



**Muthama v Ladder Consulting Company Limited & another (Cause
1333 of 2016) [2025] KEELRC 2168 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2168 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1333 OF 2016
L NDOLO, J
JULY 24, 2025**

BETWEEN

RICHARD MWENDWA MUTHAMA CLAIMANT

AND

LADDER CONSULTING COMPANY LIMITED 1ST RESPONDENT

MARTIN NGUNGA 2ND RESPONDENT

JUDGMENT

Introduction

1. The Claimant, Richard Mwendwa Muthama, had initially obtained ex parte judgment against the 1st and 2nd Respondents. By a ruling delivered on 24th March 2022, the ex parte judgment was set aside, allowing the Respondents an opportunity to defend the claim.
2. The Claimant states his claim in a Memorandum of Claim dated 28th April 2016. The Respondents filed a Response dated 11th April 2022.
3. At the inter partes trial, the Claimant testified on his own behalf and the 2nd Respondent, Martin Ngunga testified for the Respondents. The parties also filed written submissions.

The Claimant's Case

4. In his Memorandum of Claim dated 28th April 2016, the Claimant states that he was employed by the 1st Respondent as a driver, by an agreement dated 14th August 2013. He adds that he was to earn a monthly salary of Kshs. 20,000.
5. According to the Claimant, the 2nd Respondent represented himself as the sole Director of the 1st Respondent. The Claimant adds that the 2nd Respondent variously engaged staff, including the



- Claimant, for his own personal service and those of other companies associated with him, including the Institute of Performance Management.
6. The Claimant avers that on 14th February 2014, he was informed by the 1st Respondent's Receptionist, by the name Josephine, that his employment had been terminated. The Claimant accuses the Respondents of failure to issue him with a termination letter.
 7. The Claimant claims that his employment was unlawfully terminated, in that he was not given any reason for termination, and he was not afforded a hearing, prior to the termination.
 8. The Claimant further claims that he was not paid salary for January 2014 and days worked in February 2014. He adds that he never went on leave and was not paid in lieu thereof.
 9. The Claimant's claim is as follows:
 - a. 12 months' salary as general damages for unlawful termination;
 - b. Kshs. 30,000 being salary for January 2014 and 14 days in February 2014;
 - c. Unpaid leave for 7 months;
 - d. Costs plus interest.

The Respondents' Case

10. In the Respondents' Response dated 11th April 2022, the 2nd Respondent states that he is not a necessary party in these proceedings, as he has never had any employment relationship with the Claimant.
11. While admitting that he is a Director of the 1st Respondent, the 2nd Respondent maintains that the Claimant was an employee of the 1st Respondent which is a distinct entity apart from himself.
12. The Respondents admit the existence of a binding employment contract but add that the Claimant was engaged on probationary terms. The Respondents list the terms of the contract as follows:
 - a. The Claimant's duties as a driver were expressly set out in the contract;
 - b. The Claimant was initially engaged on probationary terms for a period of three months with a possibility of extension;
 - c. During the probationary period, the Claimant was to exhibit ability and commitment to perform his duties. Either party was at liberty to issue a one-day notice to terminate the contract and the Company was at liberty to extend the probationary period; confirmation was at the discretion of the employer;
 - d. The grounds for termination were all clearly set out at clause 10; among them being failure to meet the Company's expectations and failure to give time and attention to the employee's duties.
13. The Respondents state that the Claimant failed to honour his obligations and meet the 1st Respondent's expectations as per the contract. They add that vide a letter dated 27th November 2013, the 1st Respondent extended the Claimant's probation period, clearly setting out reasons for the extension, and giving the Claimant an opportunity to demonstrate improvement.
14. The Respondents aver that the Claimant did not show any improvement or willingness to improve, and at the end of the extended probationary period, the 1st Respondent was unable to confirm the



Claimant. Vide a letter dated 14th February 2014, the Company informed the Claimant that his employment would not be confirmed, with the reasons for this decision being clearly set out.

