANT**

**AND**

**SGS KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. In a Memorandum of Claim dated 16<sup>th</sup> September, 2016, and filed on 17<sup>th</sup> September, 2016, the Claimant seeks the following reliefs as against the Respondent: -
  - a. A declaration that the Respondent's decision to summarily dismiss him amounts to unfair termination
  - b. Payment of Kshs. 560,000.00
  - c. Cost of and incidental to this suit
  - d. Interests on (b) and (c) above
2. The Respondent entered appearance on 10<sup>th</sup> October, 2016 and subsequently filed a Response to the claim dated 18<sup>th</sup> October, 2016 and filed on 21<sup>st</sup> October, 2016.
3. The Claimant's case was heard on 2<sup>nd</sup> October, 2024, when the Claimant testified in support of his case. He adopted his claim and the documents filed therewith as his evidence in the matter. The Respondent's case was heard on 24<sup>th</sup> October, 2024. The Respondent presented one Nelly Indimuli, their Human Resources Manager who testified in support of their case.
4. Both parties thereafter filed written submissions.



## The Claimant's Case

5. The Claimant states that in or about February 2015, he was engaged by the Respondent as an Assistant Weigh Bridge Manager at the Athi River station following a successful interview.
6. He avers that it was an express term of his contract that the contract was for an initial period of three months with one month probation with a possible extension, and that the probation period ought not exceed six months.
7. The Claimant avers that his salary was negotiated and agreed at a gross of eighty thousand (Kshs.80,000).
8. He states that he dutifully reported to the Athi River Station and worked under the supervision of Mr. Peter Njoroge who was the cluster manager, and would report directly to him.
9. The Claimant states that he was stationed at the Athi River station for a period of two months and was thereafter transferred to the Juja station while still under the supervision of Mr. Peter Njoroge.
10. The Claimant avers that part of his duties was to collect revenues on behalf of the Respondent at the toll stations, a duty the Claimant successfully carried out during the first three months of the contract, and thereafter was issued with another contract for a period of three months ending in August, 2015.
11. It is his case that in the course of carrying out his duties during the period outlined herein, one of the Acting Technical Managers Mr. George Ngugi Kamau who was involved in the renewal of the staff contracts, demanded that the Claimant pays him unspecified amounts of money from the revenue collected, and from the Claimants salary as a security of his tenure while with the Respondent and that this would ensure a renewal of his contract promptly.
12. The Claimant states that he indeed paid unspecified amounts to the said manager from the revenues collected as demanded and equally from his salary, in fear of his services being terminated, which thus indeed ensured a renewal of his contract up to August, 2015. He avers that when thereafter in the months of September and October, the Claimant refused to make any such further payments to the technical manager, it necessitated a non-renewal of his contract as threatened earlier by the said manager.
13. That despite lack of a renewed contract in writing, the Respondent continued paying him his salary and he in turn continued carrying out the duties allocated to him under the initial contracts.
14. The Claimant states that the Respondent did not have any reason to terminate his services as he had not been involved in any acts of gross misconduct or acts requiring disciplinary action. He avers that he also did not have any reason to foresee a termination of his contract by the Respondent.
15. It is his case that on 31<sup>st</sup>December, 2015, the Respondent unilaterally and unprocedurally terminated his employment without affording him any justifiable reasons and only indicated that his contract of October-December had terminated by effluxion of time.
16. The Claimant avers that the termination was unfair and unprocedural due to the fact that as at the beginning of September 2015, the employment was open ended as he indeed worked through to December without any written contract, and as such, the allegation that his contract of October-December had terminated by effluxion could not hold.
17. The Claimant avers that as at September 2015, it can be safely construed that the Respondent had extended his contract for an indefinite period as he worked for a further period of four months contrary



