



**Bore & 2 others v Jubilee Party & 2 others (Employment and Labour Relations Cause E917 of 2021) [2025] KEELRC 1707 (KLR) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1707 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E917 OF 2021**

**HS WASILWA, J  
JUNE 11, 2025**

**BETWEEN**

**NICODEMUS BORE ..... 1<sup>ST</sup> CLAIMANT  
PETER KAHARA ..... 2<sup>ND</sup> CLAIMANT  
LEMISO GODFREY ..... 3<sup>RD</sup> CLAIMANT**

**AND**

**JUBILEE PARTY ..... 1<sup>ST</sup> RESPONDENT  
RAPHAEL TUJU ..... 2<sup>ND</sup> RESPONDENT  
NELSON DZUYA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Memorandum of Claim dated 8<sup>th</sup> November 2021 praying for judgment against the Respondent for: -
  - a. A declaration that the termination of the Claimant by the Respondents was unlawful thus null and void.
  - b. A declaration that the alleged restructuring was un-procedural and therefore unfair and that the Respondents did not comply with the law.
  - c. Damaged for unlawful termination as laid down therein.
  - d. Damages for unlawful termination
  - e. Certificate of service.
  - f. Costs of this suit and interest in prayer (c).



- g. Any other relief this Court shall deem appropriate to grant.

### **Claimants' Case**

2. The Claimants state that the 1<sup>st</sup> Respondent is a political party duly registered under the [Political Parties Act](#); whereas, the 2<sup>nd</sup> Respondent is the 1<sup>st</sup> Respondent's Secretary General and the Chief Executive Officer pursuant and the 3<sup>rd</sup> Respondent is the 1<sup>st</sup> Respondent's National Chairperson pursuant to Articles 9 and 9.1 of the 1<sup>st</sup> Respondent's Constitution.
3. The Claimants state that they were employed by the 1<sup>st</sup> Respondent as Director Membership Development, Director of Elections, Strategy and Political Affairs and Director Logistics respectively.
4. The Claimants state that they delivered their obligations competently during their employment and none of them have had any negative report or been subjected to any disciplinary process or at all. Due to their diligence and professionalism, the 1<sup>st</sup> Respondent formed the government for the term 2017.
5. The Claimants state that vide letters dated 8<sup>th</sup> October 2021 by one Wambui Gichuru, purporting to be an acting Executive Director of the 1<sup>st</sup> Respondents, they were informed of the resolution by the National Management Committee (NMC) made during its meeting of 30<sup>th</sup> September 2021.
6. That the NMC resolved to reorganise the 1<sup>st</sup> Respondent and remove certain jobs and consultancy services. The Claimants' positions were categorised as consultancy services and the same were terminated effective 8<sup>th</sup> October 2021 and they were to be paid ex-gratia payment equivalent to one month's fees.
7. The Claimants state that they were employees of the 1<sup>st</sup> Respondent and at no time were they consultants as alleged in the restructuring letters.
8. It is the Claimant's case that the restructuring letters purporting to terminate their services were signed by a non-authorised person and therefore null and void and have no legal foundation and effect. Pursuant to Article 7 of the 1<sup>st</sup> Respondent's constitution, the 2<sup>nd</sup> Respondent is the only authorised person to act on behalf of the National Executive Committee including execution of documents and not the author of the impugned letters.
9. The Claimants state that the Respondents tactfully labelled their termination as restructuring to mislead them and evade compliance with the law of redundancy; rendering them redundant vide letters titled 'Jubilee Party restructuring' without justification was procedurally wrong and amounts to unfair termination.
10. The Claimants state that the termination letters determined that they were not entitled to any payment of whatever nature save for ex-gratia which is contrary to the law.

### **Respondents' Case**

11. In opposition, the Respondents filed a Statement of Response dated 13<sup>th</sup> December 2023.
12. The Respondents state that the Claimants were not employees within the meaning of the [Employment Act](#) as alleged in the Memorandum of Claim and put the Claimants to strict proof.
13. The Respondents deny that the Claimants competently delivered their obligations and that their diligence and professionalism, competence, team work and dedication on their part and the team under their supervision that the 1<sup>st</sup> Respondent formed the government for the term 2017 to present and puts the Claimants to strict proof.



