



**Ondimu v Lake Turkana Windpower (Cause E001 of 2024)
[2025] KEELRC 1745 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1745 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E001 OF 2024**

**SC RUTTO, J
JUNE 13, 2025**

BETWEEN

SILAS BIYOGO ONDIMU CLAIMANT

AND

LAKE TURKANA WINDPOWER RESPONDENT

JUDGMENT

1. It is common cause that the Claimant was employed by the Respondent with effect from 17th January 2022, in the position of Security Human Resource Officer. Seemingly, the employment relationship was short-lived, seeing that the parties separated pursuant to a Mutual Separation and Confidentiality Deed dated 30th June 2024.
2. Indeed, the dispute herein stems from the said Mutual Separation and Confidentiality Deed, which the Claimant has averred was procured through coercion and undue influence, thus tainted with illegality, malice and hence rendering it unenforceable, null and void. It is the Claimant's view that the Respondent, through its Chief Executive Officer, unilaterally terminated his employment without fair reason, fair procedure, justice and equity.
3. It is against this background that the Claimant seeks the following reliefs against the Respondent:
 - i. A declaration that the Claimant was dismissed by the Respondent and coerced into signing the mutual separation agreement which in any event was not mutual.
 - ii. A declaration that the so called "Mutual Separation and Confidentiality Deed" was an after the fact, procured through coercion and undue influence thus tainted with malice and illegality thus rendering it unenforceable, null and void.
 - iii. A declaration that the so called "Mutual Separation and Confidentiality Deed" amounted to unfair termination and/or wrongful dismissal and that to the extent that the so-called mutual



separation agreement sought to oust reliefs accruing to the Claimant for wrongful termination guaranteed by statute, the same is invalid and/or unenforceable, null and void.

- iv. A declaration that the Respondent's action to terminate the Claimant was, malicious, unfair, unlawful, wrongful, unprocedural and illegal.
 - v. A declaration that the respondent's action to terminate the Claimant's employment was without a valid reason and no reason at all within the meaning of section 43 of the Employment Act and therefore the termination was grossly unfair.
 - vi. A declaration that the respondent's action to terminate the Claimant's employment was unfair within the meaning of section 45 of the Employment Act and therefore the termination was grossly unfair.
 - vii. A declaration that the Respondent actions culminating in the termination of the claimant's employment were discriminatory, unconstitutional, in total violation of the Claimant's rights to fair administrative action and a fair hearing.
 - viii. A declaration that the Respondent actions infringed on the Claimant's legitimate expectation that as a company the Respondent would uphold the principles of fairness, equality, good governance, natural justice, constitutionalism, human dignity, equity, inclusiveness, equality, human rights and non-discrimination.
 - ix. A declaration that failure by the Respondent to issue the Claimant a certificate of service upon termination of the Claimant constituted an offence.
 - x. The Respondent to make the following financial compensation to the Claimant:
 - a. Compensation for malicious, unfair, unlawful, wrongful, unprocedural and illegal termination-406,000 x12-Kes.4,872,000
 - b. Pay for 10.40 annual leave days-Kes.162,400
 - c. Pension Company Contribution-40,600 x12 Kes.487,200
 - d. Private Medical Insurance Self, Spouse & Children (Outpatient &Inpatient)-Kes.3,250,000
 - e. Private Medical Insurance for biological parents (Outpatient &Inpatient)-Kes.1,100,000
 - f. General Damages on discriminating the Claimant in the workplace.
 - g. General damages on Infringement and violation of the Claimant's right to human dignity, rights to fair labour practices and right to reasonable working conditions.
 - xi. Interest on(x).
 - xii. Costs and interests of the suit from the date of filing of the suit.
 - xiii. Certificate of Service.
 - xiv. Any other relief the honourable Court may deem fit to grant.
4. The Respondent did not take the Claim lying down. Through its Memorandum of Response dated 24th July 2024, the Respondent has denied that it unilaterally terminated the employment of the Claimant. According to the Respondent, the Mutual Separation and Confidentiality Deed was



signed voluntarily and with the Claimant's own volition. In the Respondent's view, the Claimant is approbating and reprobating the Mutual Separation and Confidentiality Deed by seeking to benefit from the fruits of the said Deed by way of the settlement amount, which he has not refunded and has not expressed any intention to do so. As a result of the foregoing, the Respondent has asked the Court to dismiss the claim with costs.

5. The matter proceeded for hearing on 10th March 2025, during which both sides called oral evidence in support of their respective cases.

