



**Wendo (Suing as the Personal Representative of the Estate of Dr Charles Maringo - Deceased) v National Council of Churches of Kenya & another (Cause 858 of 2019) [2025] KEELRC 1334 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1334 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 858 OF 2019**

**B ONGAYA, J  
MAY 9, 2025**

**BETWEEN**

**FLORENCE EDEL QUINN WENDO (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF DR CHARLES MARINGO - DECEASED) ..... CLAIMANT**

**AND**

**THE NATIONAL COUNCIL OF CHURCHES OF KENYA ..... 1<sup>ST</sup> RESPONDENT  
JUMUIA HOSPITALS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The claimant filed the further amended statement of claim dated 09.11.2023 through Abusa J. & Company Advocates. She brought the suit as the legal representative of the estate of Dr. Charles Maringo (deceased). Her case was as follows:
  - a. The deceased was an employee of the 1<sup>st</sup> respondent and worked for the 2<sup>nd</sup> respondent, a wholly owned subsidiary of the 1<sup>st</sup> respondent, on secondment from the 1<sup>st</sup> respondent. His contract with the respondents was confirmed in a letter of confirmation dated 01.02.2019, whose terms were set out in a contract dated 28.03.2019. He was employed as the Medical Administrator and Resident Physician, earning a gross monthly pay of Kshs. 492,140/- per month.
  - b. Sometime in March 2019, the deceased became unwell. He underwent an operation at Aga Khan Hospital and was thereafter hospitalized for a considerable period before his doctor put him on sick off. The respondents were aware of the deceased's condition and sent some of their officials to visit him in the hospital while he was recuperating.



- c. According to the deceased, he forwarded all the necessary documents to the respondents to support his condition. The respondents nevertheless unlawfully withheld his salaries and other benefits from May to December 2019 and January 2020 without lawful cause or excuse, or subjecting him to a disciplinary process. He was only paid salaries for May to September 2019 after the Honourable Court intervened, but the respondents left out the wages for October to December 2019 and January 2020. The respondents also unlawfully and without just cause and authority, deducted his salary for April 2019 in breach of contract, ostensibly to pay for the medical care he received.
  - d. The 1<sup>st</sup> and 2<sup>nd</sup> respondents thereafter commenced sham, unlawful and unprocedural disciplinary proceedings that were intended to result, and resulted in the dismissal of the deceased. He was cited to show-cause why his employment should not be terminated on alleged grounds of absenteeism, yet the respondents were well aware he was on sick leave up to 30.09.2019. On or about 05.08.2019, the respondents served the deceased with a show cause letter dated 30.06.2019, days after the deceased had issued a demand for payment of his withheld salaries.
  - e. The 2<sup>nd</sup> respondent purported to issue the deceased another show cause letter dated 02.09.2019 for absenteeism, despite being fully aware of his medical condition. Notably, the show cause letter was only served on the deceased via email on the evening of 12.09.2019, together with a hearing notice dated 12.09.2019, accusing the deceased of failing to respond to the show cause letter by 03.09.2019, yet it was sent on 12.09.2019. The deceased protested against the process scheduled for 13.09.2019, citing the short notice as a violation of his rights.
  - f. The 2<sup>nd</sup> respondent then proceeded to schedule further sham disciplinary proceedings on 19.09.2019 and 27.09.2019. On all the occasions, the 2<sup>nd</sup> respondent would share the hearing notice a few hours before the session, despite the deceased requesting that he be notified early enough to enable him to plan, considering his medical condition. When he asked for a fresh hearing date on 27.09.2019, the respondents ignored him and never summoned him for a hearing again.
  - g. On 30.01.2020, the deceased was surprised to receive a summary dismissal letter dated 13.12.2019, terminating his employment effectively from 01.10.2019. The respondents' actions were in breach of the deceased's constitutional rights to fair labour practices and reasonable working conditions, and under the core Conventions of the ILO.
  - h. The respondents have failed to pay the amount demanded and refrain from undertaking unlawful disciplinary proceedings, rendering the suit necessary.
2. The claimant therefore prayed for judgment against the respondents for:
- i. A declaration that the termination of the employment of the deceased was unfair, unlawful, null and void.
  - ii. Kshs. 7,874,240/= being salary for the remainder of the contract period from the date of the unfair, unlawful and wrongful termination being 01.10.2019 to the date of expiry of the contract of employment being 31.01.2021.
  - iii. In the alternative to (ii) above, Kshs. 5,905,680/= being 12 months' compensation for wrongful, unfair and unlawful termination.
  - iv. One month's salary in lieu of notice - Kshs. 492,140.00/=.



