



**Okwaro v County Government of Taita Taveta (Cause 11 of 2016)  
[2025] KEELRC 1955 (KLR) (30 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1955 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 11 OF 2016  
M MBARŪ, J  
JUNE 30, 2025**

**BETWEEN**

**SCOLASTICA OKWARO ..... CLAIMANT**

**AND**

**COUNTY GVERNMENT OF TAITA TAVETA ..... RESPONDENT**

**JUDGMENT**

1. The claimant is seeking the following orders;
  - a. A declaration that the claimant’s termination of employment was unlawful,
  - b. Reinstatement of the claimant to her employment,
  - c. Payment of the claimant’s salaries and unpaid leave allowance totalling Ksh.1,655,200,
  - d. Payment of salaries for every subsequent month leading to the claimant’s reinstatement,
  - e. Costs of the suit.
2. The claimant is an adult female. The respondent is established under *the constitution*, previously the Voi Municipal Council.
3. The respondent employed the claimant on 2 February 2010 as a casual supply chain management/procurement officer. In a letter dated 11 September 2013, the respondent assigned the claimant to the procurement section in the office of the Governor. The claimant worked continuously for five years and was, therefore, deemed a permanent employee.
4. The permanent employees of the respondent in the same position as the claimant were earning a monthly salary of Ksh.64,000, detailed as follows:
  - a. Basic pay Ksh.42,000,



- b. House allowance Ksh.20,000,
- c. Commuter allowance Ksh.2,000

Total Ksh.64,000.

5. On 19 April 2015, the claimant received a letter dated 17 April 2015, which terminated her employment due to her involvement in an investigation by the Ethics and Anti-Corruption Commission (EACC). The claimant has never been summoned by the EACC, and during her visit to their offices for verification, the EACC confirmed that she was not under investigation. The investigation mentioned by the respondent pertained to the County Assembly, while the claimant was in the governor's office.
6. In a letter dated 12 July 2013, the Treasury Municipal Council of Voi wrote to the respondent, recommending that the claimant be confirmed as an employee. Following this recommendation, the respondent made provisions for the position in the supplementary budget for 2012/2013 and 2013/2014.
7. The claim is that the claimant's salary should have been Ksh. 64,000 effective from August 2013, and was consequently underpaid by Ksh. 34,300. At the time of her termination, the claimant was employed in the Agriculture Department as a Supply Chain Management Officer; however, her letter of termination was signed by Boniface Mwakio, the County Chief Officer of the Finance and Planning Office, on 24 February and 16 April 2015, respectively.
8. The termination of employment was arbitrary and irregular. The claimant received no notice, nor were they allowed to be heard or paid terminal dues. Despite working continuously for five years without any disciplinary record, due process was not followed. At the time, the claimant was earning Ksh. 29,700 per month. The claimant seeks:
  - a. Salary underpayments from May 2013 to May 2015, Ksh. 823,200,
  - b. Unpaid salary between April 2015 and November 2015, Ksh. 512,000,
  - c. Unpaid leave from 2011 to 2015, Ksh. 320,000.
9. The claimant testified in support of her case that she last worked for the respondent under the Agriculture Department as a supply chain management officer until 17 April 2015, when she was terminated. The respondent alleged that she was under investigation with the EACC, which was not true, and the EACC had issued no summons for her to attend and address.
10. The claimant testified that she is seeking reinstatement with full pay owed from April to October 2015 until the date of reinstatement.
11. The claimant testified that upon her employment with the respondent, she was assigned to Wundanyi. She received a monthly salary that differed from that of other permanent employees. Although there was a recommendation for her permanent employment through a letter from the chief officer of finance, she did not have an IFMIS number, as she was classified as a casual employee. Ultimately, no letter of confirmation was issued. Nevertheless, she continued to carry out and attend to the duties of the supply chain management officer and conducted procurement for the respondent. She was offered training at the Kenya School of Government under the same title at the respondent's expense.
12. The claimant was deployed from Wundanyi to Voi, the treasury department, but the county secretary suspended this on 23 February 2015. He reasoned that casuals cannot be placed in charge of



