



**Omwodo v County Government of Uasin Gishu (Cause E016 of 2023)
[2025] KEELRC 1816 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1816 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E016 OF 2023
MA ONYANGO, J
JUNE 20, 2025**

BETWEEN

DR. KIMBERLY AHSASO OMWODO CLAIMANT

AND

COUNTY GOVERNMENT OF UASIN GISHU RESPONDENT

JUDGMENT

1. The Claimant herein filed the Memorandum of Claim dated 19th June 2023 seeking the following orders:
 - a. A declaration that the Respondent’s decisions to terminate her employment was wrongful, unfair, unlawful and unprocedural
 - b. One-month salary in lieu of notice.....Kshs 217,810
 - c. Unpaid salary from December 2019 to July 2020 Kshs 1,742,480
 - d. Gratuity for four years worked at 15 days pay for each year Kshs. 435,620
 - e. Leave pay Kshs. 217,810
 - f. 12 months salary compensation for Unlawful termination Kshs. 2,613,720
 - g. An order that the Respondent issues the Claimant with a Certificate of Service
 - h. Costs of the suit and interest thereon
 - i. Any other relief that this Honourable Court may deem just and fit to grant



The Claimant's case

2. In her Memorandum of Claim, the Claimant avers that from the year 2016, she was employed by the Respondent as a medical officer and worked continuously to the satisfaction of the Respondent.
3. She states that on 23rd September 2019, she applied for her annual leave of 30 days which was approved on 24th September 2019 by the Respondent. The leave form indicated that she would report back to work on 5th November 2019. She avers that she proceeded for leave and reported back to work as scheduled.
4. The Claimant contends that her salary was stopped in December 2019 and that in July 2020, she received a show cause letter dated 13th December 2019 stating that she had been absent from her work station since 26th September 2019 without permission. It is contended that the letter also required the Claimant to show cause why disciplinary action should not be taken against her on account of her alleged absence.
5. It is the Claimant's case that on 14th July 2020, she received another letter from the Respondent summarily dismissing her from service with immediate effect. The Claimant terms her dismissal from employment malicious, unlawful, unfair and wrongful.
6. The Claimant seeks to be compensated by the Respondent for the alleged unfair and unlawful termination. She particularized her terminal dues as hereunder: -
 - i. One-month salary in lieu of notice.....Kshs 277,810
 - ii. Unpaid salary from December 2019 to July 2020.....Kshs 1,742,480
 - iii. Gratuity for four years worked at 15 days pay for each year.....Kshs. 435,620
 - iv. Leave pay.....Kshs. 217,810
 - v. 12 months' salary compensation for unlawful termination.....Kshs. 2,613,720
7. The Respondent filed its Response and a Counterclaim dated 21st February 2024. In the Response to the Memorandum of Claim, the Respondent denied the averments made by the Claimant in her Statement of Claim and maintained that the Claimant deserted her work station as from 5th November 2019 when she was set to report to work from her annual leave. According to the Respondent, the Claimant applied for leave on 1st August 2019 which was approved on 23rd September 2019 to run through 5th November 2019. It is the Respondent's averment that the Claimant never reported back to work as scheduled in her leave application form.
8. In response to the allegation made by the Claimant that her salary was stopped in December 2019, the Respondent averred that it only issued an internal memo requesting for stoppage of the Claimant's salary which request was never acted upon.
9. It is the Respondent's case that it served the Claimant with a show cause letter dated 13th December 2019 which she declined to respond to as a result of which the Respondent's disciplinary committee held its meeting on 8th April 2020 and 20th April 2020 and recommended that the Claimant be dismissed from employment on grounds of absconding duty. It is averred that the Claimant was served with the dismissal letter dated 14th July 2020 through her known email address.