- to the usual three months contract, and further in line with the contractual term, that a probationary period ought not exceed a period of six months.
18. The Claimant states that he had successfully worked for the Respondent for a period of six months and thereafter for a period of four months.
  19. The Claimant avers that despite seeking clarification and a review of the decision taken, for being unlawful and unprocedural, and despite notifying the management of his grievances and the blackmail by the Acting Manager via an email dated 31<sup>st</sup> December, 2015 to the automotive manager Mr. Fredrick Nyale and copied to the Managing Director Albert Stockell, the Respondent failed to respond to him which thus prompted a demand letter dated 11<sup>th</sup> January 2016.
  20. The Claimant avers that the Respondent thereafter vide a letter dated 15<sup>th</sup> January, 2016, purported to rescind the termination letter, and sought that the Claimant reports back to work, to which the Claimant sought for a meeting on the 26<sup>th</sup> January 2016, between the parties herein, to enable them work out a return to work formula which would include a safer working environment for the Claimant and which would ensure no victimization emanates from his superiors.
  21. That the Respondent vide a letter dated 21<sup>st</sup> January 2016 refused to address the issue of a workable return to work formula, and instead, insisted that the Claimant returns to work immediately.
  22. The Claimant avers that on the 28<sup>th</sup> January 2016, despite the refusal by the Respondent for a meeting as requested, proceeded to report to his work station in Juja where he met with Mr. Moses Mario the system administrator who immediately called Mr. Peter Njoroge, the Claimants supervisor, who sought that the Claimant reports to him in Athi River first.
  23. The Claimant avers that he proceeded to Athi River offices where he was informed that Mr. Njoroge was not in the office and was thus forced to call Mr. Njoroge directly, who advised him to report to the Human Resources Manager at Victoria Towers in upper hill to work out modalities of his return to work.
  24. The Claimant avers that he proceeded to Victoria Towers and met the Acting Human Resources Manager Miss Hellen Mwangi who refused to attend to him, and stated that she had no such authority to hold any discussions with the Claimant.
  25. The Claimant avers that on or about 26<sup>th</sup> February 2016, he received yet another dismissal letter from the Respondent referring to a letter dated 8<sup>th</sup> February 2016, which letter the Claimant is yet to receive. That his second dismissal was premised on an alleged absenteeism/failure to return to work.
  26. The Claimant categorically states that he reported to work on the 28<sup>th</sup> January 2016, but was turned away by the Respondent through its Human Resources Manager Hellen Mwangi.
  27. The Claimant states that both the initial dismissal and the subsequent one are unlawful and unprocedural, and that he was not accorded fair play in the course of his being reinstated, which reinstatement in any event was never actualized.
  28. It is his prayer that his claim be allowed.

### **The Respondent's Case**

29. The Respondent states that it first employed the Claimant vide an employment contract dated 4<sup>th</sup> February 2015. It avers that under the said contract, parties agreed that the contract period was for three (3) months from 9<sup>th</sup> February 2015 to 31<sup>st</sup> May 2015.



30. The Respondent states that it was further agreed that the salary payable was Kshs.80,000 per month, and that the contract would be tied to the contract between the Respondent and its principal, and as such, any modification of the said contract would affect the employment contract between the Claimant and the Respondent herein.
31. It is the Respondent's case that the Claimant confirmed by signing that he had read and understood the terms of the contract he had with the Respondent.
32. The Respondent avers that the Claimant was aware that the contract between him and the Respondent was for periods of three months and was entirely dependent on the renewal or otherwise of the contract the Respondent had with its principal, Kenya National Highways Authority (KeNHA) for the provision of the services for which the Claimant was hired.
33. It states further that the parties herein engaged under those terms without any misunderstanding as the parties performed their contractual obligations, and that upon the lapse of the Respondent's contract with KeNHA, the Claimant was issued with yet another contract effective October 2015 and lapsing on 31<sup>st</sup> December 2015.
34. The Respondent avers that the Claimant did not return a copy of the contract duly executed by himself to the Respondent, but nonetheless, the Respondent continued to pay him his dues as agreed, and upon lapse of the contract, the Claimant was issued with a letter notifying him of such effective 31<sup>st</sup> December 2015.
35. It is the Respondent's case that the Claimant, being dissatisfied with the said decision, vide a letter written through his advocates dated 11<sup>th</sup> January 2016, demanded, among other issues, that he be immediately reinstated to his employment. It states further that vide a letter dated 15<sup>th</sup> January 2016, the Respondent, through its advocates then on record, responded notifying the Claimant's Advocates that the letter terminating the Claimant's employment had been withdrawn, and as such, the Claimant was required to report back to work immediately.
36. The Respondent states that a contract was drafted for the Claimant in line with the Auto Team under the KeNHA contract for another period of 3 months from 1<sup>st</sup> January 2016 to 31<sup>st</sup> March 2016.
37. It avers further that in a letter dated 19<sup>th</sup> January 2016, the Claimant's Advocate then on record reverted with fresh terms of engagement, requesting for a return-to-work formulae instead of the immediate reinstatement that had been granted, and further, compensation for his termination. The Responding responded vide a letter dated 21<sup>st</sup> January 2016, and advised the Claimant's Advocate yet again, that the termination letter had been withdrawn and that the Claimant was required to return to work as already stated. Further, the Claimant was advised that the Respondent was willing to pay his salary for the 18 days he had not reported to work.
38. It states that despite the aforementioned confirmation from the Respondent's Advocate, the Claimant never reported back to work at all and thereby necessitating the Respondent to issue him with a letter dated 8<sup>th</sup> February 2016, granting him a further seven (7) days within which to report back to work failing which his contract would stand terminated, but yet again, the Claimant was a no-show at work.
39. The Respondent states that the Claimant is the architect of his own undoing, for had he returned to work, these proceedings would have been averted. That instead, the Claimant declined, knowingly so, to return to work.



