



**Chete v Kamale Youth Polytechnic & another (Cause 932 of 2017)  
[2025] KEELRC 2352 (KLR) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2352 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 932 OF 2017  
K OCHARO, J  
JULY 31, 2025**

**BETWEEN**

**FRANCIS CHETE ..... CLAIMANT**

**AND**

**KAMALE YOUTH POLYTECHNIC ..... 1<sup>ST</sup> RESPONDENT**

**KWALE COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant herein, through his Statement of Claim dated 16<sup>th</sup> December 2017, later amended on 19<sup>th</sup> February 2019, and further amended on 23<sup>rd</sup> January 2020, sued the Respondents seeking the following reliefs:
  - a. The sum of Ksh. 2,681,440, particularised in paragraph 9 of the Amended Statement of Claim.
  - b. Notice in lieu of termination.
  - c. Payment of the claimant's salary for February 2016, when he was sick, up to October 2016.
  - d. A declaration that the Claimant was employed on a permanent basis.
  - e. Twelve [12] months' salary for unfair termination.
  - f. General damages for unfair termination.
  - g. An order directing the Respondent to issue the Claimant a Certificate of Service and a recommendation letter.
  - h. ½ salary payment [gratuity] for the two complete worked years.
  - i. General damages on the grounds of discrimination due to occupational disease.



- j. Costs of this suit.
  - k. Interest on [a], [b], and [c] above.
2. The 2<sup>nd</sup> Respondent resisted the Claimant's case by their Response to the Further Amended Statement of Claim, denying that the Claimant was their employee at any time, his cause of action against them, and entitlement to the reliefs sought.
  3. At the hearing, the 1<sup>st</sup> Respondent didn't present a witness[es] to testify against the Claimant's case. They hadn't entered an appearance and filed a response to the Claimant's claim. The 2<sup>nd</sup> Respondent did present one witness who testified in support of their defence.

### **The Claimant's Case**

4. It was the Claimant's case that at all material times, he was an employee of the 1<sup>st</sup> Respondent as an instructor, having been first employed as such on 14<sup>th</sup> July 2016. The 1<sup>st</sup> Respondent is under the management and supervision of the 2<sup>nd</sup> Respondent.
5. On or about the 5<sup>th</sup> day of January 2017, his relative passed away. On 6<sup>th</sup> January, 2017, with the permission of the 1<sup>st</sup> Respondent, he attended the funeral of that relative.
6. When he reported for work on 12<sup>th</sup> January 2017, after the said burial, he was informed by the management of the 1<sup>st</sup> Respondent institution that another instructor had replaced him.
7. As such, his employment was terminated. The termination was prompted by ill faith and malice. It was without any justifiable cause. Further, before the termination, the 1<sup>st</sup> Respondent didn't allow him an opportunity to be heard. Contrary to the law, the 1<sup>st</sup> Respondent didn't issue him with any notice before the termination.
8. Despite deducting NHIF and NSSF contributions from his salary, the 1<sup>st</sup> Respondent never remitted the deducted amounts or any other funds to the statutory authorities.
9. Without any justifiable reason, the 1<sup>st</sup> Respondent refused to pay him his salary for September 2016, October 2016, November 2016 and December 2016. They further failed to issue him a certificate of service.

### **The 2nd Respondent's Case.**

10. Respondent presented Mr. Kisiwa Mohammed Koja to testify as its witness. The witness stated that the 2<sup>nd</sup> Respondent did not at any point employ the Claimant. Any obligations arising from any contractual relationship between the 1<sup>st</sup> Respondent and the Claimant cannot in any way be imposed on it.
11. He further stated that the 2<sup>nd</sup> Respondent cannot, therefore, be called upon to settle the Claimant's case.

### **Analysis and Determination**

12. I have carefully considered the pleadings, evidence, and submissions by the parties, and the following issues emerge for determination:
  - a. Was the Claimant an employee of the 2<sup>nd</sup> Respondent at all material times?
  - b. Was the Claimant's employment unfairly terminated?



- c. Is the Claimant entitled to the reliefs sought in his pleadings?

### **Was the Claimant an Employee of the 2<sup>nd</sup> Respondent at the Time in Question?**

13. I have diligently reviewed the pleadings and evidence submitted by the Claimant in this matter, including the submissions of his Counsel. I find it challenging to comprehend the rationale for involving the 2<sup>nd</sup> Respondent in this case. In my view, the sole reason the Claimant made the 2<sup>nd</sup> Respondent a party to this suit is his thinking that the polytechnic named as the 1<sup>st</sup> Respondent in this matter is under the management of the 2<sup>nd</sup> Respondent. This is erroneous thinking and one that cannot hold water.
14. Undeniably, vocational training is a devolved function under the 2010 *Constitution* of Kenya. However, to the best of my understanding, vocational institutions are managed by Boards of Management. The County Governments do not manage the vocational institutions that fall within their jurisdiction; therefore, as asserted by the Claimant.
15. The Claimant's pleadings and evidence in my assessment do not bring out a cause of action against the 2<sup>nd</sup> Respondent at all.
16. The 2<sup>nd</sup> Respondent was not the Claimant's employer at any point. He had no cause of action against them. His case must fail at this point for these reasons.

