



**Ouma v Tradecare Africa Limited (Cause E510 of 2020)
[2025] KEELRC 1532 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1532 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E510 OF 2020**

L NDOLO, J

MAY 22, 2025

BETWEEN

EUGINE MUGABE OUMA CLAIMANT

AND

TRADECARE AFRICA LIMITED RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Statement of Claim dated 27th August 2020, claiming unlawful and unfair termination of employment by the Respondent. The Respondent filed a Memorandum in Response dated 10th November 2020, to which the Claimant responded on 8th December 2020.
2. The matter proceeded for hearing on 6th February 2025, when the Claimant testified. Counsel attending on behalf of the Respondent declined to cross examine the Claimant, stating that he was not ready to do so. The Respondent did not present any witness and I therefore directed the parties to file final submissions.
3. Thereafter, the Respondent moved the Court by way of Notice of Motion dated 11th April 2025, seeking to arrest this judgment. For some reason that was not clear to the Court, the Respondent's Counsel served the Claimant's Counsel with a hearing notice the day before the date scheduled for hearing of the Notice of Motion, but omitted to serve the Motion itself.
4. Considering the Respondent's lacklustre conduct in the prosecution of the matter, the Court struck out the Motion *instantis*. I allowed the Respondent an extension of three (3) days to file its final submissions, but there was no compliance.
5. This judgment is therefore based on the parties' pleadings and the Claimant's testimony and final submissions.



The Claimant's Case

6. By an employment contract dated 1st July 2019, the Claimant was employed by the Respondent as an Accounts Assistant, earning a monthly salary of Kshs. 35,000, which was later increased to Kshs. 45,000. The Claimant was employed on a two (2) year contract, subject to a probation period of six (6) months.
7. The Claimant states that he had a clean employment record. He accuses the Respondent of failing to disclose the state of its books of accounts, prior to engaging him. The Claimant further accuses the Respondent of suppressing the true position of its accounts.
8. The Claimant alludes to an attempt by the Respondent, to coerce him to come up with fictitious expenditure to match missing or falsified records, a move the Claimant resisted. According to the Claimant, this put him on a collision course with the Respondent, leading to the termination of his employment on 14th December 2019.
9. The Claimant's case is that the termination of his employment was unlawful and unfair. He states that he was not paid his salary for the months of November and December 2019.
10. The Claimant avers that there was no valid reason for the termination of his employment and due process was not followed.
11. The Claimant seeks reinstatement with all his back salary, allowances and benefits or in the alternative:
 - a. Salary in lieu of notice amounting to Kshs. 10,500;
 - b. Kshs. 66,000 being salary for November and December 2019;
 - c. Damages for unlawful and unfair termination of employment;
 - d. Costs plus interest.

The Respondent's Case

12. In its Memorandum in Response dated 10th November 2020, the Respondent denies engaging the Claimant as an employee as alleged in the Statement of Claim. The Respondent states that it offered the Claimant employment on probation for six (6) months.
13. The Respondent avers that the Claimant was not confirmed in his appointment, as he failed to successfully complete the probation period, leading to termination on 14th December 2019.
14. The Respondent claims that the Claimant failed to perform his duties and responsibilities as stipulated in the offer letter; in particular, the Claimant is accused of failing to provide the Managing Director, Joyce Wambui Gema, with accounting documents relating to 'Lishe Safi' procurement and sales.
15. The Claimant is also accused of picking items/merchandise for himself, without authority and without following due procedure, resulting in a parallel system of making sales. According to the Respondent, this caused massive losses to the Company.
16. It is alleged that the Managing Director held a meeting with the Claimant on 18th November 2019, to review the Claimant's probation.
17. The Respondent defends the termination of the Claimant's employment, stating that the Claimant had failed to satisfactorily complete his probation and that due process was observed in the termination.



Findings and Determination

18. There are two (2) issues for determination in this case:
 - a. Whether the termination of the Claimant's employment was lawful and fair;
 - b. Whether the Claimant is entitled to the remedies sought.

The Termination

19. The termination of the Claimant's employment was formalised by letter dated 14th December 2019, stating as follows:

“ Eugene Mugambe Ouma

ID Number:XXXXXXXX

Summary Termination of Contract while on Probation

You were employed as an accountant with clear duties and responsibilities. You consistently failed to perform those duties diligently and in accordance with company procedures. On various occasions, you were asked to provide the undersigned with accounting documents relating to Lishe Safi procurement and sales. You refused, ignored and or failed to provide the documentation.