14. It is the Respondents' case that the Claimants were not the 1<sup>st</sup> Respondent's employees and therefore the 1<sup>st</sup> Respondent was not required to follow the processes outlined in the [Employment Act](#) in terminating their services.
15. The Respondents state that the Claimants were engaged as independent consultants as their services were sought when need arises; and they did not exercise any form of control over the Claimants' services as an employer or offer them benefits stipulated in law for employees.
16. The Respondents state that none of the Claimants had performed their duties as consultants since April 2020.
17. It is the Respondents' case that it is not the duty of the Claimants to decide who should author the 1<sup>st</sup> Respondent's letters. In any case, WAMBUI GICHURU as the 1<sup>st</sup> Respondent's Executive Director was duly authorized to communicate decisions on behalf of the 1<sup>st</sup> Respondent.
18. The Respondents state that the 1<sup>st</sup> Respondent has the managerial prerogative to reorganize its operations or restructure the party from time to time to meet its objectives. Based on this prerogative, the 1<sup>st</sup> Respondent issued a notice under the provisions of Section 40 (1) of the [Employment Act](#) to the Area Labour Officer notifying the County Labour Officer of its intention to declare some positions redundant. And by way of Internal Memo, it informed all its employees that the process of restructuring of the party structure had begun and as a consequence some positions would be declared redundant.
19. The Respondents state that the 1<sup>st</sup> Respondent then commenced consultations at the management and departmental levels to work on the structure of the party and to determine which positions will be retained and which ones will be declared redundant for optimal and efficient operations of the party. Due regard was given to the criteria spelt out under the [Employment Act](#) considering the operational and business needs of the party.
20. It is the Respondents' case that the 1<sup>st</sup> Respondent engaged its employees in various consultation sessions where they were taken through the integration process and its impact and how the redundancy process will be carried out and to determine which employees can be redeployed to other positions to reduce the impact of the redundancy.
21. Subsequently, a notice of intended redundancy was issued to all the affected employees which outlined the purpose of the restructuring process, the extent of the redundancy and criteria to be used for arriving at the positions to be declared redundant. Ultimately, the individual employees whose positions were affected by the redundancy were issued with termination letters outlining their terminal benefits as stipulated in law.
22. It is the Respondents' submissions that the redundancy process was not applicable to the Claimants as they were not employees which explains the ex-gratia payment which was made as a parting gift to them.
23. The Respondents state that Claimants are not entitled to any payment or compensation as sought in their Memorandum of Claim.
24. The Respondents state that the claim is incurably defective for misjoinder of parties and ought to be struck out with costs as there was no contract of service entered between the parties whereby the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents agreed to employ the Claimants and/or where the Claimants agreed to serve as their employees. No basis at all has been laid in the Memorandum of Claim for their inclusion in the suit.



25. It is the Respondents' case that this Court has no jurisdiction to entertain the claim as there was no employer-employee relationship for the Claimants to seek compensation under the [Employment Act](#); consequently, this suit is fatally defective.

### **Evidence in Court**

26. The 2<sup>nd</sup> Claimant (CW1) adopted his witness statement dated 30<sup>th</sup> April 2024 as his evidence in chief and produced his filed Memorandum of Claim and accompanying list of documents dated 8<sup>th</sup> November 2021 as his exhibits 1-3 respectively.
27. During cross examination, CW1 testified that he has been authorised by the 1<sup>st</sup> and 3<sup>rd</sup> Claimant to testify on their behalf, however, there is no letter of authority in court.
28. CW1 testified that he has no employment letter from the 1<sup>st</sup> Respondent but he was reporting at the Jubilee office in Pangani.
29. CW1 testified that he did not protest to the letter stating that he was providing consultancy services.
30. CW1 testified that they were paid a salary of Kshs. 300,000 consolidated net of all taxes and deductions. He has no pay slips but their bank statements show they were paid the amount monthly from April 2021. However, the bank statements do not show that the amount was salary.
31. CW1 testified that while in employment, he did not apply for leave as when COVID 19 struck, they used to work from home.
32. He further testified that he is not sure whether the 1<sup>st</sup> and 3<sup>rd</sup> Claimants applied for leave.
33. CW1 testified that he sued the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in their personal capacity, but he no longer has a claim against them as they no longer work for the 1<sup>st</sup> Respondent.