40. The Respondent states that in view of the foregoing, the Claimant absconded duty and therefore, his employment was terminated at his instance, and is therefore, not entitled to the prayers as sought in the Memorandum of Claim.
41. On cross-examination, the Respondent's witness RW1 confirmed to the court that the claimant indeed reported back to work on 28<sup>th</sup> January, 2016, but did not work.
42. She further averred that the Respondent had employed staff on permanent basis, and confirmed not having filed the KeNHA contract.

### **The Claimant's Submissions**

43. The Claimant submits that despite lack of a renewed contract in writing, the Respondent continued to pay him his salary and he continued to carry out his duties under the initial contract, and further that the Respondent awarded him an end year bonus for his exemplary services.
44. It is the Claimant's further submission that though the Respondent admitted the termination of his employment was in error, despite the admission, they still refused to regularize his employment even after him reporting back to work in good faith and in reliance of the Respondent's advocate's letter.
45. It is the Claimant's submission that the Respondent did not have any reason to unilaterally and unprocedurally terminate his employment since he was not involved in any gross misconduct or acts of requiring disciplinary action.
46. It is the Claimant's submission that the Respondent did not prove lawful termination of his employment in accordance with Section 45(1) of the [Employment Act](#), 2007, which prohibits unlawful termination of employment.

### **The Respondent's Submissions**

47. The Respondent submits that the Claimant's failure to return back to work, despite the guarantees by the Respondent's advocates, were indeed sufficient grounds to terminate his services. Reliance was placed in the case of *Rogers Mutinda v Kenya Breweries Limited* ELRC Cause No. 1511 of 2017 [2022] eKLR where the Honourable Judge posited that the Claimant could not be allowed to benefit where he contributed to his own termination.
48. It is the Respondent's submission that it has fully discharged its burden under Section 47 of the Act to prove that the Claimant's dismissal was fair and justified and call upon the Court to give a verdict in favour of the Respondent. That the dereliction of duty on the part of the Claimant, despite the confirmation from the Respondent, amounted to gross misconduct as he was deemed to have absconded duty.
49. The Respondent submits that the Claimant's termination was procedurally fair in that on 11<sup>th</sup> December 2015, it issued him a letter notifying him that his contract would come to an end on 31<sup>st</sup> December, 2015 and that the same would not be renewed, but in yet another letter dated 15<sup>th</sup> January, 2016, the Respondent confirmed withdrawal of the aforementioned letter, and required of the Claimant to immediately report back to work.
50. The Respondent submits that although the Claimant was recalled back to duty, he failed to report.
51. The Respondent submits that in the event this Honourable Court is minded to grant any award as to damages, then the same should be limited to the period of the fixed term contract which was three



(3) months. It sought to rely in the case of *Anytime Limited v Fredrick Mutobera Omuraya* ELRC Appeal No. E009B of 2021 [2022] eKLR for the holding that;

“ 38. The trial Court awarded the Respondent 12 months’ salary as compensation/ damages for unlawful and unfair termination. The Respondent’s contract was fixed term for 3 months. The 12 months’ award is unreasonable, unjustified and disproportionate in the circumstances of this case, as the Respondent did not have legitimate expectation to serve for more than the three (3) months’ given under his contract of service. (See *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR supra).”