Claimant's Case.

6. The Claimant testified in support of his case and at the outset, he sought to adopt his witness statement to constitute his evidence in chief. The Claimant proceeded to produce his initial list and bundle of documents, supplementary list and bundle of documents and further supplementary list and bundle of documents as his exhibits before Court.
7. It was the Claimant's evidence that on 22nd June 2022 at 11.20 am thereabouts, in a well-choreographed episode, the Respondent ambushed and bulldozed him into a meeting ostensibly christened as a "mutual separation".
8. He took great exception to the said meeting but was silenced by the Respondent's Chief Executive Officer (CEO). According to the Claimant, this was racial hatred and discrimination by the Respondent's CEO against him.
9. The Claimant further averred that the Respondent's CEO informed him that the die was cast and there was no going back on the decision that he be terminated on 22nd June 2022. The Respondent's CEO further informed him that even if he was to pursue his case on termination in Court, it would take not less than three (3) years to receive compensation, therefore, he had no choice but to bite the bullet and swallow the bitter termination pill, disguised as a "mutual separation".
10. The Claimant further averred that immediately after the meeting of 22nd June 2022, the Respondent's CEO informed some staff that his employment was terminated on 22nd June 2022. That this was before he had sight of the Mutual Separation Deed.
11. That further, the Respondent's Chief Human Resource Officer, who was present in the said meeting of 22nd June 2022, informed his colleagues in the Human Resource Department that his employment was terminated on 22nd June 2022.
12. It was the Claimant's further evidence that his duties in the security department were assigned to his colleagues in the Human Resource Department from 22nd June 2022, subjecting him to workplace discrimination.
13. The Claimant further averred that he registered his displeasure with the Respondent on the malicious events of 22nd June 2022, but his plight was ignored.
14. That he was disconnected from accessing the Respondent's IT system and his official working email address was deactivated before any agreement on the Mutual Separation Deed had been firmed up.
15. It was the Claimant's contention that no Mutual Separation and Confidentiality Deed had been firmed up as at 1st July 2022, despite his coerced exit from the Company.
16. It was the Claimant's view that the pre-planned and pre-meditated termination "mutual separation" was an after the fact, to sanitize an illegality.



17. He further stated that he suffered humiliation, indignity and ridicule when he was directed to pack his luggage by the Respondent's CEO and bungled into a waiting aircraft from the Respondent's site in Loiyangalani to Nairobi Wilson Airport before the Mutual Separation and Confidentiality Deed was firmed up.
18. According to the Claimant, these malicious events were deliberately geared to coerce him into agreeing to the Mutual Separation and Confidentiality Deed.
19. It was the Claimant's view that the amounts he received from the Mutual Separation and Confidentiality Deed were contractual and he would have been entitled to the same even if there was no Mutual Separation Deed.
20. That he had a legitimate expectation that his dependants and biological parents would continue to enjoy the medical insurance cover as provided in his Employment Contract in the event he was to be terminated by the Respondent based on valid reason(s) and using a fair procedure, which was never the case.
21. The Claimant further averred that the better part of the year 2022 and year 2023, he was taking care of his sick mum who was later diagnosed with colon cancer and which deprived him the time, the right frame of mind and financial resources to file the case as at when the Respondent terminated his employment. Therefore, his claim is reasonable and cannot be deemed to be an afterthought.
22. The Claimant averred that on 20th December 2023, he encountered that his termination was on account of redundancy. According to him, this was a futile attempt by the Respondent to use redundancy as an excuse to hide unfair and discriminatory motives against him. That the Mutual Separation and Confidentiality Deed did not have any clause to the effect that the intended separation was on account of redundancy.
23. He further contended that it is unreasonable for the Respondent to accuse him of approbating and reprobating, yet there was no valid reason or reason at all in the so called "Mutual Separation and Confidentiality Deed" that was affording him any benefit that was outside his employment contract.
24. That he was not presented with a choice between a mutual separation agreement and a dismissal or a redundancy.
25. The Claimant further averred that his self-service portal confirms that he was constructively dismissed, which in essence implies that the Respondent made his working conditions intolerable, including pulling all illegal maneuvers to coerce him to accede to the so called "Mutual Separation and Confidentiality Deed".
26. That the Respondent never issued him with a Certificate of Service upon termination of his employment as provided under Section 51(1) of the [Employment Act](#), thus committed an offence.

Respondent's Case.