- departments. She continued undertaking the supply chain management officer duties and received allowances for such attendance.
13. The claimant testified that she was issued a note terminating her employment because she was under investigation by the EACC. There were no investigations, as alleged, and EACC never summoned her for any inquiry. This was not sufficient justification for terminating her employment.
  14. The claimant testified that she has since been recalled to her employment on similar terms from July 2022. She seeks payment of her due salaries from the date of termination and unpaid salaries where she was treated as a casual employee. She's currently paid Ksh. 22,850 as a casual, yet there is a budgetary provision for Ksh. 64,000, and the difference in pay is due.
  15. In response, the respondent admitted that the claimant was employed as a casual assistant supplies officer from 14 February 2010. She was deployed to the procurement section through a letter dated 11 September 2013 as a casual employee. The employment continued as a casual employee without confirmation of permanent employment. The alleged unfair termination of employment is without basis.
  16. A recommendation was made for the claimant's permanent employment through a letter dated 12 July 2013 from the Treasury Municipal Council of Voi. This recommendation was not approved, and the claimant remained a casual employee. The claimant's claims are not justified and should be dismissed.
  17. In evidence, the respondent called Joseph Kanyatta Mnyauro, the Assistant Director of Human Resources, who testified that, in a letter dated 12 July 2013, the Voi Municipal Council had recommended the employment claim. On 12 November 2013, an internal memo to the human resources office suggested employing the claimant as the procurement officer, but this did not materialise. The claimant remained a casual employee until the termination notice was issued.
  18. Kanyatta testified that the respondent returned the claimant to work on the same terms. The law guides the respondent. As an employee of the respondent, he is aware of the circumstances under which an employee transitions to a full-time position under section 37 of the [Employment Act](#), which the respondent has failed to apply to the claimant's employment.
  19. Bonaventure Mwakio from Finance and Planning issued a notice on 17 April 2015, terminating the claimant's employment. The claimant had worked for over three months as a casual employee and was on the payroll. Her role as a procurement officer had an allocated budget that included a house allowance and other employment benefits.
  20. The notice terminating the claimant's employment was issued by Bonaventure Mwakio from the finance and planning office, who did not possess the authority to issue such communication. The claimant was employed in the agriculture department, which was responsible for her position. The termination of employment was irregular, as there was no notice or hearing, as required by law. The alleged investigations by the EACC remain unspecified, and no action has resulted from these allegations.
  21. While the instant case was pending, the respondent recalled the claimant back to work, in the same position as a casual employee.
  22. After the hearing, both parties submitted written statements.
  23. The claim was filed on 21 January 2016.
  24. The claimant filed a Further List of documents; however, the claim remained unchanged from its 2016 filing.



25. The claim is that the respondent employed the claimant on casual terms, yet the claimant was undertaking the duties of an assistant supply chain officer. Instead of being paid like other similarly situated employees at Ksh. 64,000, which was in the budget, she was underpaid by Ksh. 22,850. Despite recommendations for permanent employment, this was not implemented. Eventually, through a notice dated 17 April 2015, the employment was terminated due to alleged investigations by the EACC. The claimant established that there were no investigations against her by the EACC and that she was not afforded due process before the termination of her employment.
26. The respondent's case is that the claimant has since been recalled to work in the same position, and the issue in dispute, seeking reinstatement, has been addressed. The alleged unlawful termination of employment is moot. The response also indicates that the claimant was not employed as a supply chain management officer as alleged, but instead remained a casual employee, a position she currently holds.
27. The witness, Mnyauro, acknowledged that the termination of the claimant's employment, according to the notice dated 17 April 2015, was irregular.
28. Indeed, under section 2 of the [Employment Act](#), a casual employee is defined as one who is sourced daily and works each day. The wage due is paid at the end of the day.
29. The claimant worked for the respondent as a casual from 2 February 2010 to 17 April 2015. The continuous employment involved specific duties as an Assistant Procurement Chain Management Officer. The position was not formalised; consequently, the claimant remained on casual terms and received a monthly wage, which is different from a casual employee's compensation.
30. Such an employee is protected under section 37 of the [Employment Act](#).
31. In the case of *Juma & 5 others v Mada Holdings t/a Baobab Sea Lodge Kilifi Limited* [2025] KECA 817 (KLR), the court held that when an employer can demonstrate that an employee was employed on casual terms and paid a daily wage, such a record serves as sufficient proof. However, if there is a record of the employee serving for more than a day and being paid a monthly salary, that employee is afforded protection.
32. The above position is reiterated in the case of *Unilever Tea Kenya Limited v Kenya Plantation & Agricultural Workers Union* [2025] KECA 830 (KLR), which states that a casual employee engaged for more than a day is protected under Section 37 of the [Employment Act](#).
33. In the case of *Kenyatta University v Maina* [2022] KECA 1201 (KLR), the Court of Appeal held that;  

... an employer cannot have an employee under the guise of being a casual on the reasoning that it has peak and off-peak sessions. To subject an employee to such a treatment is unfair because being laid off during off peak season does not guarantee the employee permanency and neither can the employee look for employment elsewhere during the off-peak season. We are in agreement with the conclusion of Wasilwa, J when she concluded:
34. In this case, despite the claimant having worked for the respondent for over five years, her employment was not confirmed and was regarded as casual. This is contrary to sections 2 and 37 of the [Employment Act](#). The claimant became protected under the law and acquired rights and benefits outlined in the [Employment Act](#).
35. Before employment termination, for any reason, including gross misconduct, the employer must adhere to the mandatory provisions of Section 41 of the [Employment Act](#).