- v. General and aggravated damages for wrongful, unfair and unlawful termination;
  - vi. Costs of the suit;
  - vii. Interest on (i), (ii), (iii), (iv) and (v) above court rates from the date of filing of this Claim until payment in full;
  - viii. Any other or further relief that this Honourable Court may deem fit and just to grant.
3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed replies to the further amended statement of claim, dated 15.07.2024, through Mathenge Gitonga & Company Advocates. Their case was as follows:
- i. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are currently two distinct legal entities with a separation between them having been implemented.
  - ii. The deceased was the 2<sup>nd</sup> respondent's employee. The 2<sup>nd</sup> respondent paid all benefits and salaries due and payable to the deceased, not the 1<sup>st</sup> respondent. It was the 2<sup>nd</sup> respondent who issued all the hearing notices and show cause letters as the deceased's employer.
  - iii. The 2<sup>nd</sup> respondent employed the deceased through an appointment letter dated 01.03.2018 on a contractual basis, which appointment was to take effect on 12.03.2018. The first six (6) months were to be the probationary period. After the performance appraisal, the deceased was to receive a two-year service agreement, renewable subject to satisfactory performance and availability of funds.
  - iv. When the probation period ended, the deceased failed to submit his appraisal form as expected. Subsequently, the 2<sup>nd</sup> respondent issued a letter dated 18.12.2018 extending the probationary period by five (5) months from 12.09.2018 to 31.01.2019 and requiring the deceased to submit his appraisal form by 15.01.2019.
  - v. Since the 2<sup>nd</sup> respondent was a subsidiary of the 1<sup>st</sup> respondent at the time of employment of the deceased, the then Human Resource (HR) Manager, Ms. Catherine Kamau, was in charge of human resources for both respondents and hence issued to the deceased a letter of confirmation of employment on 01.02.2019. The contract was executed on 28.03.2019 between Jumuia Hospitals and the deceased.
  - vi. Other terms in the service contract dated 28.03.2019 included the deceased earning a gross pay of Kshs. 492,140/= per month. Clause 3 of the contract specified the duty station to be Jumuia Hospital, Huruma, which was also the deceased's last place of work. The 2<sup>nd</sup> respondent was to terminate the employment if the parties were unable to perform their duties, and payment beyond six (6) months was to be at the discretion of the employer.
  - vii. When the deceased was admitted in the hospital, he requested through a letter dated 19.03.2019, a salary advance to enable him settle his medical bills. The amounts were disbursed directly to the Aga Khan Hospital Limited account. However, no documents supporting his condition were forwarded to the respondents despite the HR Manager making several requests and sending numerous email reminders for him to provide his sick off and discharge summary sheets. The only other documents the deceased advanced to the 2<sup>nd</sup> respondent were two letters dated 01.04.2019 and 01.07.2019 recommending three (3) months' sick off. He was therefore required to present medical documents and sick off sheets by 07.08.2019; failure to which absenteeism would be considered on his part.



- viii. When the deceased failed to respond to the show cause letters, the respondents constituted a panel to conduct a disciplinary hearing and communicated the same to him on 11.09.2019. However, he failed to attend the disciplinary hearings scheduled on 13.09.2019, 19.09.2019, 27.09.2019, and 01.10.2019 despite being issued with hearing notices. He was subsequently issued a summary dismissal notice informing him of his dismissal.
  - ix. The 2<sup>nd</sup> respondent paid the deceased all his salary arrears for May to September 2019 as per the Ruling of the Court dated 21.10.2020. Despite the deceased having been terminated from employment on 01.10.2019, the 2<sup>nd</sup> respondent, in good faith and own discretion, paid his salary in half for November and December 2019 as per clause 4.4.5 of the HR Policy.
  - x. In addition, the pension benefits accruing under the service contract and taken out in the name of the 1<sup>st</sup> respondent were fully paid out to the claimant.
  - xi. The 1<sup>st</sup> and 2<sup>nd</sup> respondents prayed that the claimant's claim against them be dismissed with costs.
4. The parties filed their respective submissions. The Court has considered the material on record and returns as follows:
  5. To answer the 1<sup>st</sup> issue the Court returns that there is no dispute that the parties were in a contract of service and the respondents being the joint employers in view that the 2<sup>nd</sup> respondent is mutually agreed to be a subsidiary of the 1<sup>st</sup> respondent. The letter of appointment was dated 01.03.2019. The agreed gross monthly salary was Kshs. 492,140/= . The initial appoint was upon probationary service of six months and upon confirmation a service agreement for a term contract of service for two years would issue. It appears the probationary service was extended and subsequently parties concluded a two years' service agreement on 28.03. 2019 commencing on 01.02.2019 to 31.01.2021.
  6. To answer the 2<sup>nd</sup> issue, the Court returns that the contract of service was terminated by the letter of summary dismissal dated 13.12.2019. The summary dismissal letter addressed to the deceased stated as follows:

“Dear Sir,

Re: Summary Dismissal

Reference is made to our show cause letter dated 30<sup>th</sup> June 2019 which you have intentionally failed to respond to date and our third (3) hearing notice dated 27<sup>th</sup> September 2019 which you failed and/or neglected to attend.

