



Ratemo v Seventh Day Adventist Church Central Rift Valley Conference (Employment and Labour Relations Cause E012 of 2024) [2025] KEELRC 1771 (KLR) (18 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1771 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
EMPLOYMENT AND LABOUR RELATIONS CAUSE E012 OF 2024**

**AN MWAURE, J
JUNE 18, 2025**

BETWEEN

JESCAH GESARE RATEMO CLAIMANT

AND

**SEVENTH DAY ADVENTIST CHURCH CENTRAL RIFT VALLEY
CONFERENCE RESPONDENT**

JUDGMENT

Introduction

1. The Claimant commenced this cause vide a Statement of Claim dated 6th February, 2024 filed through the firm of Matthew & Partners Advocates LLP.

Claimant's case

2. The Claimant avers that she initially employed by the Respondent on contractual basis from the year 2014.
3. Later, the Claimant avers that she was retained as a Conference Accountant of the Central Rift Valley Conference vide an Employment Contract, commencing on 23rd November, 2016, and confirmed on permanent and pensionable basis.
4. Subsequently, the Claimant avers that she was promoted to Conference Internal Auditor from January 2019 to the present, earning a monthly salary of Kshs.96,452.83/=.
5. The Claimant avers that she elaborated that her terms of engagement included a gross monthly salary of Kshs. 96,452.83/=, 21 working days of statutory leave and a medical cover entitling her to 75% outpatient or 90% inpatient expense coverage as per the Church working policy and that termination by either party required one month's written notice or payment of one month's salary in lieu of notice.



6. It is her case, the Claimant avers that upon her confirmation, she assumed her office, diligently performing her roles and functions as directed by the employment agreement. She reiterated that that she consistently performed her duties and responsibilities as stipulated in her contract of service and has never received any report or appraisal indicating poor performance, nor was she issued any warning letter or called for disciplinary action. On the contrary, her work was considered exemplary.
7. The Claimant avers that she maintains that she had a good working relationship and standing with her colleagues, never receiving complaints from supervisors or peers. Rather, colleagues frequently sought her advice, counsel, and direction on various issues.
8. Despite her strong work ethic and performance, the Claimant avers that she was dismayed to receive a Show cause Letter dated 28th May, 2023, from the Respondent. This letter alleged that she had been having a romantic relationship with a co-worker who were not her lawfully married husband. Perturbed by these accusations, the Claimant responded by a letter dated 29th May, 2023, contesting the grave accusations and maintaining her innocence.
9. Subsequently, the Claimant avers that by a letter dated 5th June, 2023, the Respondent suspended her from office duties for a period of three months, stating that this time would be used to investigate the case. She was later invited to appear before a commission via a letter dated 27th June, 2023, with the meeting scheduled for 2nd July, 2023.
10. The Claimant avers that following this meeting, the Respondent wrote to the Claimant on 4th September, 2023, stating that the Executive Committee was convinced the allegations were true because she "did not prove otherwise and you confirmed that the person with whom you are accused to be in a romantic relationship as was mentioned to you during the commission and also in the Excom regularly comes to your house". The Claimant responded to this letter on 16th September, 2023, maintaining her innocence in writing.
11. The Claimant avers that the entire process became a mere academic exercise as she was advised to appear before the organization's officers on 27th October, 2023, for "final deliberation on the matter in question," where the charges against her were confirmed.
12. The Claimant avers that she was coerced by two executive officers and one departmental officer to tender her resignation, being told it would be honourable and would facilitate the receipt of terminal benefits. The Claimant, however, declined this offer.
13. The Claimant maintains that the entire disciplinary process was a sham, failing to meet the basic tenets of fair hearing as guaranteed under Article 50 of *the Constitution* of Kenya, 2010, the *Employment Act*, 2012, and the relevant procedural and substantive guidelines set out under the Working Policy of the General Conference of the Seventh Day Adventists East Central Africa Division (2019-2020 Edition).
14. Furthermore, the Claimant avers that given the Respondent's nature as a church with a perceived higher moral societal expectation, the impugned termination based on alleged immorality has subjected her to grave ridicule, mental anguish, torture, and agony. The termination, being unfair, unlawful, and unjust, has not only deprived her of her daily source of income but also robbed her of rightful benefits and covers received during her employment which include; medical benefits (75% outpatient and 90% inpatient) for her nuclear family, and education assistance for her children (60% for day scholars and 70% for boarders annually).
15. The Claimant provided further particulars of the loss she incurred by dint of her termination to include education assistance provided: for Collins Omae Mwangori (High School), a benefit of Kshs.28,374/= (40,535 X0.7) for Form 1, with 10 more years of dependency, totaling Kshs.