52. The Respondent finally submits that the reliefs sought by the Claimant were pegged on the claim that the summary dismissal was unlawful, wrongful and unfair, and having shown that it was not, the Claimant then, is a victim of his undoing and the claim should therefore be dismissed with costs to the Respondent.

### **Analysis and Determination**

53. I have considered the pleadings, the witness’ oral testimony and the submissions by both parties. The issues that present for my determination are:-

- i. Whether the Claimant was unfairly terminated
- ii. Whether the Claimant is entitled to the reliefs sought

### **Whether the Claimant was unfairly terminated**

54. The Claimant’s position is that on the 31<sup>st</sup> December, 2015, the Respondent unilaterally and unprocedurally terminated his employment without affording him any justifiable reason(s) and only indicated that his contract of October-December had terminated by effluxion of time.

55. The Respondent on its part, contends that it terminated the Claimant for absconding duty. It was their case that the initial termination of 31<sup>st</sup> December, 2015 was withdrawn and the Claimant allowed to report back to work, but he did not.

56. The Respondent states that a contract was drafted for the Claimant in line with the Auto Team under the KeNHA contract for another period of 3 months from 1<sup>st</sup> January 2016 to 31<sup>st</sup> March 2016. It is their assertion that despite confirmation from their advocates that the Claimant will be re-employed, the Claimant never reported back to work at all, and thereby necessitating the Respondent to issue him with a letter dated 8<sup>th</sup> February 2016, granting him a further seven (7) days within which to report back to work failing which his contract would stand terminated, but yet again, the Claimant was a no-show at work.

57. It is clear that the termination of the Claimant vide the Respondent’s letter of 31<sup>st</sup> December, 2015, was withdrawn and the Claimant confirmed knowledge of the withdrawal. I will thus not dwell much this contract.

58. The Respondent’s position is that it recalled the Claimant back to work and issued him with a new 3 months’ contract that was to run from 1<sup>st</sup> January 2016 to 31<sup>st</sup> March 2016. This contract was dismissed vide the Respondent’s letter dated 26<sup>th</sup> February, 2016. The termination per the letter, took effect immediately.



59. The Respondent contends that it wrote to the Claimant severally requiring him to report back to work, but he did not. None of the correspondences said to have been sent to the Claimant, especially the letter dated 8<sup>th</sup> February 2016, granting him a further seven (7) days within which to report back to work was produced in evidence.
60. Section 41 of the Employment Act, 2007 demands that before terminating an employment contract on the grounds of misconduct, poor performance or physical incapacity, the employer shall grant the employee an opportunity to make representations, either in the presence of a colleague or representative of a trade union if he is a union member.
61. Absconding duty is in my view, an act of misconduct and for which the Respondent ought to have adhered to the tenets of Section 41 of the Employment Act prior to issuing its letter of 26<sup>th</sup> February, 2016 dismissing the Claimant. There was therefore no attempt made to adhere to the tenets of fair process.
62. In the case of *Mary Mutanu Mwendwa v Ayuda* [2013] eKLR the Court held that the Employment Act has made it mandatory by virtue of Section 41 for an employer to notify and hear any representations an employee may wish to make whenever termination is contemplated by the employer, and is entitled to have a representative present.
63. In a further case of *Kenya Union of Commercial Food and Allied Workers v Meru North Farmers Sacco Limited* [2013] eKLR the court held that the right to be accorded a hearing and be accompanied by a fellow employee or union representative during the hearing is a sacrosanct right.
64. In light of the foregoing, it is evident that the Respondent did not comply with Section 41 of the Employment Act, and which renders the dismissal procedurally unfair, and so I hold.
65. The second limb in determining the fairness or otherwise of a dismissal, is the issue of substantive justification required under Sections 43, 45 and 47 of the Employment Act, 2007.
66. In *British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kuc/aw)* [2019] eKLR which quoted with approval the decision of *Anthony Mulaki v Addax Kenya Limited*, Cause No. 822 of 2012 the Court held as follows:-
- “In examining validity of reasons, the court was correctly directed by the Respondent to the case of *British Home Stores Ltd v Burchell*(1980) LC.R. 303 E.A.T. where it was held that for the court to uphold the decision by the employer as being fair, it must be shown that: -
- a. The employer must believe at the time of termination, that the employee is guilty of the allegations against him/her
  - b. The employer had reasonable grounds upon which to sustain that belief; and
  - c. The employer carried out as much investigation as reasonable in the circumstances the employer need only be satisfied on the balance of probability.”
67. The question then, is whether the grounds for the Claimant’s dismissal meet the minimum standards set in the foregoing cases. The Respondent contends that it dismissed the Claimant for absconding duty, while the Claimant’s position is that he reported to work when his earlier termination was lifted, but he was not allowed to work and was instead, asked to go back home as the issue was being handled by advocates.