10. In the Counter claim, the Respondent averred that the Claimant failed to serve it with a one month's salary in lieu of notice as per paragraph 88 of the Employment Contract and as such the Claimant owed the Respondent Kshs. 217,810 being one month's salary in lieu of notice.
11. It was further the averment of the Respondent that the Claimant did not exhaust the legally provided procedure requiring her to appeal against the decision of the County Public Service Board to the Public Service Commission. The Respondent prayed for an order directing the Claimant to adhere to the laid down procedure by appealing against the decision terminating her employment to the Public Service Commission.
12. In the end, the Respondent prayed for the dismissal of the Claimant's claim with costs to the Respondent and entry of judgment in favor of the Respondent as per counterclaim.

The evidence

13. The Claimant testified on 12th March 2024 as CW1. She adopted her witness statement recorded on 19th June 2023 and a further statement dated 7th March 2024 as her evidence in chief. She also relied on the bundle of documents she filed in support of her case.
14. The Claimant stated that the email address used by the Respondent to send her the show cause letter dated 13th December 2019 is not hers.
15. On being cross examined by Counsel Oduor for the Respondent, the Claimant maintained that she reported back to work on 5th November 2019. The Claimant contended that she went to the county offices to complain about the stoppage of her salary but was told to await her dismissal letter. She averred that she received the show cause letter dated 13th December 2019 and the dismissal letter dated 14th July 2020 on the same day in July 2020. The Claimant stated that she received the dismissal letter after the period for appeal had lapsed. It was the Claimant's testimony that she did not receive the letter from her supervisor regarding the complaint that she had deserted duty.
16. On re-examination, the Claimant stated that when she reported to work on 5th November 2019, she was not issued with a show cause letter and that the show cause letter dated 13th December 2019 was served on her together with the dismissal letter in July 2020.
17. The Respondent called Sila Rono, the acting secretary to the Uasin Gishu Public Service Board who testified as RW1. RW1 adopted his witness statement dated 21st February 2024 as part of his evidence in chief.
18. RW1 reiterated that the Claimant proceeded on leave on 23rd September 2019 and was to report on 5th November 2019 but she failed to report on the material day. RW1 stated that there was an internal memo from the chief officer indicating that the Claimant had not reported back to work. That as provided by the law, her salary was stopped. RW1 maintained that between January 2020 and July 2020, no complaint was received from the Claimant about the stoppage of her salary as she had deserted duty. He maintained that the recommendation of the disciplinary committee was that the Claimant be dismissed for absconding duty.
19. During cross examination, RW1 stated that the Claimant was lawfully away at the end of September 2019. He also stated that the Respondent served the Claimant with the show cause letter dated 13th December 2019 via the postal address and the email address contained in her bio data, that is P.O. Box 73125-00200 Nairobi and kimbleyasaso@yahoo.com. When referred to the leave application form, RW1 confirmed that the Claimant's address as indicated therein was 3686972 Mombasa. RW1 also confirmed that the dismissal letter was sent to P. O. Box 3686972 Mombasa.



20. It was the Respondent's witness testimony that the Claimant was never invited to the disciplinary meeting but the County Government Workers Union appeared on her behalf.
21. On re-examination, RW1 stated that the address used to serve the Claimant with the show cause letter dated 13th December 2019 is the same address indicated in her employment contract.

