



Bamburi PLC v Macharia (Employment and Labour Relations Cause E753 of 2022) [2025] KEELRC 1715 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEELRC 1715 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E753 OF 2022**

**HS WASILWA, J
JUNE 12, 2025**

BETWEEN

BAMBURI PLC CLAIMANT

AND

CHRISTINE WANJIRU MACHARIA RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 18th October 2022 and prays for judgment against the Respondent for:
 - a. Kshs. 2,067,765 being payment in lieu of notice and school fees benefit owing and due to the Claimant from the Respondent.
 - b. Costs of the suit.
 - c. Any other remedy that this Honourable Court may deem fit to grant.

Claimant's Case

2. The Claimant avers that it employed the Respondent on 21st October 2015 as the Compensation & Benefits Manager earning a gross annual salary of Kshs. 4,143,000; the contract was effective from 31st October 2019.
3. The Claimant avers that vide a letter dated 23rd October 2019, the Respondent notified it of her intention to terminate her employment contract by 31st October 2019 contrary to clause 5 of the employment contract which required in case of termination, the Respondent gives the Claimant three months written notice or pay three months' salary in lieu of notice.



4. The Claimant aver that the Respondent acknowledged in her resignation letter that she did not comply with the notice period under the contract and she would pay the Claimant the remainder of the notice period.
5. It is the Claimant's case that pursuant to the employment contract, it offered to pay the Respondent's school fees benefit payable for the full year in advance; this benefit was recoverable from the Respondent if she left the Claimant Company before the end of the year.
6. The Claimant avers that at the time the Respondent was leaving her employment, she was indebted to the Claimant: 24 days' notice pay amounting to Kshs. 1,187,721 and refundable school fees balance amounting to Kshs. 880,044.
7. It is Claimant's case that vide a letter dated 14th November 2019, it sought payment of the outstanding sum from the Respondent and subsequently, its advocates on record demanded the sums due to it from the Respondent vide a letter dated 30th August 2022. The Respondent wrote back denying the same.

Respondent's Case

8. In opposition to the Claim, the Respondent filed a Statement of Response dated 17th November 2022.
9. The Respondent avers that she was an employee of the Claimant for the period commencing 4th November 2015 to 31st October 2019.
10. The Respondent denies acknowledging she did not comply with the notice period under the contract and she would pay the Claimant the remainder of the notice period; and avers that a written communication was made to the Claimant through her advocates on record on a without prejudice basis and without admission of any liability, wherein an offer for an out of court settlement was made to no avail.
11. The Respondent admitted that the Claimant provided School Fees Benefit and avers that the benefit was granted as a contractual obligation pursuant to Clause 12 of the Employment Contract and the Claimant's Education Policy and that this benefit is not recoverable in the manner pleaded by the Claimant.
12. It is the Respondent's case that the employment contract and subject education policy did not have any provision for refund of any school fees paid in any circumstances or at any stage of the employment relationship between the parties including during separation or at all, therefore the claim is not founded on any law.
13. The Respondent avers that pursuant to the futile attempts made to settle the dispute herein out of court as evidenced by her letter and email correspondence prior to filing of this suit, hence, the subject suit is premature and unnecessary. It was files in total disregard of Article 159(2)(c) of *the Constitution*

Evidence in Court

14. The Claimant's witness, Beatrice Kiruri (CW1) testified that she is the Claimant's Human Resource Manager. She adopted her witness statement dated 13th February 2024 as her evidence in chief and produced her filed documents dated 18th October 2022 as her exhibits 1-8 respectively.
15. During cross-examination, CW1 testified that the Respondent gave only 6 days' notice instead of the required 90-day notice period.
16. CW1 testified that the school fees benefit is recoverable if the Respondent left the company before the end of the year, but this is not provided in the contract.



17. The Respondent (RW1) adopted her witness statement dated 17th November 2022 as her evidence in chief and produced her list of documents dated 17th November 2022 as her exhibits 1-14.
18. During cross-examination, RW1 testified that she worked until the end of October, however, she did not pay the Claimant the remainder of the notice period not worked.
19. RW1 testified that at the time she resigned at the Claimant company, she had enjoyed the school fees benefit although she left before the year ended.
20. RW1 testified that she would still be entitled to the benefit even if she did not work up to December.
21. RW1 testified that she had agreed to pay the notice pay, however, the Claimant is asking for more than the notice period.