### **Claimants' Submissions**

34. The Claimants submitted on two issues: - Whether the Claimants were un-procedurally and unfairly/unlawfully terminated by the Respondents and if the same amounts to unfair labour practice; and whether the Claimants are entitled to the remedies sought.
35. On the first issue, the Claimants submitted that in the instant case, the question is were the Claimants engaged as employees of the 1<sup>st</sup> Respondent under a contract of service or were they engaged as independent contractors to render consultancy work. They relied on Erastus Kwaka Otieno v Dhanush Infotech Limited [2021] KEELRC 125 (KLR) where it was held: The [Employment Act](#) defines a "contract of service" to mean:

“An agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies.”

From the above definition, it is clear that an employee is normally engaged under a contract of service. Section 2 of the [Employment Act](#) defines an employee to refer to a person employed for wages or a salary and includes an apprentice and indentured learner.”

36. The Claimants submitted that that the Respondents admission they were employees affirm their position that they were employed by the 1<sup>st</sup> Respondent. Further, there are bank statements of their



salary accounts where their respective salaries were remitted by the 1<sup>st</sup> Respondent. It is only the letters issued by the 1<sup>st</sup> Respondent that indicates that their consultancy services were being terminated, however, the letters indicate the respective positions they held at the 1<sup>st</sup> Respondent which was not controverted by the Respondents.

37. It is the Claimants' submission that the restructuring letters purporting to terminate their services were signed by a non-authorized person therefore null and void and have no legal foundation and effect. It is undisputed that Article 9(7) of the 1<sup>st</sup> Respondent's constitution provides that the 2<sup>nd</sup> Respondent is the only authorized person to act on behalf of the National Executive Committee including execution of documents and not the author of the impugned letters.
38. The Claimants submitted that there would be no need for restructuring and terminating services of any consultant were they not full-time employee. The existence of an employment engagement coupled with monthly salary payments remitted by the 1<sup>st</sup> Respondent which was not controverted that they were remitted for any other service is a prima facie confirmation that the Claimants were employees of the 1<sup>st</sup> Respondent.
39. The Claimants submitted that they worked at the 1<sup>st</sup> Respondent's headquarters exclusively for the 1<sup>st</sup> Respondent and the positions they held were undisputed as captured in the termination letters of 8<sup>th</sup> October 2021. It is trite law that in a consultancy agreement the client does not avail the tools and resources which the consultant uses to perform his work which was not the case herein. This shows a prima facie relationship between the Claimants and the 1<sup>st</sup> Respondent which went beyond the ordinary consultancy arrangement as the Respondents allege.
40. It is the Claimants' submission that they remained under the exclusive control of the Respondents which is discernible from the evidence tendered by the Claimants and relied upon which is uncontroverted. The Claimants lacked the freedom to render their services as they wished to whomever they desired and from any place, therefore, their engagement with the 1<sup>st</sup> Respondent removes the element of an independent consultant and places them within the realm of an employer-employee relationship.
41. The Claimants relied in the description of an independent contractor in *Kenya Hotels & Allied Workers Union v Alfajiri Villas (Magufa Ltd)* [2014] KEELRC 860 (KLR) as follows: "An independent contractor's contract, in my view is a contract of work (contract for service) and not a contract of service, or to use the ordinary language a contract of employment. The hallmarks of a true independent contractor are that the contractor will be a registered taxpayer, will work his own hours, runs his own business, will be free to carry out work for more than one employer at the same time, will invoice the employer each month for his/her services and be paid accordingly and will not be subject to usual "employment" matters such as the deduction of PAYE (tax on income), will not get annual leave, sick leave, 13th Cheque and so on."
42. The Claimants submitted that it is undisputed they were paid a monthly salary which invokes an employment relationship with the 1<sup>st</sup> Respondent, they never raised fee notes as consultants typically do. If indeed there was a consultancy arrangement, the Respondents would have tendered an invoice issued by the Claimants to demonstrate they were consultants offering consultancy services to them.
43. It is the Claimants' submissions that for all intents and purposes they were employees of the 1<sup>st</sup> Respondent and the parties engaged as such, consequently, they rightly deserve all the rights of employment and fair labour practices ought to be observed under the relevant laws.