Submissions

22. In her submissions, the Claimant identified the issues for submissions to be:
 - a. Whether there was a valid reason for terminating the Claimant's employment?
 - b. Whether the Claimant was accorded a fair hearing prior to the termination of the Claimant's employment.
 - c. Whether the Claimant appealed the decision to terminate her employment.
 - d. Whether the Claimant and the Respondent are entitled to the reliefs sought in the Memorandum of Claim and Counterclaim respectively.
23. On the issue whether there was a valid reason for terminating the Claimant's employment, the Claimant submitted that there was absolutely no reason for the termination of her employment. According to the Claimant, the letter dated 9th December 2019 on which the Respondent purportedly relied to find that the Claimant was not at work does not indicate as such as it indicates that the Claimant proceeded on her annual leave at the end of September 2019. It is also the Claimant's submission that there is no evidence that she did not report back to work after her leave ended.
24. On the issue whether the Claimant was accorded a fair hearing prior to the termination of her employment, the Claimant submitted that the Respondent's witness acknowledged that the Respondent never invited the Claimant to a disciplinary meeting and that the disciplinary meeting did not have any officials from the Claimant's union in attendance as she is a medical doctor and a member of the Kenya Medical Practitioners and Dentists Union and not the Local Government Workers Union. This is clearly reflected in her pay slip.
25. On this basis, the Claimant submitted that the Respondent failed in its statutory duty to accord her a fair hearing as imposed on it by Article 47 of [the Constitution](#) and section 41 [1] of the [Employment Act](#).
26. With regard to the third issue, it is the Claimant's submission that she appealed against the decision to terminate her employment to the Public Service Commission through the Respondent's County Public Service Board vide a letter dated 1st August 2020 but she never received any response.
27. In addition, the Claimant submitted that filing an appeal to the Public Service Commission is not mandatory and that an appeal to the Public Service Commission is not the sole procedure for challenging a decision of the County Public Service.
28. The Claimant submitted that she did appeal to the Public Service Commission even though the said appeal process was not mandatory and does not take away the jurisdiction of this court.
29. Lastly, the Claimant submitted that she had clearly shown that not only was there no valid reason for the termination of her employment but also that the Respondent failed in its statutory duty to give hear a fair hearing. She therefore submitted that she is entitled to all the prayers sought in her Memorandum of claim.



30. Regarding the Respondent's counterclaim, the Claimant submitted that the prayer for a sum of Kshs. 217,810/- being one month's salary in lieu of notice and an order directing the Claimant to appeal to the Public Service Commission cannot be granted as the Respondent acted unfairly and unlawfully in terminating her employment.
31. The Claimant thus prayed to be granted the reliefs sought and for the dismissal of the Respondent's Counterclaim with costs.
32. On its part, the Respondent identified the issues for submissions to be:-
 - i. Whether or not the decision to terminate the Claimant's employment as a result of desertion of duty was valid
 - ii. Whether or not the Claimant was accorded a fair hearing prior to her summary dismissal
 - iii. Whether or not the doctrine of exhaustion rightly applies to this suit in favor of the Respondent as against the Claimant
 - iv. Whether or not the Claimant is entitled to the reliefs sought
 - v. Whether or not the Respondent is entitled to the reliefs sought
33. On the first issue, the Respondent submitted that during the hearing, RW1 relied upon the letter dated 6th December 2019 as the basis for instituting the process that culminated in the dismissal of the Claimant summarily. It is contended that although the Claimant went on leave between 24th September 2019 to 5th November 2019, as at the time of issuing the letter dated 9th December 2019, a period of more than one month had lapsed since the leave period for the Claimant ended and that her supervisor, the Hospital Administrator confirmed that the Claimant left her place of employment at Plateau Mission Hospital at the end of September, 2019 indicating that the last time the Claimant was at work was end of September, 2019.
34. The Respondent submitted that as per the employment contract relied upon by both parties, clause 8 provides that desertion will be deemed to have occurred when an employee is absent from the appointed place of work without the knowledge of the supervisor.
35. In this regard, the Respondent while citing section 44[4] of the *Employment Act* and Clause 8 of the employment contract dated 25th May 2016 between the parties herein argued that it was the intention of the parties that the employment contract shall be deemed to have been terminated when the employee absents herself from work without any justifiable cause. The Respondent submitted that it had proved that the Claimant was absent from her work station without notifying her immediate supervisor and as such the reason for termination of her employment was valid. In support of this position, the Respondent cited the case of *Nancy C. Maritim v Sot Tea Growers Sacco Ltd* [2018] eKLR, *Ann Njoroge v Topez Petroleum Ltd*, [2013] eKLR and *Nairobi Elrc No. 2473 of 2017 Titus Malweyo Wangereka v Gurdrip Singh Rupra*.
36. On the issue whether or not the Claimant was accorded a fair hearing prior to her summary dismissal, the Respondent submitted that its witness testified that upon the Hospital Administrator, the Claimant's immediate supervisor, confirming that the Claimant had deserted her work station without notification, the Respondent initiated the disciplinary process through the show cause letter dated 13th December 2019 issued to the Claimant. According to the Respondent, although the Claimant denied receiving the said letter, the onus was on her to prove to the court that she was not aware of the show cause letter until 14th July 2020 when she averred to have received the said letter.