27. The Respondent called oral evidence through its Chief Human Resource Officer, Dr. Jane Karani, who equally adopted her witness statement to constitute her evidence in chief. RW1 further produced the initial list and bundle of documents as well as the further list and bundle of documents filed on behalf of the Respondent as exhibits before Court.
28. It was RW1's testimony that on or about June 2022, the Respondent started implementing strategic changes in the organization, and came to the decision that the Claimant and Respondent should



separate. The Respondent's CEO therefore convened a meeting on 22nd June 2022 to deliberate on how both parties could mutually separate without oppressing any party.

29. Thereafter, the Respondent via an email dated 22nd June 2022, sent to the Claimant a draft Mutual Separation and Confidentiality Deed, as was the agreement between the Claimant and the Respondent's CEO.
30. As part of the terms of the mutual termination, the Claimant voluntarily executed a Deed dated 30th June 2024 by which the Claimant was terminated by mutual consent in accordance with clause 2 of the Deed.
31. As part of the terms of the Deed, the Respondent received Kshs. 5,000,662/= as full and final settlement of the mutual and amicable separation.
32. The Claimant was never silenced or subjected to any form of racial hatred as erroneously alleged. According to RW1, the Respondent believes in fostering an inclusive and respectful workplace where diversity is celebrated, and every employee is treated with dignity and fairness, a fact that the Claimant is well aware of.
33. RW1 further denied there being utterances made by the Respondent's CEO with regards to the Claimant's case taking a minimum of three (3) years to prosecute, hence coercing him to sign the deed.
34. RW1 added that the Claimant is an Advocate of the High Court of Kenya, well versed with the Laws of Kenya and the Court processes, therefore, he had the liberty to refuse to sign the Deed if he had reservations on the same.
35. She further disputed there being communication regarding the Claimant's termination to other employees of the Respondent because the parties were yet to finalize the terms of the Deed. RW1 termed these allegations false.
36. That the email correspondence dated 24th June 2024, relied upon by the Claimant, does not indicate that his duties were assigned to other employees as alleged. To the contrary, the email correspondence indicates that certain duties were also being performed by other employees of the Human Resource Department. This was done in the normal course of business.
37. RW1 averred that the email dated 24th June 2024 sent by the Claimant was in bad faith as it was sent after he had agreed on the mutual separation. That further, the Claimant and the Respondent had agreed that the last working day was 22nd June 2022 therefore, it would only be prudent to commence the necessary handover and separation procedures.
38. That the Deed had already been agreed upon and was undergoing minor amendments, hence the parties had to a large extent mutually separated, therefore, it was not abnormal for the Claimant to be removed from the Respondent's IT system.
39. According to RW1, the dues paid to the Claimant pursuant to the Deed were not contractual as alleged by the Respondent. The Claimant was paid 10 months' compensation in addition to his other dues as per clause 3.2 of the Deed.
40. The Respondent further affirms that the Claimant's actions amount to approbating and reprobating and should not be tolerated. This is because the Claimant signed the Deed out of his own volition, and he never expressed any indication of his intention to return the settlement amount to the Respondent.
41. That the Claimant enjoyed and reaped the "fruits" of the Deed and he should not now be allowed to question the validity of the Deed.



42. That the Respondent never declared the Claimant redundant and only stated in the response to the demand letter dated 20th December 2023 that the Respondent preferred to enter into the Deed as opposed to a redundancy, as a mutual separation would have been more favorable to the Claimant. Had the Claimant not signed the Deed and expressed his reservations to mutually separate, the Respondent would have proceeded with the procedure laid out in law governing redundancies.
43. RW1 further stated that the indications made by the Claimant that his constructive dismissal was done in error are false. The Respondent admits and acknowledges that the termination was by way of a mutual separation.

Submissions.

