



**Kamau v Kenya Obstetrical and Gynaecological Society (Cause  
34 of 2020) [2025] KEELRC 2011 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2011 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 34 OF 2020  
DKN MARETE, J  
JUNE 25, 2025**

**BETWEEN**

**CATHERINE KAMAU ..... CLAIMANT**

**AND**

**THE KENYA OBSTETRICAL AND GYNAECOLOGICAL  
SOCIETY ..... RESPONDENT**

**JUDGMENT**

1. This matter was originated by way of a Statement of Claim dated 23rd January 2020. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's Memorandum of Response dated 10th July 2020 denies the claim and prays that it be dismissed with costs.
3. The Claimant's case is that on 8th July, 2019 the Respondent offered her employment as a Project Manager for a probationary period of three (3) months at a monthly salary of Kshs.110,000.00. The probation was to last until 8th October, 2020.
4. The Claimant's further case is that on 29th September, 2019, she was invited via email to attend a review panel on 13th September, 2019 in anticipation of the completion of the probationary period. The probationary contract was however extended by a further three (3) months with effect from 1st October, 2019. The expiry date therefore became 1st January, 2020.
5. The Claimant's other case is that she did her best to the end of the probationary period which was effective on 1st January, 2020 and without any work from the Respondent, she deemed the silence to be a confirmation. However, on 9th January, 2020, she was requested to attend a review panel which she did and was not given any feedback. Neither the Claimant's immediate supervisor nor the Chief Executive Officer participated in this review despite being the people she directly answered to and therefore the best placed persons to review her performance.



6. It is the Claimant's further case that all this time, she continued working in the same position and was not aware of any intent at termination or complains regarding her performance. On 13th January, 2020 was shocked and surprised to see the Respondent advertise for the job she occupied. On the following day she was terminated for poor and unsatisfactory performance.
7. The Claimant asserts that this was wrongful and unlawful for the following reasons.
  1. The Claimant's termination on probationary terms was illegal as her probationary contract ended on the 1<sup>st</sup> January 2020.
  2. The reasons(s) for termination was not valid.
  3. The Respondent did not follow the stipulated procedures while terminating the Claimants contract.
  4. The review panel was improperly constituted.
8. She claims thus;
  - i. A declaration that the claimant was unfairly, unlawfully and wrongfully terminated.
  - ii. An order for reinstatement of the Claimant without loss of benefits.
  - iii. Payment of consolidated salaries due to the claimant until reinstatement
  - iv. Two and a half (2 ½ ) years salary equivalent to the contractual period.
  - v. Compensation for unfair, wrongful and unlawful termination.
  - vi. One (1) month's salary in lieu of notice.
  - vii. Costs of the claim.
  - viii. Interest on (i), (ii) and (iii) above at court rates.
  - ix. Any other relief that this court may deem just and fit to give.
9. The Respondent's case is a denial of the claim. The Respondent as paragraph 3 denies the contents of the paragraph 3 of the Claimant's Memorandum of Claim and avers that the claimant's performance was below par as at the time for the first performance of the appraisal on 30th September, 2019 with the Respondent awarding her a chance to improve on humanitarian grounds. This did not improve on the subsequent evaluation and therefore the termination as provided by clause C of the contract dated 1st October, 2019 and 8th July, 2019.
10. The Respondent further denies the allegations of threats made by the Claimant and states that performance evaluation was provided for in both contracts of employment and that the Claimant is lying on this. It is her penultimate case that the Claimant is dishonest and has not come to court with clean hands in that this claim is not anchored on any law and therefore should be dismissed.
11. This matter came to court variously until the 16th October, 2024 when the parties agreed on determination by way of written submissions.
12. The issues for determination therefore are;
  1. Whether the Claimant was on probation at the time of her termination from employment.
  2. Whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful.



3. Whether the Claimant is entitled to the relief sought.
  4. Who bears the costs of this cause?
13. The 1st issue for determination is whether the Claimant was on probation at the time of her termination from employment. The Claimant's case and submissions is that on expiry of probation period on 1st January, 2020, she was automatically confirmed to employment. The Respondent's silence amounted to this automatic confirmation. It is her further submissions that section 42(2) of the *Employment Act*, 2007 limits and restricts probation to six (6) months unless this is extended with employee's consent. She further buttresses her case by relying on authority of *Oduor v Kalvinder Singh Bhullar* [2024] KEELRC 847, where the court held that failure to confirm an employee after probation implies automatic confirmation.
  14. The Respondent on the other hand submits that the Claimant was still on probation and further that termination was justified under clause C of her contract of service. This advocated for termination upon poor appraisal. It is not in dispute that the probation period lapsed on 1st January, 2020 and the Respondent did not extend it any further. The termination on 14th January, 2020 was made post probation. The Claimant was therefore a confirmed employee at the time and date of termination and I find as such. This answers the 1st issue for determination.
  15. The 2nd issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The Claimant submits that no valid reason was given for her termination of employment. She was not treated to a fair hearing either. At the evaluation meeting, her supervisor and Chief Executive Officer to whom she was directly answerable were not invited or present. She was not awarded an opportunity to defend herself. On this she seeks to rely on authority of *Monica Munira Kibuchi v Mount Kenya University* [2021] which sought to dethrone section 42(1) of *Employment Act*, 2007 for being infringement of employee's fundamental right under Articles 24, 41, 47 of *the constitution* on fair labour practices and due administrative action. Probationers like other employees are entitled to fair procedure in the event of termination of employment. Section 2 of *Employment Act*, 2007 is not segregational on this.
  16. The Respondent's case and submission is that performance appraisals (Exhibits BE1, pages 21-34) justified the termination and that the Claimant was notified verbally and via email. The termination letter cited no specific performance failures, violating Section 41 of the *Employment Act*, 2007 on the right to be heard. The review panel excluded the Claimant's direct supervisors thus rendering the process superfluous and unfair. In the authority of *Mary Wairimu Njuguna v KPLC* [2018] eKLR: employers must prove poor performance with clear metrics. Here, none were provided. The appraisal process was not communicated to the Claimant thereby making it fallacious. The termination was thus wrongful, unfair and unlawful. The Claimant has proved her case on a balance of probabilities. The termination was therefore wrongful, unfair, unlawful, and procedurally flawed and I hold as such. This answers the 2nd issue for determination.
  17. The 3rd issue for determination is whether the Claimant is entitled to the relief sought. She is. Having worn on a case of wrongful, unfair and unlawful termination of employment, she becomes entitled to the relief sought.
  18. I am therefore inclined to allow the claim and order relief as follows;
    - (i) One (1) months salary in lieu of notice .....Ksh.110,000.00
    - (ii) Eight (8) months salary as compensation for unlawful termination of employment .....Kshs.880,000.00



Total of Claim .....Kshs.990,000.00

(iii) The costs of this cause shall be borne by the Respondent.

**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Mr. Kovuna instructed by Kairu Mbuthia Law LLP for Claimant.

Mr. Jaoko instructed by Nchoe Jaoko & Company Advocates for the Respondent.

