



**Wanjala v Orijo Enterprises t/a Amazon Hotel (Cause E026 of 2024)
[2025] KEELRC 1752 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1752 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
CAUSE E026 OF 2024
DN NDERITU, J
JUNE 13, 2025**

BETWEEN

ERIC KHISA WANJALA CLAIMANT

AND

ORIJO ENTERPRISES T/A AMAZON HOTEL RESPONDENT

JUDGMENT

I. Introduction

1. Through Amasakha & Company Advocates, the claimant commenced this cause by way of a memorandum of claim dated 23rd July, 2024 seeking for the following reliefs –
 - a. A declaration that the claimant was unfairly terminated from employment.
 - b. Payment in lieu of notice.....Kshs26,070/-
 - c. Compensation for unfair termination(Kshs26,070 x 12).....Kshs312,840/-
 - d. Unpaid leave (17x 9 years x Kshs869/-)....Kshs132,957/-
Total amount.....Kshs445,797/-
 - e. Issuance of a certificate of service
 - f. Costs and interests of the suit.
2. As it is the procedure, the memorandum of claim was accompanied with a verifying affidavit sworn by the claimant, a list of witnesses, a witness statement by the claimant, a list of documents and copies of the listed documents.
3. The respondent entered appearance through Nandwa & Company Advocates, and filed a response to the claim dated 28th October, 2024 seeking for the dismissal of the claim with costs for lack of merit.



The response to the claim was accompanied with a list of witnesses, a witness statement by Millicent Omanga(RW1), a list of documents and a copy of the listed document.

4. On 18th November, 2024 the claimant filed a reply to the response to claim, accompanied with the claimant's further witness statement, a written statement by Joram Mugimba (CW2), a further list of documents and copies of the listed documents
5. On 6th December, 2024, the respondent filed a further written statement by Millicent Omanga, a written statement by Gerald Mecha Ombati, a written statement by Valentine Kharasi (RW2), a further list of documents and copies of the listed documents.
6. The claimant's case came up in court for virtual hearing on 11th February, 2025 when the claimant (CW1) and Joram Mugimba (CW2) testified and the claimant's case was closed.
7. The defence was heard virtually on 12th March, 2025 when RW1 and RW2 testified and the respondent's case was closed.
8. Counsel for both parties addressed and summed up their respective client's case by way of written submissions. Counsel for the claimant, Mr. Adeya, filed his submissions on 3rd April, 2025 while counsel for the respondent, Mr. Idi, filed his submissions on 22nd April, 2025.

II. The Claimant's Case

9. The claimant's case is expressed in the memorandum of claim, the reply to the response to the claim, the oral and documentary evidence by the claimant and CW2, and the written submissions by his counsel.
10. In his claim, the claimant stated that he was employed by the respondent in March, 2014 as a steward and in January, 2017 he was promoted to a manager, earning a gross monthly salary of Kshs28,000/= . The claimant pleaded that on 6th May, 2024 the respondent issued him with a letter asking the claimant to proceed on a one-month leave.
11. The claimant pleaded that after the leave he returned to work, only to be advised by the respondent that he could be informed when to return to work. In compliance the claimant went home and waited in vain, until 22nd June, 2024 when he formally inquired from the respondent about his employment status.
12. It is pleaded that the respondent informed the claimant that he was no longer its employee as his contract had expired in April, 2024.
13. The claimant pleaded that from 2014 to 2023, he had only taken leave for four days each year, and only in 2024 had he taken a month's leave.
14. In his virtual testimony in court, the claimant adopted his filed witness statements on record as his evidence-in-chief and stated that he was an employee of the respondent from 2014 and that in 2018 he was engaged on a one-year contract. He stated that he did not sign any contract in 2024 as he could not issue and sign a contract to himself, as the respondent has no human resources manager.
15. He stated that his contract as a manager was for 12 months and that he worked up to May, 2024.
16. CW2 testified that he was employed on three-months' contracts which were signed by the claimant as manager or the accountant until he was dismissed in December, 2022.
17. It is on the foregoing circumstances and facts that the court is urged to allow the claim and grant the reliefs as prayed for.