37. The Respondent thus maintained that the Claimant was duly notified through the show cause letter dated 13th December 2019 of the Respondent's intention to take disciplinary action against her wherein her response was expected within Seven [7] days from the date of the letter. On this basis, the Respondent urged the court to find that the Claimant was accorded a fair hearing by being served with the show cause letter which did not elicit any response.
38. On the third issue, the Respondent submitted that vide its Counterclaim, it averred that the Claimant having been dissatisfied by the decision to terminate her employment by the County Public Service Board, ought to have appealed against that decision to the Public Service Commission upon receipt of the dismissal letter dated 14th July 2020. According to the Respondent, the Claimant furnished the court with letters dated 1st August 2020 and 7th December 2022 purportedly issued to the Public Service Commission and the County Public Service Board respectively but did not prove that the said letters were indeed served upon the recipients. The Respondent thus urged the court to find that the Claimant did not follow the laid down legal process of appealing against the decision to terminate her employment by the County Public Service Board to the Public Service Commission. That as such the filing of this suit is pre-mature since the available legal channel has not been exhausted.
39. On the issue whether or not the Claimant is entitled to the reliefs sought, the Respondent urged the court to find that it is unable to grant any prayer in this suit since the Claimant failed to exhaust the statutory process by appealing to the Public Service Commission. The Respondent urged the Court to direct the Claimant to adhere to the laid down procedure as provided for in the [Public Service Commission Act](#).
40. With regard to the claim for one month's salary in lieu of notice, the Respondent contends that the Claimant is not entitled to this award since she deserted her work station. It is submitted that the same is clearly stipulated under clause 8 of the employment contract dated 25th May 2016 which provides that in case of desertion the claim is unsustainable.
41. On the claim for unpaid salary, the Respondent submitted that since the Claimant was absent from her work station without the knowledge of her supervisor and her whereabouts were unknown, she had contravened the express terms of the contract of employment and she is not entitled to this prayer.
42. The Respondent also submitted that the Claimant is not entitled to gratuity since the same is not specifically provided for in the contract of employment. Further, that gratuity is governed by statute and is payable only if the Claimant is an employee whose wages are regulated such as private security personnel.
43. It is also the Respondent's submission that the Claimant is not entitled to leave pay since through her own admission in her pleadings she went on leave.
44. On the prayer for compensation for unfair termination, the Respondent submits that the Claimant is not entitled to the same since she was lawfully terminated from employment as a result of desertion after she failed to report back to her work station at the end of her annual leave on 5th November 2019.
45. With regard to the fifth issue whether or not the Respondent is entitled to the reliefs in the counterclaim, the Respondent submits that since it has already been demonstrated on a balance of probabilities that the Claimant deserted her work station without giving any prior notice after the conclusion of her leave period, the Respondent is entitled to Kshs. 217, 810/= as one month's pay in lieu of notice.