44. The Claimants submitted that Article 13 of Recommendation No. 166 of the ILO Convention No. 158- Termination of Employment Convention 1982 provides for consultation before termination of employment under circumstances such as restructuring as follows:

“When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- a. provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- b. give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.”

This was buttressed in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* [2014] KECA 404 (KLR).

45. The Claimants submitted that no prior notice was issued to them prior to the termination and no consultation took place as required by the law and the Respondent did not tender any evidence that they followed the required procedure before termination them on alleged restructuring of the party.

46. It is the Claimants' submission that the Respondents tactfully labelled them but to also evade compliance with the law of redundancy. Therefore, declaring the restructuring and rendering them redundant vide the letters titled 'Jubilee Party Restructuring; without justification was procedurally wrong and amounts to unfair termination.

47. The Claimants submitted that Section 40(1) of the *Employment Act* requires employers contemplating redundancy to give the employees or their trade union notice of at least one month as observed in *Kenya Airways Limited v Aviation & Allied Workers Union Kenya & 3 others* (supra). The 1<sup>st</sup> Respondent is mandated to provide the parties with an opportunity to try and avert or minimize terminations resulting from redundancy and mitigate the adverse effects of such terminations and grant reasonable notice.

48. The Claimants submitted that it is trite law where an employer seeks to declare redundancy, Section 40 of the *Employment Act* must and should have been observed and in this case, the 1<sup>st</sup> Respondent failed to do so. Therefore, the termination became unfair termination within the meaning of Section 45 of the *Employment Act*.

49. It is the Claimants' submissions that prior to the impugned letters of 8<sup>th</sup> October 2021 purporting restructuring, there was no meaningful consultation that done. Pursuant to the provisions under Sections 40(1)(c) of the *Employment Act*, the 1<sup>st</sup> Respondent failed to satisfactorily demonstrate the selection was rational which is contrary to the said provision as the 1<sup>st</sup> Respondent failed to state the rationale that followed for each to prove that the Claimants' positions necessitated the removal of the job positions.

50. The Claimants submitted that the Respondents failed to come out clearly on the basis of the applied restructure and how it was arrived to terminate their employment and not the other employees; and the Respondents did not provide any document to prove if any criteria were ever applied at all.



51. It is the Claimants' submissions that the alleged restructuring exercise and the process adopted by the Respondents was a total sham and the deliberation to terminate the Claimants' positions was unlawful for lack of procedure, compliance and should be declared unlawful and of no effect in law as such without any justifiable cause for their termination, the same subjected them to unfair labour practices.
52. On the second issue, the Claimants submitted that the Respondents have not opposed the issuance of the prayers sought and urge this court to allow the prayers as sought, therefore, the Claimants are entitled to the prayers sought and should be granted.
53. The Claimants submitted that they suffered irreparable loss and damage from the actions of the Respondents and as such should be awarded with damages. The alleged restructuring process adopted by the Respondents was a total sham and the decision meted to terminate the Claimants with immediate effect was un-procedural and unjustified and as such unlawful. The Claimants have been subjected to great prejudice and suffering by the actions of the Respondents and the Claimants hold the Respondents liable for contravention of the law.
54. The Claimants submitted that they are entitled to the orders sought in order to compensate them for unfair wrongful termination and since the events in the current case were occasioned by the Respondents and they should bear the consequences and bear the costs of the suit.