- 113,496 (28,374X4). For University (Baraton), the claim is Kshs. 1,176,000 (140,000 X3 X4 X0.7). For Alpha Omwebu in Carol Academy, the benefit is Kshs.55,800/= (93,000X 0.6), with 12 more years under dependency age. Additional education benefits are claimed for Junior High School at Kshs.167,400 (55,800X3), Senior High School at Kshs.167,400 (55,800 X3), and University (Baraton) at Kshs.882,000/= (140,000 X3 X0.7).
16. Further lost benefits include housing benefit at market rate monthly house rent, calculated as Kshs.6,120,000 (17,000 X 12 months X 30 years), motor vehicle insurance cover at Kshs. 225,000/= (7,500 X 30 years), worker's education assistance for the employee's studies (50% of the total cost, balance of project amounting to Kshs.148,050/= (296,100 * 0.5)), and an annual bonus (50% of 1 month's salary) totaling Kshs. 748,800 (24,960 X 30).
 17. Lastly, the Claimant aver that upon retirement, had she not been illegally terminated, she would have completed 40 years of service, entitling her to a retirement allowance of 6 months' salary, calculated as Kshs.299,520/= (6 X 49,920).
 18. The Claimant avers that her termination was unlawful and unfair under the *Employment Act*.
 19. The Claimant alleges malice, bad faith, and procedural irregularities, including the fabrication of reasons for dismissal, lack of formal complaints about her performance, exclusion of key individuals in the allegations against her, and failure to follow legal and procedural requirements under Sections 40 and 43 of the *Employment Act*.
 20. The Claimant avers that her dismissal resulted from an illegal process and abuse of office. By reason of her termination, the Claimant avers that she has been wrongfully dismissed without valid reasons, and the proper procedure set out in the *Employment Act* was not followed. She further submits that she has lost her career and reputation as an upstanding and reliable worker and cannot mitigate this loss.
 21. The Claimant avers that on 28th November 2023, her Advocate wrote to the Respondents, protesting the unlawful and unprocedural termination of her employment and outlining the dues owed.
 22. On 8th December, 2023, the Claimant avers that the Respondents replied, denying each allegation and directing the Claimant to an alleged internal dispute resolution mechanism detailed in the working policy of the General Conference of the Seventh Day Adventist East Central Africa Division.
 23. The Claimant avers that she has fully complied with Clause B 45 10 Conciliation and Dispute Resolution of the Respondent's Working Policy concerning internal dispute resolution and has fully exhausted these mechanisms as intended. Furthermore, she states that, as confirmed by minutes dated 31st May, 2023, these internal organs are not operational or constituted due to internal wrangles, a fact of public knowledge, which she views as a further attempt to scuttle her right to legal recourse.
 24. The Claimant prays for judgment for:
 1. Reinstatement of the Claimant's former position with the Respondent with all her back salary, allowances and benefits from the time of unfair and unlawful termination;
 2. A declaration that the Claimant's employment was unfairly terminated by the Respondent;
 3. One Month's salary equivalent being payment in lieu of notice in the sum of KShs.96,452.83/=
 4. Compensation for unfair termination assessed at 12 months, amounting to KShs.1,157,433.96/=
 5. Interest at courts rates on 3 above from the date of filing suit until payment in full;



6. Special Damages for unfair and unlawful termination as pleaded and quantified in Para. 16 above in the sum of Kshs.9,977,666/=
 7. Costs of this suit; and
 8. Any other relief as the Honourable Court would deem just and expedient to grant.
25. Despite service of the pleadings upon the Respondent, by affidavit of service deponed on 17th May 2024 and Court also served the Respondent on 1st October 2024 the Respondent did not enter an appearance or file a response to the claim herein. As such, the claim proceeded as undefended cause.