We take note that you have been absent from work since 5<sup>th</sup> August 2019 to date without permission and attempts to get explanations for the absence have been futile. You also failed to provide medical reports to support your absence from work despite our request for the same.

In view of the above we write to notify you of the Hospital's decision to terminate your employment as a Medical Administrator/Resident Physician at Jumuia Hospital Huruma effective 1<sup>st</sup> October 2019 in accordance with section 44(4) (a) and (e) of the [Employment Act](#) 2007.

Please arrange to hand over to the Operations Manager, Jumuia Hospitals. On clearance you will be entitled to payment of:

1. Days worked upto 5<sup>th</sup> August 2010.



2. 42.5 leave days.
3. Pension as per the RBA guidelines.

Yours faithfully,

Signed

Rev. Canon Chris Kinyanjui

General Secretary”

7. To answer the 3<sup>rd</sup> issue, the Court returns that the termination was not unfair both in substance and procedure. The Court particularly finds as follows:
  - a. As submitted for the 2<sup>nd</sup> respondent, the reason for termination was the deceased’s failure to explain his absenteeism as set out in the letter of termination. The deceased had received the letter to show cause and had failed to reply. He had been given numerous opportunities but failed to attend the disciplinary hearing. While the deceased may have been unwell, he had failed to provide the medical certificates in that respect. The 2<sup>nd</sup> respondent invoked the cited provisions of section 44(4) (a) and (e) of the *Employment Act* 2007 on absenteeism without leave or lawful cause and failure to obey lawful and proper command when he neglected to respond to the show cause notice and to attend the disciplinary hearings when duly invited to do so.
  - b. Thus, the Court finds that the reason for termination was valid as genuine per section 43 of the Act, it was fair as relating to the deceased’s conduct and the respondent’s operational requirements, and , the procedure adopted was fair – per section 45 of the Act. The 2<sup>nd</sup> respondent’s submissions in that regard are upheld.
  - c. While it is submitted for the claimant that the deceased had provided the relevant medical records to justify his absence, nothing is said of the deceased’s failure to respond to the letter to show cause and failure to attend the disciplinary hearing. Further, it is submitted for the claimant that under clause 10.3 of the contract of service the claimant being sick was entitled to three months’ leave with full pay and thereafter three months with half pay and further, “...Payment beyond this period shall be at discretion of the employer”. Thus, it is submitted for the claimant that the prolonged ill health could not be a ground for summary dismissal. However, the Court has found that while the deceased may have been under sporadic medical sick offs, the evidence per his conduct of neglecting to respond to the show cause notice shows that he had opted not to cooperate and the reason for termination was not the prolonged ill-health but failure to explain the absence in view of the show cause notice and then the gross misconduct of neglecting to answer the show cause notice and to attend the numerous disciplinary hearings that were scheduled. While it is submitted for the claimant that the termination was on account of ill-health or physical incapacity, the material before the Court and the parties’ respective cases show that the dismissal was a flow from the notice to show cause which was about absenteeism and then neglect to submit to the disciplinary process that had been commenced.
  - d. The Court has considered the testimony of 1<sup>st</sup> claimant’s witness (CW1) who was the spouse to the deceased and was very close to the deceased throughout the material times. She testified in a contradictory manner thus, “Last date at work at Hospital was October 2020. That his last day at work was 05.08.2019. Letter at page C63 dated 02.09.2019. It says he had not reported at work from 05.08.2019 up to date of letter 02.09.2019. A request to Dr. Charles to produce



medical chits and for 3 months he did not submit sick off chits – and he did submit them.” CW1 further testified that the deceased was summoned several times to attend the disciplinary hearing but he did not attend at all. The Court has examined the record of the disciplinary committee meeting held on 01.10.2019 and it is consistent with the said CW1’s testimony that the deceased failed to respond to the various notices to show cause and failed to attend disciplinary hearing on the numerous days he was invited to attend.

- e. Thus as at summary dismissal the deceased had failed to cooperate by a responding to the allegations and attending the hearings. The summary dismissal was not unfair both in substance and procedure.
8. The 4<sup>th</sup> issue is on remedies. The Court returns as follows:
- a. The Court has found that the dismissal was not unfair or unlawful and a declaration will not issue in that regard. Similarly compensation in that respect is not justified.
  - b. The claim for salary for remainder of the term contract has not been justified. The court considers that once parties separated, they were respectively freed from the contract of service. The claimant has not shown any reason attributable to the respondents that may have impaired the deceased from engaging gainfully after the termination.
  - c. The termination was by summary dismissal which the Court has found was justified in the circumstances and section 44 of the Act entitled the respondents to make such dismissal with no notice or shorter than was agreed. The prayer for pay in lieu of one month notice is declined.
  - d. The Court has considered the unique circumstances of the case and no orders on costs of the suit.
9. In conclusion judgment is hereby entered for the respondents against the claimant for dismissal of the suit with no orders on costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 9<sup>TH</sup> MAY, 2025**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

