



Mwangi v Kevian Kenya Limited (Employment and Labour Relations Cause E456 of 2022) [2025] KEELRC 2032 (KLR) (25 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 2032 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E456 OF 2022**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

ANTHONY NGARI MWANGI CLAIMANT

AND

KEVIAN KENYA LIMITED RESPONDENT

JUDGMENT

1. This matter came about by way of Memorandum of Claim dated 28th June 2022. It does not disclose any issue in dispute on its face.
2. The Respondent in a Respondent's Written Statement of Defence dated 2nd September, 2022 rubbishes the claim and prays that it be dismissed with costs.
3. The Claimant's case is that he was employed by the Respondent on 1st July, 2021 in the office of Logistics Manager on a one year contract subject to 3 months probationary period. He earned Kshs.120,000.00 per month and his primary duties were planning, coordinating, and monitoring logistics operations such as transportation and supply chain processes. This employment was terminable only on ground serious misconduct by the Respondent.
4. The Claimant's further case is that he was initially to be on contract and also under terms of employment contract implied by the law and as established in the authority of *Monica Munira Kibuchi & 6 Others v Mount Kenya University* [2021] eKLR that the employment relationship was terminable summarily and only if compliance with provision of section 44(4) of *Employment Act*, 2007 and also giving notice to the Claimant Section 41 of the *Employment Act* aforesaid. The Respondent's argument that probationary contracts exclude such protections is thus untenable. This was also subject to the Claimant being subjected to a hearing that was fair and justiciable.
5. The Claimant's other case is that on 9th September, 2021, the Respondent breached the employment contract by unilaterally and terminating the claimant services for alleged unsatisfactory performance



without notice, hearing or justification and also without disciplinary proceedings whatsoever. This was despite having given his time, energy and service to the Respondent whose actions were uncalled for and unwarranted. Besides, the Claimant had had to relocate from Mombasa to Nairobi to take up the assignment and therefore the termination badly inconvenienced him. This action was illegal, wrongful, unfair and inhumane.

6. He claims a sum of Kshs.1,320,000.00 for unlawful dismissal, loss of income and trauma made up as follows;
 - a. Compensation for wrongful dismissal equivalent to 10 months salary (balance of contract period).....Kshs.1,200,000.00
 - b. One months notice in lieu of noticeKshs 120,000.00
 - TOTALKshs.1,320,000.00
7. He prays as follows;
 - a. Sum of Kshs.1,320,000,000
 - b. Interest on (a) above from 9th September 2021 till payment in full
 - c. Issuance of a Certificate of Service
 - d. Costs of this claim
 - e. Any other relief that this court may deem fit to grant.
8. The Respondent denies any denied wrongdoing its Statement of Defence and Witness Statements by Tabitha Waweru and Irene Mburu. It asserted that the termination was lawful on grounds of the Claimant's poor performance and insubordination during the probationary period. Specifically, the Respondent accused the Claimant of disobeying directives by allowing drivers to use undesignated vehicles and unauthorized cannibalization of gearboxes from one vehicle to another.
9. The Respondent further case is that the Claimant had signed a discharge voucher on 16th September 2021, waiving any further claims. It also contended that the termination complied with the contractual probationary terms, which permitted termination with two weeks' notice or payment in lieu.
10. This matter came to court variously until the 30th April, 2024 when the parties agreed on a disposal by way of written submission.
11. The issues in dispute therefore are;
 1. Whether the claimant waived his rights to claim by executing the discharge voucher.
 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 claim?
12. The 1st issue for determination is whether the claimant waived his rights to claim by executing the discharge voucher. It is the Respondent's case and submission that the discharge voucher executed by the claimant absolved them of further liability. The Claimant, however, disputes this and posits that such a disclaimer could not override statutory protections under the [Employment Act, 2007](#).



13. This Court has considered the authorities cited by the Respondent, including *Sheila Kiplangat v Unilever Tea Kenya Limited* [2022] eKLR and *Geoffrey Emojong Emasu v H. Young & Co. [E.A.] Limited* [2022] eKLR, where discharge vouchers were upheld as binding. However, these cases must be distinguished. In *Sheila Kiplangat*, the claimant signed the voucher voluntarily with full knowledge whereas in the present case, the Claimant alleges procedural unfairness in the termination. Section 45 of the *Employment Act, 2007* prohibits unfair termination and no contractual clause can negate this statutory protection. The discharge voucher, while relevant, does not automatically bar the Claimant from seeking redress if the termination was procedurally or substantively flawed. This would be utter distortion of the principles of justice unfairness as set out in under sections 41 and 45 of the *Employment Act*, afore cited. I therefore find that the signing of discharge voucher by the Claimant did not in any way discharge or absolve the Respondent of their obligations and the law. This answers the 1st issue for determination.
14. The 2nd issue for determination is whether the termination of the employment of the Claimant by the Respondent was wrongful, unfair and unlawful. The crux of this dispute lies in whether the termination was lawful. The *Employment Act, 2007*, requires termination to be both substantively justified and procedurally fair. This was enunciated in the celebrated authority of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR.
15. The Respondent alleged poor performance and insubordination. However, as held in *Jane Samba Mukala v Ol Tukai Lodge Limited* [2013] eKLR, termination for poor performance requires proof of an established performance evaluation system and prior warnings. The Respondent failed to provide evidence of such evaluations or documented warnings. The show-cause letters dated 26th August, 2021 and the Claimant's response on 27th August, 2021 do not suffice as they were issued shortly before termination and lacked specificity on the issues complained of by the Respondent.
16. Moreover, in the authority of *Monica Munira Kibuchi & 6 Others v Mount Kenya University* [2021] eKLR the three-judge bench held that probationary employees are entitled to procedural fairness under Section 41 of the *Employment Act, 2007*. The Respondent's argument that probationary contracts exclude such protections is thus untenable. This provision of the Act also mandates a hearing before termination, including an explanation of allegations and an opportunity for the employee to respond. The Respondent's witness statements confirm that the Claimant was summarily dismissed without a proper hearing. The termination letter dated 9th September 2021 merely cited unsatisfactory performance without detailing the allegations or allowing the Claimant to defend himself adequately.
17. The Respondent's reliance on the probationary clause permitting termination with two weeks' notice is also misplaced. While probationary contracts allow for easier termination, they do not exempt employers from procedural fairness. This is the observation and authority by the Court of Appeal in *National Bank of Kenya v Samuel Ngugu Mutonya* [2019] eKLR which emphasized that even probationary terminations require adherence to the tenets of basic fairness.
18. In light of the foregoing, this Court finds that the Claimant's termination of employment by the Respondent was substantively and procedurally unfair. The Respondent failed to justify the termination or adhere to the mandatory procedural safeguards under the *Employment Act, 2007*. I therefore find a case of unlawful termination of employment and hold as such. This answers the 2nd issue for determination.
19. The 3rd issue for determination is whether the claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he becomes entitled to the relief sought.
20. I am therefore inclined to allow the claim and order relief as follows;



- i. One (1) month salary in lieu of noticeKshs.120,000.00
- ii. Six (6) months salary as compensation for unlawful termination of employmentKshs.720,000.00
Total of claim/awardKshs.840,000.00
- iii. The Respondent is ordered to issue the Claimant with a Certificate of Service in thirty (30) days.
- iv. The costs of this cause shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:

Mr. Kiiru holding brief for Thuita instructed by Guandaru Thuita & Company Advocates for the Claimant.

Miss Mwendwa holding brief for Marete instructed by Kithinji Marete & Company Advocates for the Respondent.