### **Was the Claimant's Employment Unfairly Terminated?**

17. The Claimant asserted that his employment was unfairly terminated. Under section 47[5], he had a duty to demonstrate that an unlawful termination of his employment had occurred. It is well established what the duty under this provision involves. The employee must establish prima facie that the termination lacked procedural and/or substantive fairness. I have carefully considered the unchallenged pleadings and evidence by the Claimant on his assertion that the termination was not justified, and that the dictates of procedural fairness were not conformed with, and conclude that he discharged the duty under the above-stated provision.
18. Section 43 of the *Employment Act*, 2007, places a legal obligation on the employer in a dispute regarding termination of an employee's employment to prove the reason for the termination. A further duty is placed on the employer under section 45 of the *Act* to prove that the reason was on account of a fair and valid. Where the duty under section 43 of the *Act* isn't discharged, the termination is deemed unfair by dint of the stipulations of section 45.
19. The 1<sup>st</sup> Respondent didn't present any evidence before this Court to establish the reason for the termination of the Claimant's employment. It didn't, therefore, discharge its burden under section 43 of the *Act*. By operation of the law, the termination is hereby deemed unfair.
20. Section 41 of the *Employment Act*, a provision of the law which the Court has severally held as being mandatory, provides for procedural fairness. It provides for what an employer contemplating terminating an employee's employment must do and avail.
21. The provision above reflects procedural fairness comprising three components. The first component - notification/information — requires the employer to inform the employee of their intention to terminate employment and the grounds for this decision. The second component, the hearing, obliges the employer to provide the employee with an opportunity to defend themselves against the grounds. The third component, consideration, requires the employer to consider the representations made by the employee and/or their accompanying person before deciding to terminate or dismiss the employee.



Consideration is crucial because, without it, the purpose of the hearing and the protections granted to employees under the Employment Act shall be undermined.

22. It is incumbent upon the employer to demonstrate on a balance of probabilities that the dictates of procedural fairness as brought out in the section were conformed to. Having not presented any evidence, one cannot be off the mark to conclude that the termination wasn't procedurally fair, and this Court so holds.
23. The termination of the claimant's employment was procedurally unfair.

### **Of the Reliefs**

24. The claimant sought, *inter alia*, a certificate of service. The Respondent did not assert that the same was issued to the Claimant at the time of separation or at all. The Claimant's claim for the same was therefore unchallenged. This Court has on many occasions held that an employee's right to a certificate of service under section 51 of the Employment Act is inviolable. It must be issued to an employee upon the termination of their employment relationship with their employer. Any employer breaching this right risks being liable for any damage or loss that may arise from the breach.
25. The Claimant further sought compensation to the extent of twelve months' gross salary for the unfair termination of his employment. Section 49[1][c] bestows upon this Court the power to grant a compensatory award in favour of an employee who has successfully assailed the termination of his or her employment on account of it being unfair. However, it should be noted that the power is exercised at the Court's discretion. An award or denial of the same is dependent on the justice of each case.
26. I have carefully considered the circumstances of this matter; that the termination of the Claimant was without any expressed and proved reason; the fact that the termination was procedurally and substantively unfair; the fact that there is no evidence demonstrating that the Claimant induced the termination in any manner, and the length of his service with the 1<sup>st</sup> Respondent, and conclude that he is entitled to the compensatory relief, to the extent of 6 months' gross salary, Kshs. 48,000.
27. The Claimant's employment was terminable under section 35 of the Employment Act, by twenty-eight days' notice. No doubt, the Claimant's assertion that the notice was not issued was not discounted. As a result, this Court will have no reason to award him notice pay under section 36 of the Act. The relief is hereby granted.
28. The Claimant contended that the 1<sup>st</sup> Respondent unjustifiably failed to settle his four months' salary arrears amounting to Kshs 32,000. The evidence was not challenged. As a result, I hold that he has proved entitlement to payment of the same. The relief is hereby awarded.
29. In the upshot, judgment is hereby entered in favour of the claimant in the following terms:
  - a. A declaration that the termination of his employment was unfair.
  - b. Compensation pursuant to the provisions of section 49[1][c] of the Employment Act, Kshs.48,000.
  - c. Unpaid salary Kshs. 32,000.
  - d. One month's salary in lieu of notice, Kshs. 8000.
  - e. The Respondent is directed to issue the Claimant with a Certificate of Service within 30 days of this judgment.
  - f. Costs of this suit.



g. Interest on the awarded sums at court rates from the date of this judgement till full payment.

**READ, SIGNED AND DELIVERED ON THIS 31<sup>ST</sup> DAY OF JULY 2025**

**OCHARO KEBIRA**

**JUDGE**