Evidence in court

26. During formal proof hearing, the Claimant testified as CW1 and sought to adopt her witness statement dated 26th February, 2024 as her evidence in Chief. She also produced the documents in the list of documents dated 6th February, 2024, as her exhibits 1 to 13 respectively.
27. The court directed the Claimant to file written submissions.

Claimant's submissions

28. The Claimant submitted that her termination was unfair and unlawful. She contends that fair termination must involve valid reasons and procedural fairness, citing the case of *Walter Ogal Anuro V Teachers Service Commission (2013) eKLR* where the court held as follows:

“... for a termination of employment to pass the fairness test, there must be both `substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”

29. The Claimant submitted that her employment was allegedly terminated due to a romantic relationship with a coworker, yet no evidence was presented to substantiate the accusation. The Claimant submitted that the termination violated sections 41, 43, and 45 of the *Employment Act*, which mandate fair labor practices, requiring the employer to provide proof of a valid reason and adhere to fair procedures.
30. The Claimant submitted that she seeks reinstatement, compensation for unfair termination, special damages amounting to approximately Kshs.9.98 million, one month's salary in lieu of notice, and interest on the awarded amount, among other reliefs.
31. The Claimant submitted that the Respondent failed to respond to the case, leading to a formal proof hearing. The Claimant emphasizes that her termination lacked substantive justification and procedural fairness, and she seeks redress under constitutional and employment law provisions to restore her employment and recover damages.

Analysis and determination

32. The court has considered the pleadings on record and the submissions, the issue for determination is whether the claim is merited.



33. Section 47(5) of the *Employment Act* provides as follows:

“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

34. The Claimant was served with a Notice to show cause dated 28th May 2023 and was accused of having a romantic relationship with a man who was not her lawfully married husband.

35. This could have been an offence in the church’s policy but still the said man is not named and no other details have been provided. It reminds one of the story in the Holy Book of the woman taken to Jesus accusing her of committing adultery and yet the man she could have been committing adultery with was not presented to Jesus.

36. Without any details the accusation fails to establish substantial justification where an employer is expected to provide a valid reason. The Respondent as already said did not controvert the claim by the Claimant as he did not provide a substantiated reason or details of the man she was accused of cohabiting with.

The provision of Section 43(1) and 45(1) of the *Employment Act* are not met therefore. Section 43(1) provides as follows: -

43. (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.

37. Section 45(1) provides as follows –

“(1) No employer shall terminate the employment of an employee unfairly.”

38. The Claimant was not taken through the disciplinary hearing as provided in Section 41(1) of the *Employment Act*. The same states:-

“41. Subject to section 42 (1), an employer shall, before terminating the
(1). 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.”

39. She was invited to attend a Commission for investigations and after that she was dismissed after she was coerced to resign but she refused to resign. The court did not have the benefit of the termination letter but it is clear the Claimant is no longer in the Respondent’s employment. It is also clear she did not resign from the employment.

40. The Respondent having not filed a response or tendered evidence in court did not contravene the Claimant’s claim. They failed therefore in twin tests of providing substantive justification in giving a



valid reason for termination and procedural fairness. This is as set out in the case of Walter Ogal Anuro -vs- Teachers' Service Commission Cause No.955 of 2011 where the court stated:

“The termination to pass the fairness test, it ought to be shown that there was not only substantial justification for termination but also procedural fairness.”

41. The court therefore finds and holds the claimant was unfairly and unprocedurally terminated from her employment. She is awarded the following reliefs: -

- (1) One month' salary in lieu of notice - Kshs.96,541/2
- (2) Compensation for unfair termination equivalent to 8 months' salary - Kshs.771,662/64
- (3) Interest at court rates at 14% per annum from date of judgment till full payment
- (4) Costs are awarded to the Claimant.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 18TH DAY OF JUNE, 2025.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of *the Constitution* which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

