



**Wambugu v CMC Motors Group Limited & another (Cause  
149 of 2020) [2025] KEELRC 2092 (KLR) (25 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2092 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 149 OF 2020  
DKN MARETE, J  
JUNE 25, 2025**

**BETWEEN**

**JOSEPH MAINA WAMBUGU ..... CLAIMANT**

**AND**

**CMC MOTORS GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**CMC HOLDINGS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The matter was originated by way of a Memorandum of Claim dated on 11th March, 2020. The issues in dispute are therein cited as; Unpaid redundancy benefits Unlawful termination and terminal benefits Unpaid dues for work done
2. The Respondents in a 1st and 2nd Respondent's Statement of Response and Counter Claim dated 7th April, 2021 deny the claim and pray that it be dismissed with costs.
3. The Claimant's case is that he was employed by the Respondent as Head of Credit at a gross monthly salary of Kshs. 351,169.00. On 26th March 2018, he was pressured to resign or face termination. This was without justification. He declined the threats but agreed on a proposed terms or formulae for separation made by the Respondent. This was however rejected by the employer. On 22nd June 2018 he was abruptly escorted by security, forced to sign a redundancy letter and denied access to his laptop and belongings. The redundancy was allegedly a sham as the 1st Respondent advertised and filled similar positions shortly after his termination.
4. The Claimant's further case is that he is owed Kshs. 2,280,896.57 in redundancy benefits under company policy and Kenyan employment laws. The Respondents failed to pay his terminal dues despite demands. The Claimant performed duties for the 2nd Respondent's subsidiaries in Uganda and Tanzania (CMC Motors Uganda, Hughes Motors Tanzania, and Hughes Agriculture Tanzania)



but was not paid for these services. He claims Kshs. 18,260,787.50 for these services, calculated at one-third of his salary over 52 months.

5. The Claimant facilitated a government vehicle lease deal worth millions but was denied a commission of Kshs. 27,879,792.00 (1.25% of sales). He alleges the commission was diverted to a third party, namely Mosi and Company Advocates. The Claimant asserts that the Respondents acted in bad faith using redundancy as a pretext for termination while continuing to employ others in his role. He seeks redress for financial losses, reputational harm like credit listing, and violations of his constitutional and contractual rights.

He prays thus;

- (a) Kshs. 2,280,896.50 being the dues he is entitled to under redundancy.
  - (b) Kshs. 18,260,787.50 being the dues he is entitled to under unpaid work.
  - (c) Kshs. 27,879,792.00 being the dues he is entitled to under commissions.
  - (d) Kshs. 13,329,314.24 being the dues he is entitled to under school fees benefits.
  - (e) Kshs. 7,023,379.92 being 12 months' compensation for unlawful termination.
  - (f) Kshs. 175,000.00 being the dues the Claimant is entitled to under unpaid club subscription fees for Royal Golf Club.
  - (g) A declaration that his termination was unlawful.
  - (h) Interest on unpaid amounts at court's rates.
  - (i) Costs of the suit.
6. The Respondent's case is a denial of the claim.
  7. In further response, the Respondents posit that the 2nd Respondent (CMC Holdings Limited) had no employment relationship with the Claimant and seeks to be struck out from the proceedings. The Respondents further aver and argue that certain claims like unpaid work, commissions, school fees, and club subscriptions are statute-barred.
  8. The 1st Respondent (CMC Motors Group Limited) admits the Claimant's employment but denies unlawful termination, asserting that the redundancy was part of a legitimate restructuring due to financial losses in 2017, political climate, and interest capping. The process complied with Section 40 of the Employment Act, 2007 including notices to the trade union (Amalgamated Union of Kenya Metal Workers) and labor officer on 24th April 2018. One hundred and nine (109) employees were affected and the Claimant's role, Head of Credit, was abolished as obsolete. The Claimant was consulted between February - June 2018 and handed the redundancy letter civilly in his office thus contradicting allegations of intimidation.
  9. The 1st Respondent denies assigning the Claimant extra duties in Uganda/Tanzania or promising additional pay. There was no policy for 1/3 salary for these or any assignment or at all. The Claimant's role in the government vehicle lease deal or owing commissions (Kshs.27.8 million) is denied. It disputes the existence of any approved claim. The 1st Respondent rejects liability for school fees and club subscription calling them baseless and unsupported by contractual terms.
  10. The Respondents refute allegations of high-handedness, degrading treatment or financial harm to the Claimant and receiving a notice of intention to sue or owing any sums claimed. The Respondents