III. The Respondent's Case

18. The respondent's case is contained in the response to claim, the oral and documentary evidence adduced through RW1 and RW2, and the written submissions by its counsel.
19. In the response to the claim, it was pleaded that the claimant had only been employed on two three-months renewable contracts and his employment with the respondent was not continuous as from 2014 to 2024 as alleged by the claimant.
20. It was pleaded that the claimant deliberately refused to proceed on leave to cover up the gross misconduct and fraud that he allegedly committed against the respondent.
21. It is pleaded that once the claimant was sent on leave, the respondent discovered malpractice and fraud by the claimant such as – refusal to take leave, falsifying expenditures, colluding with suppliers to defraud the respondent, interfering with the system software, and removing contract forms from the respondent's custody. It is pleaded that the claimant's actions amounted to gross misconduct and thus summary dismissal was appropriate and that decision was communicated to the claimant.
22. RW1 in her testimony in court stated that the claimant was engaged on three-month contracts from time to time. She stated that leave was granted and taken upon request, but the claimant deliberately failed to apply for leave. She stated that she later realized that the claimant failed and or refused to go on leave to facilitate his committing misconduct and ruining RW1's business which ultimately closed for lack of business and alleged mismanagement by the claimant.
23. In cross-examination, RW1 conceded that the claimant was an employee of the respondent from 2015 to 2024 wherein he worked in various positions such as cleaner, receptionist, supervisor, and finally as a manager. She stated that at the beginning the claimant was engaged on a one-year contract before the subsequent three-month contracts. She conceded that the claimant's contracts for 2024 could not be traced after the claimant left employment. She stated that the decision not to renew the claimant's contract was made in April, 2024 and the claimant was asked to proceed on paid leave in May, 2024. She stated that a disciplinary hearing was held although the claimant was not terminated, but rather his contract lapsed by effluxion of time. She conceded that the claimant was not issued with a certificate of service.
24. RW2 was an accountant with the respondent and she testified that she was aware that the claimant was engaged on term-contract basis as she had witnessed claimant's 2024 contracts in January of that year.
25. In cross-examination, RW2 conceded that the claimant's contract for 2024 could not be traced and the same was not availed in court.

IV. Submissions

26. The claimant's counsel submitted on three issues – Whether this honourable court should make a declaration that the claimant's termination was unfair; Whether the claimant should be awarded compensation for unfair termination, payment in lieu of notice and accrued leave days.; and, Who should bear costs of the suit.
27. On the first issue, counsel submitted that the claimant remained in employment until 6th May, 2024 despite the respondent's assertion that his contract had lapsed in April, 2024.
28. Citing *Onyango V Tribe Hotel* (20240KEELRC 114 KLR, counsel submitted that the respondent had failed to adduce a contract to confirm that indeed the claimant's indicated that his employment on contract had lapsed. The court is urged to find and hold that if the claimant's contract had lapsed



- in April, 2024 and then continued to working until May, 2024 the respondent was estopped from asserting that the contract had lapsed and the claimant was thus entitled to protection under Section 35(1) (c) of the *Employment Act* (the Act).
29. It is submitted that under Sections 41, 44 and 45 of the Act, while the respondent in its response to claim set out particulars of gross misconduct against the claimant, the procedure laid down in Section 41 of the Act was not followed which required the claimant be informed of the reason(s) the respondent was contemplating dismissing him.
 30. It is further submitted that no disciplinary hearing was conducted for the claimant to be heard. It is submitted that the claimant was condemned unheard and no evidence was tendered in relation to the alleged gross misconduct and fraud. It is submitted that based on Section 47(5) of the Act the grounds for dismissal of the claimant were not justified.
 31. It is further submitted that the burden of proof required for fraud is higher than a balance of probability and the same was not established. Counsel cited *Arthi Highway Developers Limited V West End Butchery Limited & 6 Others (2015) eKLR* as the respondent neither adduced evidence of any expenditure nor software fraud.
 32. On the second issue, the court is urged to consider the claimant's 10 years of service to the respondent and the circumstances surrounding his dismissal and award the claimant the maximum compensation for unfair dismissal, one-month salary in lieu of notice, unpaid leave days, and issuance of a certificate of service.
 33. On the other hand, counsel for the respondent identified the following issues for determination – Whether the claimant was unfairly terminated; Whether the claimant is entitled to payment in lieu of notice, compensation for unfair termination and compensation for unpaid leave; and, Who should bear the costs of this suit.
 34. On the first issue, it is submitted that the claimant had initially been engaged on a one-year contract, but from 2018 he was placed on various three-month term contracts. It is submitted that the claimant's final contract lapsed by effluxion of time and thus a claim for unfair termination does not arise. Counsel cited *Registered trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho - Kariuki (2017) eKLR* on this issue.
 35. It is submitted further that despite the respondent finding out that the claimant had defrauded the respondent, it paid the claimant the salary for June, 2024 when his second three-month contract lapsed. The court is urged to find that the claimant was only engaged on three-months contracts, which was the respondent's standard period for contracts in 2024.
 36. On the second issue, the respondent's counsel submitted that the claimant refused to proceed on leave to cover for his fraudulent activities in the respondent's business as there is no evidence that he applied for leave and same denied.
 37. It is submitted that the claimant earned varying salaries throughout his employment and thus the leave multiplier cannot stand.
 38. The court is urged to dismiss the entire claim for lack of merits.