15. The Respondents contend that the Claimant was paid all his dues up to his last day of service.

Findings and Determination

16. There are three (3) issues for determination in this case:
- a. Whether the 2nd Respondent is a necessary party in these proceedings;
 - b. Whether the Claimant has proved a claim of unlawful termination of employment;
 - c. Whether the Claimant is entitled to the remedies sought.

The 2nd Respondent's Joinder

17. The 2nd Respondent complains that he is improperly joined in these proceedings, because there was no employment relationship between him and the Claimant. He however confirmed that he was the Proprietor and Managing Director of the 1st Respondent.
18. Moreover, all the documents evidencing the employment relationship were signed by the 2nd Respondent; additionally, he was the sole witness on behalf of the Respondents.
19. Section 2 of the *Employment Act* defines an employer as:
- “any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company” [emphasis added]
20. In appropriate cases therefore, a manager of a body corporate, who is proximately involved in the acts forming the subject matter of an employment dispute, may be joined as a necessary party.
21. In this case, actions taken by the 2nd Respondent were the direct cause of this dispute and there is no way he can exculpate himself from these proceedings. For this reason, I adjudge the 2nd Respondent as properly joined in these proceedings.

Unlawful Termination?

22. The Respondent filed a letter dated 14th February 2014, addressed to the Claimant as follows:

“Dear Richard,

Ref: Non Confirmation After Probationary Period

Reference is made to our letter dated 27th November 2013 in which we expressed our dissatisfaction in the following areas:

1. Cleanliness of the vehicle;
2. Decorum (respectability, etiquette);
3. Grooming; and
4. Lack of initiative and proactivity.



Unfortunately we have not seen much progress in any of these areas and as such are unable to confirm your position. You shall be paid your dues up to the last working day of your probation which is the date of this letter.

We wish you all the best in all your future endeavours.

Yours Faithfully

(signed)

Martin Ngunga

Chief Executive Officer”

23. This letter makes reference to a previous one dated 27th November 2013, purporting to extend the Claimant’s probation to 14th February 2014, the date of the termination letter. The Claimant denied receiving the letter dated 27th November 2013 and the Respondents did not adduce evidence to show that it was sent to him.
24. On cross examination by the Claimant’s Counsel, the 2nd Respondent stated that the Claimant’s employment was terminated on account of negligence. According to the 2nd Respondent, the Claimant left the company motor vehicle under his care on the street. He added that the Claimant was not given an opportunity to be heard because he had disappeared.
25. Even assuming that the Claimant was still on probation at the time of termination of his employment, he was entitled to an opportunity to be heard. This was the holding by a three judge bench of this Court in *Monica Munira Kibuchi & 6 others v Mount Kenya University; Attorney General (Interested Party)* [2021] eKLR.
26. From the evidence on record, the Claimant was not subjected to any disciplinary process and the allegations levelled against him were not proved at the shop floor. The provisions of Sections 43 and 41 of the *Employment Act* were therefore violated.
27. In light of the foregoing, I have reached the conclusion that the termination of the Claimant’s employment was substantively and procedurally unfair, and he is entitled to compensation.

Remedies

28. Pursuant to the foregoing, I award the Claimant three (3) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s short stint in employment but also the Respondent’s unlawful conduct in bringing the employment to a premature end.
29. In the absence of evidence to the contrary, the claim for salary for January 2014 and 14 days in February 2014 succeeds and is allowed. The Claimant is also entitled to prorata leave for the period of service.
30. Finally, I enter judgment in favour of the Claimant, against the 1st and 2nd Respondents jointly and severally as follows:
 - a. 3 months’ salary in compensation Kshs. 60,000
 - b. Salary for January 2014 20,000
 - c. Salary for 14 days in February 2014 9,333
 - d. Prorata leave for 6 months (20,000/30*1.75*7) 7,000Total 96,333



31. This amount will attract interest at court rates from the date of judgment until payment in full.
32. The Claimant will have the costs of the case.
33. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Ogunde for the Claimant

Mr. Muriithi for the Respondent