Determination

46. Before dealing with the issues falling for my determination, it is important to clarify that the issue of exhaustion of internal mechanisms raised by the Respondent was dealt with as a Preliminary issue before the suit was set down for hearing. On 7th February 2024, parties entered into a consent where the preliminary objection was withdrawn with a condition that it was not to be raised in the defence. The terms of the said consent were dictated to the court by Counsel Gathu and confirmed by Mr. Oduor as follows: -
1. By consent orders of this court that the suit proceeds as undefended suit be set aside
 2. Respondent's P.O. be marked as withdrawn and the Respondent shall not raise such issue in its defence
 3. The Respondent to file its response within 14 days from today
 4. Respondent pays the Claimant throw away costs of Kshs 10,000 within 14 days
47. Based on the above consent and after considering the pleadings, the evidence tendered in court and the submissions of the parties, the issues falling for determination are: -
- i. Whether the Claimant's employment was terminated based a valid reason and fair procedure
 - ii. Whether the reliefs sought in both the Claim and Counterclaim are merited.

Whether the Claimant's employment was terminated based a valid reason and fair procedure

48. On the first issue, the Claimant maintained that her employment contract with the Respondent was terminated without a valid reason and that due process was not followed by the Respondent.
49. The Claimant testified that she proceeded on leave from 26th September 2019 to 5th November 2019 and that upon the lapse of her leave days she reported back to work. It was her case that her salary was stopped by the Respondent and when she followed up she was told to wait for her dismissal letter.
50. The Respondent on the other hand contends that it dismissed the Claimant after she deserted duty. According to the Respondent, the Claimant did not report back after her annual leave lapsed and thus deserted duty. That the Claimant's immediate supervisor issued an internal memo dated 9th December 2019 addressed the Chief Officer, PSM requesting for stoppage of the Claimant's salary. It is the Respondent's case that the Claimant did not complain about the stoppage of her salary, which the Respondent interpreted to mean that the Claimant was not at work. That it served the Claimant with the show cause letter dated 13th December 2019 through postal address No. 73125, Nairobi and email address kimbleyasaso@yahoo.com. The Respondent maintained that the Claimant was taken through disciplinary hearing and was subsequently issued with a dismissal letter dated 14th July 2020 on account of desertion of duty.
51. In her defence, the Claimant denied absconding duty and maintained that she was unlawfully terminated from employment by the Respondent. She maintained that she was served with both the show cause letter dated 13th December 2019 and the dismissal letter dated 14th July 2020 at the same time via the address as per leave form, 3686972 Mombasa.
52. Section 43 of *Employment Act* 2007 provides as follows:

“ 43. Proof of reason for termination



[1] In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

[2] The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee”.

53. Section 44[4][a] of the *Employment Act* 2007 provides as follows:

[a] without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;

54. Section 44[4][a] is specific that absence from work per se does not constitute a ground for dismissal unless it is without leave or other lawful cause. It is not in dispute that the Claimant’s leave was approved on 24th September 2019. The Claimant in her evidence stated that she proceeded for her leave on 26th September 2019 and reported back on 5th November 2019. The Respondent on its part maintained that the Claimant did not report back to work after the lapse of her leave days.

55. For an employer to plead that an employee has absconded duty in its defence, it is now trite that the employer must demonstrate and prove that it took steps to find out the whereabouts of the employee. In the case of Stanley Omwoyo Onchweri v BOM Nakuru YMCA Secondary School [2015] eKLR the court held that the employer must demonstrate what measures were put in place to trace the employee who is alleged to have absconded duty.

56. In the instant case, the Respondent did not tender any evidence to show the efforts it made in tracing the Claimant after she allegedly absconded duty. It did not adduce evidence of any reporting structure for an employee upon resuming work after annual leave or how absence was monitored. In the absence of such proof, the court finds that the Respondent did not prove that the Claimant deserted duty as alleged and find that the termination was without a valid reason. The letter from the Hospital Administrator does not state that the Claimant had absconded duty. It merely states:

6th Dec, 2019

The C.E.C.M.

Uasin-Gishu County

Department of Health

Dear Madam,

Re: Dr. Kimberley A. Omwondo

The above named Medical Officer reported in Plateau Mission Hospital on 26th Sept. and left end of sept 2019.

Thank you.

