



**Mungoma v Curries Bar & Restaurant (Cause 1784 of 2016)  
[2025] KEELRC 1400 (KLR) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1400 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1784 OF 2016**

**S RADIDO, J  
MAY 15, 2025**

**BETWEEN**

**PETER MUNGOMA ..... CLAIMANT**

**AND**

**CURRIES BAR & RESTAURANT ..... RESPONDENT**

**JUDGMENT**

1. Peter Mungoma (the Claimant) sued Curries Bar & Restaurant on 7 September 2016, and he stated the Issue in Dispute as:  
  
Unlawful and unfair termination of the Claimant’s employment in contravention of his employment rights and unpaid terminal dues.
2. The Respondent filed a Response on 13 October 2016, prompting the Claimant to file a Reply to Response on 4 November 2016.
3. The Cause was heard on 19 March 2025 and 25 March 2025. The Claimant and a former General Manager with the Respondent testified.
4. The Claimant filed his submissions on 11 April 2025 (should have been filed and served before 9 April 2025), and the Respondent’s submissions were not on record by this morning.
5. The Court has considered the pleadings, evidence and submissions.

**Unfair termination of employment**

6. The Claimant asserted that the Respondent unlawfully terminated his employment on 22 April 2014 because there was no disciplinary hearing before the dismissal.
7. The Claimant testified that he was given a dismissal letter, though he did not produce a copy in Court, allegedly because the Respondent did not allow him to leave with a copy.



8. The Respondent denied unlawfully terminating the Claimant's employment. Its witness testified that upon facing financial difficulties in 2015, preliminary investigations established that the Claimant and another employee had been manipulating its electronic systems and stealing cash.
9. The witness further testified that the Claimant was called upon to explain the loss of money, and he wrote a letter dated 19 April 2015 offering to take responsibility and repay the lost money and also relinquish his employment (a copy of the letter was produced in Court).
10. The witness also stated that it made a report to the Police (OB number provided), and that when the Claimant learnt of the development, he disappeared and could not be located. The Claimant produced an extract from the Police records. He did not explain where he got the extract from.
11. The Claimant, a cashier, wrote a letter to the Respondent on 19 April 2015 in which he took responsibility for the lost money and undertook to repay the same in order not to jeopardise his career.
12. The Claimant did not explicitly disclose the name of the person who dismissed him either in the written witness statement adopted as part of the evidence or during oral testimony. The last gate pass produced by the Claimant was dated 11 April 2015 and not 22 April 2015, when he alleged he was dismissed.
13. Under section of the *Employment Act*, 2007, the Claimant had the burden of showing that an unfair termination of employment occurred. He did not.
14. The Court finds that the Claimant failed to prove that an unfair termination of employment occurred.

#### **Breach of contract**

##### **Service pay**

15. The Claimant prayed for Kshs 8,654/- service pay.
16. There was no evidence that the Claimant was a member of a pension fund or was contributing to the National Social Security Fund as envisaged by section 35(5) & (6) of the *Employment Act*, 2007 and the Court will allow this head of the claim.

##### **Leave pay**

17. The Claimant did not provide an evidential or legal foundation to this head of the claim, and relief is declined.

##### **April 2015 salary**

18. The Respondent did not produce the Claimant's pay records to show he was paid earned wages for the days worked in April 2015, and the claim is allowed.

##### **Underpayments**

19. The Claimant contended that he was underpaid Kshs 84,851/-. He relied on the Regulation of Wages Amendment Order, 2013. The monthly minimum wage for a cashier in Nairobi was Kshs 22,070/-. The Claimant was earning a monthly wage of Kshs 15,000/-. He was thus underpaid, and relief is allowed.

##### **Overtime**

20. The Claimant did not lay an evidential or legal basis for this head of the claim, and relief is declined.



### **Certificate of Service**

21. A Certificate of Service is a statutory entitlement, and the Respondent should issue one to the Claimant.

### **Conclusion and Orders**

22. The Court finds and declares:

- i. The Claimant did not prove that an unfair termination of employment occurred.
- ii. The Respondent was in breach of contract.

23. The Claimant is awarded:

- i. Service pay Kshs 8,654/-
  - ii. April 2015 salary Kshs 15,000/-
  - iii. Underpayments Kshs 84,851/-
- TOTAL Kshs 108,505/-

24. The Claimant is denied costs for having filed submissions outside the agreed timelines without offering any explanation.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 15<sup>TH</sup> DAY OF MAY 2025.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Kaluki Muriu Ndiritu & Co. Advocates

For Respondent Mutua Mathuva & Co. Advocates

Court Assistant Wangu