V. Issues for Determination

39. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The following issues commend themselves to the court for determination –



- a. What was the nature and length of the claimant's employment with the respondent?
- b. Was the claimant's termination unfair and unlawful?
- c. What are the appropriate orders for this court to make in regard to the above issues and on costs?

VI. Employment

40. The claimant's case is that he was employed verbally in March, 2014 as a steward and rose through the ranks to become a manager in 2017. He stated that the respondent introduced written contracts in 2018 and he signed various short term contracts until 2023. He stated that he did not sign a contract in 2024. The claimant adduced contracts for 2018 (no period), 2019(12 months), 2022(12 months), and 2023(12 months). The contracts were produced with no objection at all from the respondent.
41. RW1's witness statement stated that the contracts adduced by the claimant did not originate from the respondent, and the stamp therein was forged. She stated that a report had been made at the police station as per the OB report she adduced. According to RW1 all the contracts issued to the claimant were for three-months at a time. The respondent did not adduce any of the said contracts as alleged to be in the claimant's name.
42. The claimant testified that as at the time of dismissal he earned a gross monthly salary of Kshs28,000/= . There was no rebuttal to this assertion from the respondent. The claimant stated that he worked without a contract in 2024 until his was dismissal. RW1 and RW2 alleged that the claimant was on a three-month contract which lapsed in April, 2024 but no contracts were availed in court.
43. The law in Kenya recognizes several forms of employment based on the period, nature, terms, and conditions of the engagement. As stated in *Krystalline Salt Limited V Kwekwe Mwakele & 67 Others (2017) eKLR*, the Act recognises four major types of employment – contract for specified period of time; contract for unspecified period of time, contract for a specific piece of work or piece-work at a specific piece-rate, and casual employment.
44. The first duty for this court is to determine, based on the evidence on record and the law applicable, the nature and classification of the employment relationship between the claimant and the respondent. As far as the court understands the dispute between the parties and the evidence availed during the trial, the claimant was a manager working for the respondent and he was sent on compulsory leave as from 6th May, 2024 as per the undated letter produced in court.
45. The respondent stated that the claimant was engaged in 2015 until 2024. As far as the records availed and produced by the claimant show, he signed a contract in 2018. There is no evidence of his engagement, which he asserts was verbal between 2014 to 2017, although the respondent's RW1 confirmed the claimant's engagement from 2015 to 2024.
46. The court is of the considered view that the claimant was initially engaged either in 2014 or 2015 without a written contract before the contracts were introduced in 2018. During that period the claimant's employment with the respondent was for all intents and purposes permanent and pensionable or what is sometimes referred to as regular employment, even if he was originally engaged as a casual. Section 37(1)(a) &(b) of the Act) states –

“ 37. Conversion of casual employment to term contract

- (1) Notwithstanding any provisions of this Act, where a casual employee—



- (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
- (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more, the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

47. Section 2 of the Act defines a casual employee as “a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time.”

48. The claimant had been engaged from either 2014 or 2015 to 2017, without a contract, a period longer than three months. The court takes the considered view that the employment relationship between the claimant and the respondent was thus not casual as at 2017. It was a regular permanent employment relationship. It is the evidence on record that in 2018 the parties voluntarily entered the relationship to that of short-term contracts of three months at a time.