44. On his part, the Claimant submitted that his termination was at the behest of the Respondent, and it preceded the alleged "mutual separation".
45. The Claimant further submitted that he was not subjected to any disciplinary procedure or granted a hearing before termination or given any reason for termination within the meaning of Sections 41, 43 & 45 of the *Employment Act*.
46. It was the Claimant's further submission that the tone of his email of 24th June 2022, manifestly demonstrates that he was coerced into signing the mutual separation agreement, which renders it null and void. In support of his position, the Claimant sought to rely on the case of *Sagoo v Thika Cloth Mills Limited (Cause 372 of 2019) [2023] KEELRC 2697 (KLR)*.
47. It was further submitted by the Claimant that the Respondent was using its position to obtain an unfair advantage over him by using all means, which included reassigning his duties to his colleagues in the Human Resource Department prior to any agreement of the mutual separation, to coerce him into acceding to the so called "Mutual Separation and Confidentiality Deed".
48. Citing the case of *Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR Civil Appeal No. 48 of 2015*, the Claimant posited that this Court cannot enforce a "mutual separation agreement" procured by the Respondent through coercion and undue influence, which he has pleaded and proved.
49. Referencing the case of *Pauline Wangeci Warui v Safaricom Limited [2020] eKLR*, the Claimant argued that any allegations that he is approbating and reprobating are not applicable in this suit as he was never presented with a choice between a mutual separation agreement and a redundancy/summary dismissal.
50. It was the Claimant's position that the amounts he received from the Mutual Separation and Confidentiality Deed were contractual and statutory. He argued that he would have been entitled to the same even if there was no Mutual Separation and Confidentiality Deed. To buttress this argument, the Claimant placed reliance on the case of *Pauline Wangeci Warui v Safaricom Limited [supra]*.
51. The Claimant further submitted that settlement amounts cannot limit/negate his Constitutional right to freedom from discrimination, human dignity, fair labour practices and fair administrative action.
52. On its part, the Respondent submitted that the Claimant signed the Mutual Separation and Confidentiality Deed voluntarily, and as per the detailed clause 4 of the Deed, waived all his claims against the Respondent.
53. It was the Respondent's position that the Claimant's conduct does not in any way correspond with his allegations of coercion.



54. The Respondent further submitted that it was not unusual for the Deed to have a different date from the date of signature. Citing the case of National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd [2002] 2 EA 503 [2011] eKLR at 507, the Respondent argued that the parties agreed for the Deed to bear the date 30th June 2022 and therefore, the Claimant should not be allowed to argue otherwise, yet he voluntarily signed the Deed himself. The Respondent maintained that the Claimant is bound by the terms of the Deed.
55. It was further submitted by the Respondent that the Claimant seems to be ignorant of the fact that he was not terminated from employment, hence there was no obligation for it to provide evidence for the reason for termination.
56. Placing reliance on the case of John Mburu Vs Consolidated Bank of Kenya [2019] KECA 796(KLR), the Respondent argued that the allegations of coercion have not been proven by the Claimant.
57. It was further submitted by the Respondent that no evidence has been tabled by the Claimant to show that the employer used his position to unduly influence him.
58. According to the Respondent, the Claimant has failed to discharge the burden of proof as stated in Section 107 of the [*Evidence Act*](#).
59. In closing, the Respondent urged the Court to find that the Deed was valid and binding and as per clause 4, no claim can lie against the Respondent by the Claimant.

Analysis and Determination.

60. Flowing from the record, the Court has isolated the following issues for determination:
 - a. Whether the Mutual Separation and Confidentiality Deed was voluntarily entered into and binding on the Claimant;
 - b. Depending on (a) whether the Claimant was unfairly and unlawfully terminated from employment;
 - c. Is the Claimant entitled to the reliefs sought?

Whether the Mutual Separation and Confidentiality Deed was voluntarily entered into and binding on the Claimant

61. At the heart of this dispute is the Mutual Separation and Confidentiality Deed (Mutual Separation Deed), dated 30th June 2022, executed by the Claimant and the Respondent.
62. It is the Claimant's case that the separation was not mutual and that the Respondent terminated his employment without fair reason, fair procedure, justice and equity. According to the Claimant, his termination from employment was disguised as a mutual separation. The Claimant has further alleged that the Mutual Separation Deed was procured through coercion and undue influence, and is therefore tainted with illegality and is unenforceable.
63. Disputing the position advanced by the Claimant, the Respondent has averred that the Claimant has misrepresented facts to fit his false narrative. The Respondent maintains that the Mutual Separation Deed was signed voluntarily and with the Claimant's volition.
64. According to the Respondent, the Mutual Separation Deed gave an opportunity to both parties to agree on how to separate without prejudicing the rights of either party. The Respondent has further



contended that the Claimant is an Advocate of the High Court of Kenya and was well informed and could deduce whether the Mutual Separation Deed was prejudicial to his rights.