### **Respondents' Submissions**

55. The Respondents submitted that where there are several Claimants, one of them, with written authority from the other claimants may swear the verifying affidavit on behalf of the others. In the instant case, the Claimants filed a joint Memorandum of Claim which was anchored on a verifying affidavit sworn by the 1<sup>st</sup> Claimant. The 1<sup>st</sup> Claimant alleged in the verifying affidavit that he had authority of the 2<sup>nd</sup> and 3<sup>rd</sup> Claimants to swear the affidavit on their behalf, however, no such written authority was filed with the Memorandum of Claim; therefore, the claim is defective and unsustainable
56. During the hearing in court, the 2<sup>nd</sup> Claimant appeared in court instead of the 1<sup>st</sup> Claimant and purported to testify on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Claimants. However, during cross-examination, the 2<sup>nd</sup> Claimant did not have any formal document showing that he had received any such authority to appear as a witness on behalf of the Claimants. It is therefore the Respondents' submission that no evidence was tendered in support of the 1<sup>st</sup> and 3<sup>rd</sup> Claimants' cases and the same ought to fail for lack of proof.
57. The Respondents submitted that the Claimants were not employees within the meaning of Section 2 of the Employment Act and were therefore not subject to the statutory procedures governing termination of employment.
58. The Respondents submitted that there was no employer-employee relationship between the Claimants and the Respondents, as the Claimants were independent consultants engaged by the Respondents on a need basis as such this court has no jurisdiction.
59. The Respondents submitted that the Claimants' own exhibits are clear that they were consultants and not employees. During cross-examination, the 2<sup>nd</sup> Claimant did not have any evidence that he protested the manner in which his termination letter described the services he was offering to the Party.
60. The Respondents submitted that the Claimants are bound by their own exhibits and any attempts to run away from their contents are untenable. A perusal of the Memorandum of Claim does not reveal anywhere that the Claimants contested the contents of the letters that described their services as consultancy services.



61. The Respondents submitted that contrary to the Claimants' submissions, the 1<sup>st</sup> Respondent did not pay an ex-gratia payment of one month's salary but one month's fees.
62. The Respondents submitted that during cross-examination, the 2<sup>nd</sup> Claimant could not produce any evidence that he ever applied for leave from the Party as an employee could be expected to do. There was no evidence of control by the Respondents over the Claimants. The only document that the Claimants produced was bank statements which shows that the Claimants used to receive a sum of Kshs. 300,000, however, the same is not indicated as salary/wages. The submissions that the same was the monthly salary payment is evidence at the very least, an assumption which should be disregarded.
63. It is the Respondents submissions that the prayer for salary for 12 months as well as the 3 months' salary in lieu of notice is untenable in light of the fact that the Claimants were not in contract of service. Further, the Claimant did not produce any contract entitling them to such payment upon termination.
64. The Respondents submitted that the claim for unpaid leave allowance of Kshs. 300,000 has not been justified how it was arrived at. The court has further not been shown the foundational basis for granting the Claimants the aforesaid amount considering that the Claimants have no claim for untaken leave days.
65. In respect to gratuity, the Respondents submitted that no contractual basis has been laid out for this claim in either the body of the Memorandum of Claim or the submissions.
66. The Respondents submitted that the court should not allow the prayers sought by the claimants and should dismiss the claim in its entirety with costs to the Respondents.
67. I have examined all the evidence and submissions of the parties herein. The issues for the court's determination are as follows:-
  1. Whether the claimants were employees of the respondents and if so,
  2. Whether they were terminated fairly and justly.
  3. Whether the claimants are entitled to the remedies sought.
68. The claimants have averred that they were employees of the respondents having been so employed in various positions as stated in their evidence. The claimants however aver that they were not issued with any employment letters or contracts but have submitted their bank statements to show that they were periodically paid a salary by the respondents. The claimants were earning 300,000/- all inclusive per month.
69. The 2<sup>nd</sup> claimant herein Peter Kihara appeared in court and testified and indicated he was also testifying on behalf of the other claimants. He did not submit the authority to testify on behalf of the other claimants in court. The claimant's case however remained uncontroverted because the respondents chose not to call any evidence.
70. The respondents denied employing the claimants but they never adduced any evidence before this court. I find the claimant's case proved accordingly for unfair termination. I award each as follows:
  1. 3 months' salary as compensation for unfair termination. =  $3 \times 300,000 = 900,000/-$
  2. I also award each claimant prorated leave for 6 months = 150,000/-

Total = 1,050,000/-

Less statutory deductions.



71. The 1<sup>st</sup> respondent will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 11<sup>TH</sup> OF JUNE, 2025.**

**HELLEN WASILWA**

**JUDGE**