49. However, as at the point the claimant was issued with the written contracts, whether for three months or one year in 2018, he had become a permanent employee of the respondent and as such he enjoyed the protection under Section 35(1) (c) of the Act, which states –

“(1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be— (c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing”.

50. Furthermore, the evidence on record confirms that in 2024 the claimant worked without a contract as none was produced in court and the presumption is that the parties had again altered the relationship and the claimant was again a regular employee.

51. In the foregoing circumstances, the claimant was entitled to protection of the law as cited above as a permanent or regular employee as at the time of dismissal.

V. Dismissal

52. The basic tenet of the law of evidence does not change and holds true as encapsulated in Section 107 of the *Evidence Act* – that he who alleges must prove. The claimant alleged that he was unlawfully and unfairly dismissed without notice. He stated that he proceeded on leave and on resuming from leave he was informed to remain until he is called back to work. He was not called back to work. It was only after his advocate sent a demand letter to the respondent that the respondent asserted that the claimant’s contract had lapsed in April, 2024 by effluxion of time.



53. The respondent in its response to the claim stated that the claimant had been summarily dismissed for gross misconduct discovered while he was on leave, ranging from falsifying expenditure, colluding with suppliers, refusing to take leave, interfering with a software system, refusing to renew his contract and taking away his contracts from the custody of the respondent (para.6). It was pleaded that the reasons for dismissal were communicated to the claimant.
54. RW1, in a dramatic departure during the hearing, testified that the claimant was not terminated but rather his contract had lapsed and that the respondent was under no obligation to renew the same.
55. The respondent in its response to the claim (para. 5) pleaded that the claimant had refused to sign a contract of employment yet in the same breath states that the claimant had signed a three-month contract in 2024 which had lapsed in April, 2024. No contract whatsoever was availed to corroborate this assertion and the court can only infer that as of May, 2024 there was no contract in place between the claimant and the respondent.
56. The respondent is the custodian of the employment records under Sections 10 and 74 of the Act and failure to avail the alleged contract, which had since allegedly expired, did not help its case. There is no evidence, therefore, that effluxion of time was indeed the reason for the claimant leaving employment or termination.
57. Parties are bound by the pleadings they file. The respondent asserted that the claimant was summarily dismissed in its response to claim and that he was formed of the reason for the dismissal. There was no evidence that a warning, show-cause letter, or notice was issued to inform the claimant of the alleged gross misconduct. There was no justifiable reason for the respondent dismissing the claimant that was notified to him as contemplated under Section 41 of the Act.
58. The respondent did not take any steps to bring the claimant to appear for a disciplinary hearing on the alleged misconduct. Indeed, RW1 testified that the claimant was not summarily dismissed as pleaded. Procedural fairness is mandatory even where an employer contemplates summary dismissal for gross misconduct under Section 44 of the Act.
59. Rules of natural justice apply in disciplinary hearings in that no one may be condemned unheard; an employee has a right to all information and particulars of charges before the hearing; and, (s)he has a right to test the evidence by way of cross-examination. An employer has to establish a prima facie case against an employee for such a hearing to meet the minimum threshold of a fair hearing as envisaged under Articles 47 & 50 of *the Constitution* and the various provisions of the *Fair Administrative Action Act*.
60. The court is of the view and holds that the claimant was not afforded and accorded a fair and reasonable opportunity to be heard and to present his defence and he was thus not heard within the meaning and context of the provisions of the law and more so Sections 41, 43, 44, & 45 of the Act and thus, his termination was unlawful and unfair.

V. Reliefs

61. Having held that the dismissal of the claimant by the respondent was wrongful, unfair, and unlawful, the court shall now consider each of the reliefs sought as set out in the introductory part of this judgment.
62. Prayer (a) is for a declaration that the claimant was unfairly terminated from employment. This has been decided in the foregoing paragraphs of this judgment and an order shall issue accordingly.