maintain the redundancy was lawful and commercially justified, dismissing the Claimant's allegations as exaggerated and or fabricated. They urge the court to dismiss the suit and grant their counterclaim.

11. The issues for determination in this case, as distilled from the pleadings and submissions of both parties, are as follows:
  1. Whether the declaration of redundancy by the 1st Respondent against the Claimant was lawful and compliant with Section 40 of the [Employment Act, 2007](#).
  2. Whether the Claimant's termination from employment was wrongful, unfair and unlawful.
  3. Whether the Claimant is entitled to the relief sought.
  4. Who bears the costs of this cause?
12. The Claimant contends that his redundancy was unlawful, arguing that the 1st Respondent failed to comply with the procedural and substantive requirements under Section 40 of the [Employment Act, 2007](#). He asserts that his position was not genuinely redundant as evidenced by the subsequent recruitment of employees to perform similar roles.
13. Section 40 of the [Employment Act, 2007](#) mandates that an employer must issue notices to the affected employee, the labour office, and the relevant trade union (if applicable). The employer must also demonstrate that the redundancy was based on genuine operational requirements and that a fair selection criterion was applied.
14. The Respondents argue that the redundancy was necessitated by severe financial losses incurred in 2016 and 2017 attributed to economic downturns and interest rate capping. They produced audited financial statements showing losses of Kshs. 1,033,371,000 in 2016 and Kshs. 2,160,151,000 in 2017. Additionally, they assert that consultations were held with employees, including the Claimant and that notices were duly issued to the labour office and the union. The Claimant, however, disputes the genuineness of the redundancy, pointing to the advertisement for an Assistant Manager Credit shortly after his dismissal. He argues that this demonstrates that his role had not become superfluous. The Respondents counter that the advertised position was distinct and junior to the Claimant's role as Head of Credit.
15. The court finds that while the Respondents provided financial records to justify the redundancy, the timing of the subsequent recruitment raises doubts about the bona fides of the exercise. The case of *Chapman v Goonvean & Rostowrack China Clay Ltd* [1973] 2 All ER 1973 by the Claimant holds that redundancy does not exist where the business's need for the employee's services remains unchanged. The advertisement for a similar role shortly after the Claimant's dismissal suggests that his position was not genuinely redundant.
16. Moreover, the Respondents failed to demonstrate that a fair selection criterion was applied as required of Section 40(1)(c) of the [Employment Act, 2007](#) was applied. The authority of *Jane I Khalechi v Oxford University Press EA Ltd* [2013] eKLR emphasizes that redundancy must target positions, not individuals. The Claimant submits that the Respondents did not provide any evidence of how the Claimant was selected for redundancy over other employees in similar roles. The redundancy was procedurally and substantively flawed. This renders the redundancy unlawful. The constructive termination of employment was therefore also wrongful, unfair and unlawful. This answers the 1st and 2nd issues for determination.
17. 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.