Signed

Hospital Administrator

57. The letter does not state that the Claimant did not report back to work after her annual leave.



58. With regard to the issue whether the Claimant was taken through the due process before her dismissal from employment, the Respondent contended in its pleadings and the evidence of its witness that the Claimant was served with the notice to show cause letter dated 13th December 2019 via email and postal addressed as indicated in her bio data, and that the dismissal letter dated 14th July 2020 was served on her through the address provided in her leave application form. According the Respondent, although the disciplinary hearing was conducted in the absence of the Claimant, the County Government Workers' Union was present during the said disciplinary hearing on the Claimant's behalf.
59. Section 41 of the Employment Act provides: -
- “Subject to section 42 [1], an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.”
60. The above provision requires that the employee being considered for dismissal must be notified of the intention to dismiss and be given an opportunity to attend the disciplinary hearing. Noting that the Claimant was not personally present in the disciplinary hearing, and that she was not invited for the same, further noting that she is a medical doctor who pays union dues to the Medical Practitioners and Dentists and not the County Government Workers Union, it cannot be said that she was taken through any the due process.
61. The Court of Appeal in the case of Janet Nyandiko v Kenya Commercial Bank Limited [2017] eKLR held that an employer is enjoined to comply with the mandatory provisions of Section 41 and 45 of the Employment Act in terminating an employee's employment, and that failure to do so renders the termination unfair.
62. Flowing from the above, I find and hold that the Claimant was unfairly terminated from employment as due process was not followed in the termination of the Claimant's employment.
- What reliefs should then issue?
63. The Claimant sought the following reliefs which I proceed to address in separate heads:
- a. Salary in lieu of notice
- Having made a finding that the Respondent had no valid reason to terminate the Claimant's employment on account of desertion of duty and that fair procedure was not followed, the Claimant is entitled to pay in lieu of notice and I award her the same at Kshs. 217,810
- b. Unpaid salary from December 2019 to July 2020
- RW1 on cross examination stated that the Claimant's salary was stopped pursuant to the internal memo dated 9th December 2019 on the subject, “Request for stoppage of salary Dr. Kimberly Omwodo-P/No. 2015708244”. The Claimant court having found that there was no proof that the Claimant was absent from duty from December, 2019, the Claimant is entitled to the withheld salary up to the date of termination of her employment. I award her the same at Kshs. 1,742,480
- c. Gratuity
- This prayer is declined as the Claimant's employment contract dated 23rd May 2016 does not make provision for payment of gratuity.



d. Leave

The leave form annexed to the Claimant's list of documents shows that the Claimant had exhausted all her leave days at the time she was applying for leave on 23rd September 2019. I decline to grant this prayer.

e. 12 months' salary compensation for unlawful termination

The Respondent having failed to prove the reasons for termination of the Claimant's employment, and the termination having been unprocedural and unlawful, the Claimant is entitled to compensation in terms of section 49 of the *Employment Act*. Taking into account the circumstances under which she lost her job, the conduct of the Respondent in the process of terminating the Claimant's employment and all other relevant factors under section 49[4] of the Act, I award the Claimant 3 months' salary as compensation in the sum of Kshs. 653,430.

f. Certificate of Service

The Claimant is entitled to be issued with a Certificate of Service pursuant to Section 51[1] of the *Employment Act* 2007. The Respondent is directed to issue the same.

64. In conclusion, judgment is hereby entered in favor of the Claimant against the Respondent as follows:

- i. Salary in lieu of notice Kshs. 217,810
- ii. Unpaid salary from December 2019 to
July 2020 Kshs. 1,742,480
- iii. 3 months' salary compensation for unlawful termination Kshs. 653,430

65. The Respondent shall issue a Certificate of Service to the Claimant within thirty days of this judgment.

66. The Respondent shall bear the Claimant's costs of this suit.

67. Interest shall accrue at court rates from date of judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 20TH DAY OF JUNE 2025

MAUREEN ONYANGO

JUDGE