36. In *Machanga Mwachanya v Operation 680 Limited* [2013] eKLR, the court set out the principles in section 41 as follows;
- a) That the employer has explained to the employee in a language the employee understands the reasons why termination is being considered;
  - b) The employer has permitted an employee representative, either a fellow employee or a shop steward, to be present during the explanation.
  - c) That the employer has heard and considered any explanations by the employee or their representative;
  - d) Where an employer has more than 50 employees, it has adhered to its internal disciplinary procedural rules.
37. The Court of Appeal in the case of *Oyombe v Eco Bank Limited* [2022] KECA 540 (KLR) emphasized the principles of section 41 of the *Employment Act* as follows;
- Under this Section, four elements must thus be satisfied for summary dismissal procedure to be said to be fair, being: -
- a) An explanation of the grounds of termination in a language understood by the employee;
  - b) The reason for which the employer is considering termination;
  - c) Entitlement of an employee to have a representative of his choice when the explanation of grounds of terminations is being made;
  - d) Hearing and considering any representation made by the employee and the representative chosen by the employee.
38. In this case, the respondent alleged that the claim was under investigation by the EACC; therefore, the termination of employment was justified. This information was confirmed to be inaccurate. There were no outstanding investigations against the claimant by the EACC.
39. Even where such EACC investigations took place, which is not entirely accurate, the due process outlined in Section 41 was mandatory. The respondent, under the mistaken belief that the claimant was a casual employee and could therefore terminate her employment at will, issued a notice terminating her employment. This led to the unlawful and unfair termination of employment.
40. The claimant is seeking reinstatement. The assertion by the respondent that the claimant has been recalled to work is not equivalent to an order of reinstatement. A recall on the same terms as a casual employee, while serving as a procurement chain management officer, constitutes an abuse of process and undermines the essence of these proceedings. The claimant has approached the court seeking justice, having been employed under casual terms for over five years and now wishing to be employed on permanent terms, like other employees in comparable positions. To recall her back to work without due consideration of the claim herein is to engage in unfair labour practices.
41. The fact of unfair termination of employment is not addressed.
42. The recall to work cannot rectify the unfair labour practice evident in this case.



43. However, in this case, the order requested for reinstatement cannot be granted. Employment was terminated on 17 April 2015, and the claimant was recalled to work in July 2022. The internship period can only be resolved through compensation.
44. The claimant earned a wage of Ksh. 29,700 per month.
45. Considering the facts of the case, this appears to be the worst-case scenario of abuse of process, negating the rights at work. An award of 10 months' gross salary for unfair termination of employment is hereby found appropriate.
46. Compensation is hereby allocated at Ksh. 297,000.
47. Concerning the lack of due process, the claimant is entitled to notice pay based on their last earned wage of Ksh. 29,700.
48. Concerning the claim for salary underpayments, the claimant was not confirmed in any role other than that of a casual employee. Attempting to claim as other officers of the respondent, despite having worked as a supply chain management officer without the requisite appointment letter, has resulted in these proceedings. This situation is currently being addressed and rectified.
49. Concerning the claim for unpaid salary from April 2015 to November 2015, the claimant was employed up to the date of the letter dated 17 April 2015. This cut-off point is significant and has led to these proceedings. The injustice inflicted upon the claimant is addressed above.
50. On the claim for leave accrued from 2011 to 2015, the claimant, who was previously protected under Section 37 of the *Employment Act*, benefited from Section 28 of the Act. She was entitled to a minimum of 21 days of annual leave. However, such leave cannot be accrued beyond 18 months as stipulated by law. In this regard, under Section 28(4) of the Act, the claimant is entitled to 33 days of leave, amounting to Ksh. 32,670.
51. Regarding costs, these proceedings stem from a deliberate and calculated effort by the respondent and its officers to undermine the claimant's employment. Despite a recall to work in July 2022, the respondent was reinstated under similar employment terms. Although the claimant failed to amend her claim accordingly, this claim illustrates an employer willing to contravene legal norms and employment terms. The proceedings are well-founded; therefore, the claimant is entitled to her costs.
52. Considering the findings above, the court brings to the respondent's attention the provisions of Section 37 of the *Employment Act* and Section 46(h) of the Act. This will suffice.
53. Accordingly, judgment is herein entered for the claimant against the respondent in the following terms;
  - a. Employment terminated unfairly;
  - b. Compensation awarded at ksh.297,000;
  - c. Leave pay ksh.32,670;
  - d. Costs of the suit.

**DELIVERED IN OPEN COURT AT MOMBASA, THIS 30 JUNE 2025.**

**M. MBARŪ**

**JUDGE**

In the presence of:



Court Assistant: Japhet

..... and .....