Upon probing and forensic review by the undersigned, it was noted that you had created a parallel system of making sales which allowed employees and yourself to take products out of the company without authorization and accountability.

This led to massive losses and lack of accountability a culture that persisted during your surgeon (sic) in the accounting department. While being sent on leave on the 3rd of December 2019 while reviewing the history of sales, we realized increase in turnover in sales of over 300% while maintaining the same level of activities, a reduction in non-conforming of over 200%, from previous levels.

This letter therefore serves to summarily terminate your contract with effect from 3rd December 2019. Your terminal dues calculation is as attached. Kindly return all company property in your possession including Tshirts, Phones, Phone Lines and any other merchandise.

This letter serves also to inform you of the fact that you are no longer allowed to communicate of (sic) perform any duties on behalf of the company.

Yours,

(signed)

Joyce Wambui Gema

Managing Director”

20. Before proceeding to consider and determine the Claimant's claim of unlawful and unfair termination of employment, I need to address an issue of jurisdiction raised by the Respondent in its Notice of Motion dated 11th April 2025, which the Court struck out instantis.
21. The issue, as stated by the Respondent in that application, is that because the Claimant's monthly salary was below Kshs. 80,000 then this Court lacks jurisdiction to entertain his claim.



22. It is true that by Gazette Notice No 6024 of 2018, jurisdiction was donated to the Magistrates' Courts to hear and determine employment matters where the applicable monthly salary does not exceed Kshs. 80,000.
23. Nevertheless, the Gazette Notice did not divest the Employment and Labour Relations Court of its residual jurisdiction over employment and labour relations matters. The effect of this is that no employment or labour relations claim filed in this Court can be said to be fatally defective. This was the finding of this Court in *Linotic Floor Company Limited v Kamau* [2024] KEELRC 385 (KLR).
24. That settled, I will now proceed to consider the Claimant's claim on merit. The dismissal letter accuses the Claimant of consistently failing to perform his duties as required; particulars being that he had refused, ignored and/or failed to provide accounting documents relating to procurement and sales of a project known as 'Lishe Safi'.
25. The Claimant was further accused of creating a parallel sales system, thus facilitating release of products from the Company, without authorisation and accountability.
26. These accusations come into close quarters of gross misconduct and the procedure for handling such cases is set out under Section 41 of the *Employment Act*, which provides that:
 41.
 - (1) Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 - (2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee under section 44 (3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection 1. make.
27. In his final submissions, the Claimant referred to the decision in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] eKLR where the foregoing procedural fairness requirements were summarised as follows:

“The ingredients of procedural fairness...within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee. This gives a concomitant statutory right to be informed to the employee. Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”
28. In the instant case, the Respondent made no attempt to comply with the mandatory procedural fairness requirements established under Section 41 of the *Employment Act*.



29. The charges levelled against the Claimant were therefore unsubstantiated and unproved, rendering the dismissal wrongful and unfair.

Remedies

30. The Claimant claims reinstatement as a primary remedy. However, in view of the time lapse after separation, reinstatement would not be an appropriate remedy.

31. Instead, I award the Claimant three (3) months' salary in compensation. In arriving at this award, I have considered the Claimant's short stint in the Respondent's employment. I have also taken into account the Respondent's failure to allow the Claimant an opportunity to respond to the allegations leading to the premature severing of the employment relationship.

32. In accordance with the offer of employment dated 16th July 2019, the Claimant is entitled to two weeks' salary in lieu of notice.

33. In the absence of evidence to the contrary, the claim for salary for November and December 2019 succeeds and is allowed.

34. Finally, I enter judgment in favour of the Claimant as follows:

- a. 3 months' salary in compensation.....Kshs. 135,000
- b. 2 weeks salary in lieu of notice.....22,500
- c. Salary for November 2019.....45,000
- d. Salary for December 2019.....21,000
- Total.....223,500

35. This amount will attract interest at court rates from the date of judgment until payment in full.

36. The Claimant will have the costs of the case.

DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF MAY 2025

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JUDGE

Appearance :

Mr. O'Makalwala for the Claimant

Mr. Kariuki h/b for Mr. Muriuki for the Respondent