Claimant's Submissions

22. The Claimant submitted on two issues: whether the Claimant is entitled to the payers sought in the Statement of Claim; and who should pay the costs of the Claim.
23. On the first issue, the Claimant submitted that the Respondent is bound by the terms of her employment contract which she freely entered into and this court's duty is to enforce the contract between the parties. The Respondent lawfully and procedurally resigned from the Claimant's employment and admitted in cross-examination that she engaged in employment with a different entity and it is only right and just that she makes payment of the outstanding dues to the Claimant.
24. The Claimant submitted that the Respondent is estopped from claiming that she made the offer to pay on a 'without prejudice' basis or that the payment was subject to ascertainment of the amount due. That the Claimant clearly tabulated in its letter dated 29th October 2019, the outstanding amounts which the Respondent had not denied.
25. The Claimant submitted that the Respondent is in breach of her employment contract and the Claimant should accordingly be remedied for such breach. It relied on the case of *Pauline Kathure Kiraithe v Nation Media Group Limited* [2021] KEELRC 2209 (KLR) which held: "Consequently, it is clear as the day, that the Claimant was not forced out by the Respondent but she voluntarily left the Respondent's employment with 70 days of her notice period still outstanding and without paying salary in lieu, contrary to clause 11 (c) of her contract of service and section 36 of the [Employment Act](#).
..... Having found that the Claimant breached her contract of service by exiting when 70 days of her notice period were still outstanding, I must hold, as I do, that the Respondent is entitled to payment of Kshs. 681,007 being salary in lieu of the 70 days of the resignation notice not served by the Claimant. The Respondent is also entitled to the claim for Ksh. 6391.70 being car insurance balance which has not been disapproved by the Claimant."
26. It is the Claimant's submission that an order should issue for the Respondent to pay the outstanding notice pay as she willingly resigned from the Claimant's employment, which resignation was duly accepted. Further, the Respondent did not seek a waiver of such payment and neither was any granted.
27. On the school benefit claim, the Claimant submitted that the Respondent is misleading this court that this benefit was not recoverable. It is undisputable that the Claimant offered the Respondent a school fees benefit payable for the full year; it was CW1's testimony that the benefit was recoverable from the Respondent if she left the company before the end of the year, which testimony was uncontroverted by the Respondent. It is common ground that the Respondent left the Claimant's employment before the end of the year hence the claim.



28. The Claimant highlighted that under clause 12 of the Respondent's contract with the Claimant, it was contracted that: "You will be entitled to the benefits of the Company's education allowance scheme in respect of three (3) bona fide children who are receiving full time education and who are under the age of 21 in accordance with the Company policy."
29. The Claimant submitted that it was clear that the benefit was only enjoyable by the Respondent as long as she remained in the Claimant's employment for the entire year. The Respondent admitted leaving the Claimant's employment before the end of the year; the Claimant prorated the school fees benefit refund and claimed the sum of Kshs.880,044. The Respondent did not dispute the sums claimed and her claim that she is not liable to refund the benefits amount amounts to an attempt to unjustly enrich herself, which attempts this court should stop.
30. The Claimant submitted that it has sufficiently demonstrated that the claim is meritorious. The Respondent has not proffered any explanation for continuing to refuse to pay the outstanding amounts to the Claimant. Therefore, the logical conclusion is that the Respondent's conduct is actuated by malice with sole intention of frustrating the Claimant hence the claim should be allowed with cost
31. It is the Claimant's submission that the Respondent's actions are a gross violation to its right to fair labour practices and property and therefore asks that the claim should be allowed as prayed with costs in its favour.