65. It is not in dispute that the idea of mutual separation was first broached by the Respondent in a meeting it held with the Claimant on 22nd June 2024. Subsequent to that meeting, RW1 forwarded a draft copy of the Mutual Separation Deed for the Claimant to review.
66. In response to RW1's email, the Claimant vide his email dated 24th June 2024, expressed his dissatisfaction with the discussions held on 22nd June 2024. He termed the meeting an ambush and opined that the discussions were bereft of procedural and substantive justice. He further told the Respondent that his transition was long preplanned and premeditated.
67. Notwithstanding the sentiments expressed by the Claimant in his email of 24th June 2022, he proceeded to review the Mutual Separation Deed and give his comments on the same. In this regard, the Respondent exhibited a copy of a draft Mutual Separation Deed, which contained tracked changes from the Claimant's end.
68. In an email dated 4th July 2022, the Respondent's CEO, Phylip Leferink, responded to the Claimant's email of 24th June 2022 and advised him that they had adopted the changes he had suggested. Mr. Leferink further invited the Claimant to review the document and give his comments.
69. Through an email dated 5th July 2022, the Claimant reverted with proposed amendments, which were accepted by the Respondent's CEO via email of even date. Once again, the Respondent's CEO invited the Claimant to review the Mutual Separation Deed and give his concurrence.
70. The Claimant responded vide his email of 5th July 2022, as follows:

“ Good morning Phylip,
Thank you for your prompt feedback. We are in agreement.
Kind regards”
71. What manifests from the foregoing sequence of events is that in as much as the Claimant was initially displeased with the idea of mutual separation, he was drawn in and proceeded to negotiate the terms of the settlement with the Respondent. It is these negotiations that culminated in the Mutual Separation Deed that was executed by both parties.
72. Indeed, it is evident from the record that the Claimant engaged the Respondent's CEO via email concerning the terms of the settlement. He even reviewed the draft Mutual Separation Deed extensively and tracked the changes he wanted incorporated in the document. At no point through the email exchange did the Claimant pull the plug on the negotiations.
73. In the event the Claimant had reservations regarding any of the terms of the Mutual Separation Deed, one wonders why he did not reject the same at the outset, as opposed to executing the same.
74. Notwithstanding the fact that the parties were not on the same page initially, they eventually agreed and settled on the terms of separation and subsequently, the Claimant was paid the sum of Kshs 5,000,662/= as agreed in the Mutual Separation Deed.
75. It is also worth noting that after the separation, the Claimant appears to have gone quiet for more than one (1) year until 17th November 2023, when he issued the Respondent with a demand letter claiming unfair termination on the basis of the Mutula Separation Deed. This was long after he had received the settlement amount.



76. In light of the Claimant's active participation in the negotiations culminating in the Mutual Separation Deed, the Court is not persuaded that the same was procured through coercion and that the Claimant signed the same involuntarily. If anything, the email correspondence exhibited before Court discounts the Claimant's assertions of coercion.
77. As it is, there is no evidence on record to suggest that the Claimant signed the Mutual Separation Deed involuntarily and without full knowledge of all the material information and the import of the document.
78. What's more, the Claimant is an Advocate of the High Court of Kenya, hence was well aware of the legal implications of the Mutual Separation Deed.
79. All things considered, the Court finds that the Claimant executed the Mutual Separation Deed voluntarily and is bound by the same. Accordingly, the Court is enjoined to give effect to the intention of the parties herein.
80. Revisiting the terms of the Mutual Separation Deed, Clause 2.1 expressly provides that the employment of the Claimant terminated by mutual consent with effect from the date of the Deed, being 30th June 2022.
81. Consequently, by signing the said Mutual Separation Deed, the Claimant accepted the terms thereof, which included cessation of the employment relationship.
82. Just as the Claimant accepted payment of the settlement amount, is the same way in which he is bound by the other terms of the Mutual Separation Deed, specifically with respect to the mutual separation and waiver of further claims connected to his employment with the Respondent. He cannot approbate and reprobate at the same time.
83. To this end, the Claimant's assertions that he was unfairly and unlawfully terminated from employment cannot be sustained.
84. In the same vein, the reliefs sought by the Claimant cannot be sustained as they ordinarily flow from a finding of unfair termination of employment.
85. The upshot of the foregoing is that the Claimant's suit is dismissed in its entirety with an order that each party will bear its own costs.
86. The Respondent shall issue the Claimant with a certificate of service in line with Section 51(1) of the [Employment Act](#), within 7 days from the date of this judgment.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JUNE 2025.

STELLA RUTTO

JUDGE

In the presence of:

For the Claimant In person

For the Respondent Ms. Gakure

Court Assistant Millicent

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 had 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 *Civil 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.

STELLA RUTTO

JUDGE