68. The Claimant has produced a gate pass dated 28<sup>th</sup> February, 2016, confirming that he indeed, did go to the Respondent's premises anticipating his reinstatement, but which was not to be. Further, on cross-examination, the Respondent's witness RW1 confirmed to the court that the Claimant reported back to work on 28<sup>th</sup> January, 2016, but did not work.
69. This in my view corroborates the Claimant's assertion that he reported to work as directed, but was taken round from one manager to another and finally asked to leave and let the lawyers deal with the matter. The court was similarly not told why after recalling the Claimant back to work, he was not allowed to work and was simply told to go back.
70. The Court of Appeal in the case of Pius Machafu Isindu v Lavington Security Guards Limited [2017] eKLR held thus:-
- “..... The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions.”
71. The Respondent's contention that it dismissed the Claimant on the ground of absconding duty is therefore not supported, on the basis that evidence show that the Claimant reported to work, but was not reinstated.
72. In the end, I find and hold that the Respondent has not proved that the reasons for the Claimant's dismissal are reasonable, fair and justified.
73. In the upshot, I hold the Claimant's dismissal both procedurally and substantively unfair.

#### **Whether the Claimant is entitled to the reliefs Sought**

74. The Claimant's claim is for a declaration that the Respondent's decision to summarily dismiss him amounts to unfair termination, payment of Kshs. 560,000.00, costs of and incidental to this suit and Interests.
75. The finding that the Claimant's dismissal is unfair entitles him to compensation for the unfair dismissal. The Claimant's contract terminated by the Respondent's letter of 26<sup>th</sup> February, 2016 was valid for only three (3) months.
76. In the case of Anytime Limited v Fredrick Mutobera Omuraya ELRC Appeal No. E009B of 2021 [2022] eKLR, also cited by the Respondent, the Court held: -
- “ 38. The trial Court awarded the Respondent 12 months' salary as compensation/ damages for unlawful and unfair termination. The Respondent's contract was fixed term for 3 months. The 12 months' award is unreasonable, unjustified and disproportionate in the circumstances of this case, as the Respondent did not have legitimate expectation to serve for more than the three (3) months' given under his contract of service.”
77. Persuaded by the foregoing decision, I deem an award of three months' salary sufficient compensation for the unfair dismissal, and which is hereby awarded.
78. In whole, the Claimant's claim succeeds and orders granted as follows:-
- a. A declaration that the Claimant's dismissal was unfair.



- b. That the Respondent pays the Claimant three months salary as compensation for the unfair dismissal at Kshs. 240,000/=
- c. The Respondent shall bear the costs of the suit
- d. Interest on (b) & (c) is awarded at court rate from the time of filing suit until payment in full.

79. Judgment accordingly.

**DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS  
22<sup>ND</sup> DAY OF MAY, 2025.**

**C. N. BAARI**

**JUDGE**

Appearance:

Mr. Arunda present for the Claimant

Mr. Rabut present for the Respondent

Ms. Esther S-C/A