Respondent's Submissions

32. It is the Respondent's submission that during cross examination, CW1 was at pains to explain the origin of the claim for school fees balance. She was unable to show this court where in the Respondent's employment contract she was required to reimburse or pay the amount sought as school fees balance.
33. The Respondent submitted that she has always been ready and willing to pay the claimant in lieu of notice amounting to Kshs.1,187,721.00, however, the Claimant demanded a higher amount justification. RW1 gave evidence through a letter dated 13th October 2022 addressed to the Claimant's Advocates indicating her willingness to settle the aforesaid amount without the unjustified school fees balance, however, her offer for payment was turned down and five days later the Claimant filed the suit herein seeking judgment for the full Kshs. 2,067,765/- plus costs.
34. The Respondent submitted that the Claimant's submission that she is in breach of her employment contract is not only misconceived but disingenuous. In any event, there is neither an averment for breach of contract nor particulars of breach pleaded in the Statement of Claim to allow this court to pronounce itself on that question. She relied on the holding of the Court in Daniel Otieno Migore v South Nyanza Sugar Co. Ltd [2018] KEHC 5465 (KLR) thus: "It is by now well settled by precedent that parties are bound by their pleadings and that evidence which tends to be at variance with the pleadings is for rejection. Pleadings are the bedrock upon which all the proceedings derive from. It hence follows that any evidence adduced in a matter must be in consonance with the pleadings..."
35. The Respondent submitted that the Claimant's averment that the school fees benefit given to her during her employment was recoverable if she left the Claimant Company before the end of the year has not been supported by any evidence. There is no provision in the Respondent's contract of employment requiring her to pay and/or refund any school fees balance upon termination of her employment or whatsoever.
36. It is the Respondent's submission that it is trite law that whoever alleges must prove. The Claimant failed to meet the burden in proving their claim for refund of the school fees benefit as CW1 when



tasked during cross examination to establish the where this refund is anchored in the employment contract or company policy, she could not. She therefore implores this court to be guided declare that the Claimant has not met its burden of proof on the purported refund of school fees benefit.

37. On costs, the Respondent submitted has demonstrated that she presented a payment plan to settle what she owed the Claimant in terms of notice pay, but the same was turned down on account of the Claimant demanding a higher amount than what was owed. She also proved that the extra payments demanded were unjustified as they have no basis in law or in her contract with the Claimant. The Claimant decided to file suit despite a clear avenue for settlement, therefore, the Claimant's conduct was wanting and the Respondent cannot in fairness be condemned to bear the costs of this suit.
38. I have examined all the evidence and submissions of the parties herein. The respondents herein admits in principal that she owes the claimant 24 days' notice period and not the school fees paid.
39. I have looked at the contract of employment issued to the respondent dated 21/10/2015. Clause 5 states as follows:-
5. Termination
- Any time after your appointment has been confirmed, you may terminate this appointment by giving to the Company three (3) months written notice or by paying three months salary in lieu of notice.
- Any time after your appointment has been confirmed, and in accordance with the regulations contained in the Employment Act, the Company may terminate this appointment by giving you three months notice or by paying three months' salary in lieu of notice.
40. It is therefore true that the notice period envisaged under the contract was 90 days. The respondents having only given the claimants 6 days' notice is obligated to pay the reminder period of 84 days.= $84/30 \times 525,332 = \text{Kshs } 1,470,904.4/-$.
41. As concerns school fees paid for the respondents children, the contract on clause 12 states as follows:
- You will be entitled to the benefits of the company's education allowance scheme in respect of three (3) bona fide children who are receiving full time education and who are under the age of 21 in accordance with the company policy.
42. Under the contract there is no indication that the school fees paid is refundable after it falls due. The claim for school fees refund by the claimant cannot therefore stand. What the claimant is therefore entitled to from the claim is payment of the notice period which I award at kshs 1,470,904.4/- less statutory deductions with interest at court rates with effect from the date of this judgment.
43. As concerns costs, the claimant demanded payment of the amount due from the respondent. The respondent responded admitting she was willing to pay the notice period owed and asked the respondents not to file suit as she makes arrangements to pay up. The claimant's counsel seem to have ignored this request and filed suit. In the circumstances, I find that the claimants are not entitled to any costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH OF JUNE, 2025.

HELLEN WASILWA

JUDGE