63. Prayer (b) is for payment in lieu of notice. The court has found that the dismissal was wrongful, unfair, and unlawful. The court has found that the claimant's employment converted to regular/permanent in 2024 as no term-contract was issued. In *Krystalline Salt Limited V Kwekwe Mwakele & 67 Others* (supra), the Court of Appeal opined that – In this case, the claimants worked continuously for days, which in the aggregate was more than a month, and as such, under Section 37(1) (a), they had become protected by Section 35(1) (c) from arbitrary dismissal.
64. Under Section 35(1) (c) of the Act, an employee cannot be terminated without prior written notice of at least 28 days.
65. The respondent was obligated to issue to the claimant a prior written notice of at least 28 days before termination. The claimant alleged that he was earning a monthly gross salary of Kshs28,000/- but he adduced bank statements indicating that he was earning Kshs26,070/= from the respondent. The respondent did not dispute or provide contrary evidence. The claimant was thus entitled to Kshs26,070/= as pay in lieu of notice as claimed.
66. Prayer (c) is for compensation under Section 49 of the Act. The claimant has pleaded for the maximum compensation of 12 months' gross salary of (Kshs26,070 x 12) Kshs.312,840/-. Section 49(4) of the Act provides some of the factors that this court ought to consider in determining the appropriate award in compensation for unfair and unlawful dismissal or termination. The claimant testified that he was dismissed after he proceeded on leave. The respondent did not provide evidence that the claimant was guilty of any misconduct or that due process was followed before the dismissal. Compensation is essentially not aimed at punishing an employer but intended to compensate an employee for the loss of salary or earnings bar the dismissal or termination. The court takes the view that this is not an appropriate case for the award of the maximum 12 months' gross salary in compensation. The court considers compensation equivalent to three months' gross salary to be fair compensation in the entire circumstances. The same is calculated at Kshs26,070/= (the last salary) *3= Kshs78,210/=.
67. Prayer (d) is for unpaid leave (17 x 9 years x Kshs869/-=Kshs132,957/=). The claimant asserted that he had only taken four days' leave yearly from 2014 to 2023 and only one month's leave in 2024. A claim for unpaid leave is a continuing injury which must be claimed within 12 months after dismissal. The claimant's claim is within the statutory timelines. The claim for leave is from 2014 to 2023 (para 12 of the claim). The claimant pleaded that as of 2014 he was engaged as a steward earning Kshs6,000/= . He stated that his engagement commenced in March 2014. By virtue of Section 28 of the Act, as of December, 2014 the claimant had not attained the 12-month period to entitled him to leave. As for the period 2015 to 2017, the claimant did not plead specifically what salary he earned during this period as that should be the basis for the calculation of the leave pay.
68. The claimant pleaded that he rose through the ranks to become a manager and thus his salary scales during the said periods was necessary for the calculation of the leave pay due to him in each year. As for the years 2018 to 2019, and 2022 to 2023, the claimant adduced contracts bearing varying salaries from Kshs18,000/=, Kshs20,000/=, Kshs20,000/= and Kshs25,000/= respectively. In the claim before the court, there is no specific pleading for leave based on the said salaries that the claimant received. As for the years 2020 to 2021, there was no evidence of the amount of salary the claimant earned as the basis for his leave claim.
69. The claimant pleaded that he was entitled to 17 days of leave for 9 years at the rate of Kshs869/=. There were no particulars stated in this claim, such as the specific salary he was earning each year. The claimant simply used a global figure with no basis on how the same had been arrived at, considering that the claimant's own documentary evidence indicated that he earned varying salaries. The court finds and holds that the claimant failed to specifically plead and prove the claim for leave pay.



70. Prayer (e) is for a certificate of service under Section 51 of the Act. No lawful explanation has been advanced by the respondent as to why the claimant has not been issued with a certificate. The issuance of the same should be unconditional. The court orders that a certificate of service be issued by the respondent to the claimant and that the same be delivered to his counsel on record within 30 days of this judgment

VII. Costs

71. The claimant is awarded costs of the cause.

VIII. Disposal/Orders

72. The court issues the following orders –

- a. A declaration be and is hereby issued that the dismissal of the claimant by the respondent was wrongful, unfair, and unlawful.
 - b. The claimant is awarded a total of Kshs104,280/= together with interest thereon from the date of this judgment till payment in full. The said sum is made up as follows –
 - i. Compensation for wrongful and unlawful dismissal.....Kshs78,210/=
 - ii. One month's gross salary in lieu of notice.....Kshs26,070/=Total.....Kshs104,280/=
- The award is subject to statutory deductions.
- c. Certificate of service be issued by the respondent in the name of the claimant and the same be delivered to his counsel on record within 30 days of this judgment.
 - d. Costs of the cause to the claimant.

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

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DAVID NDERITU

JUDGE