18. This claim is crowded with multifarious shreds of sub-claims on various facilities enjoyed by the claimant during his term of office. It therefore becomes necessary to individually analyze all these and conclude as to which are viable and those that have no standing. This is done below.
19. The Claimant seeks Kshs. 27,879,792 in unpaid commissions for a leasing deal he facilitated. He relies on internal memos indicating that non-sales staff were entitled to a 0.5% commission for sales leads. The Respondents argue that the Claimant was not a sales consultant and that no separate agreement entitled him to commissions.
20. The court notes that the Claimant's job description did not include direct sales responsibilities. However, the memos produced (Pages 387 and 387A of Claimant's Bundle) suggest that non-sales staff could earn commissions for leads. The Claimant has demonstrated his involvement in securing a significant leasing deal and the Respondents have not disproved his entitlement to a commission. The Claimant is entitled to the unpaid commission at the agreed rate of 0.5%, subject to verification and computation of the actual amount.
21. Secondly, the Claimant seeks Kshs. 13,329,314 for school fees, arguing that the 1st Respondent's policy guaranteed education support until his children completed university. The Respondents contend that this benefit was discretionary and administered by a trust, not the employer. Moreover, a termination of employment extinguishes all complimentary benefits that go along with employment. For example, an employer is not duty bound to compensate for and issue of newspapers that was available to the employee during his stint of duty or employment. This lapses with separation or termination of employment.
22. Additionally, and in view of the claim for bursary support the employment contract (Page 10 of Claimant's Bundle) states that the 1st Respondent would recommend through the Connaught House Education Trust. There is no evidence of any contractual obligation for the 1st Respondent to pay fees directly or indefinitely. This therefore would not have continued in the event of termination or any other event resulting in a separation of the party's relationship in employment.
23. Similarly, the claim for Kshs. 175,000 in unpaid club fees lacks substantiation. The policy document (Page 43 of Claimant's Bundle) states that such payments were subject to budgetary allocation which the Claimant has not proven. These claims fails for lack of evidence.
24. The Claimant alleges that the 1st Respondent unlawfully detained his vehicle (Ford Ranger KS2618) over disputed repair bills. The Respondents provides that the Claimant agreed to the repairs and failed to settle the invoice of Kshs. 1,276,187. The court finds that the Claimant approved the initial quote (Page 534 of Claimant's Bundle) but disputes the final invoice. However, he has not provided evidence of overcharging beyond his assertions. The 1st Respondent was entitled to recover the repair costs from the Claimant's terminal dues under Section 19(1)(h) of the [Employment Act](#), 2007.
25. The Respondents allege that the Claimant diverted Kshs. 900,000 from a client, Seo & Sons Ltd, and issued post-dated cheques that were dishonoured. The Claimant did not file a defence to the counter claim. The evidence (Pages 52-55 of Respondents' Bundle) supports the Respondents' claim. The cheques were returned unpaid, and the Claimant has not rebutted the allegation. The Counter claim succeeds. The Claimant ought to repay Kshs. 900,000.
26. I am therefore inclined to allow the claim and Counter Claim and order relief as follows;
  - i. A declaration be and is hereby issued that the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.



- ii. Twelve (12) salary as compensation for unlawful termination of employment Ksh.351,169.00 x 12.....Kshs.4,214,028.00
- iii. Severance pay, 15/30 x 351,169.00 x 8.....Kshs.1,404,676.00  
Total of claim .....Kshs.5,618,704.00
- iv. The Claimant shall meet and pay the Respondent Kshs.900.000.00 as Counter Claim.
- v. The Commissioner for Labour is ordered to, with the liaison and involvement of the parties ordered to verify and compute the claimant's unpaid commissions and report back to court in 120 days of this judgment of court.
- vi. The Commissioner of Labour is further ordered to, with the liaison and involvement of the parties, analyze and compute the amount of repair costs owing by the claimant and this amount recovered from the claimant's terminal dues in accordance with the law.
- vii. The costs of the claim shall be borne by the Respondent whereas the costs of the Counter Claim shall be borne by the Claimant.
- viii. Mention on 26th November, 2025 for a report on computation.

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

**D. K. NJAGI MARETE**

**JUDGE**

Appearances

Mr. Obwaka holding brief for Malembe instructed by RSM LAW LLP Advocates for the Claimant.

Mr. Ogembo instructed by Ogembo and Associate Advocates for the Respondent.

