



**Mutisya v Shona Epz Limited (Cause E594 of 2023)
[2025] KEELRC 2176 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2176 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E594 OF 2023**

**L NDOLO, J
JULY 24, 2025**

BETWEEN

EUNICE NDUKU MUTISYA CLAIMANT

AND

SHONA EPZ LIMITED RESPONDENT

JUDGMENT

1. This dispute arises from an employment relationship between the Claimant and the Respondent, evidenced by an employment contract dated 1st February 2018.
2. The Claimant states her case in a Statement of Claim dated 27th July 2023 and the Respondent defends itself by a Response dated 28th December 2023.
3. At an inter partes mention on 14th March 2024, the matter was fixed for hearing on 2nd October 2024. There was however no appearance for the Respondent at the hearing and the matter proceeded ex parte upon which I gave directions that the parties file final submissions.
4. By the return date of 21st November 2024, the Respondent had filed a Notice of Motion dated 15th November 2024, seeking re-opening of the case. The parties recorded a consent allowing for recall of the Claimant for cross examination and presentation of the Respondent's witness.
5. The matter was fixed for hearing on 29th April 2025, on which date Counsel on record for the Respondent informed the Court that he had filed an application dated 25th April 2025, seeking leave to cease acting for the Respondent. The application came up for hearing on 12th May 2025 and being satisfied that the Respondent had been duly notified, I granted leave to the law firm of E. Omulloh Advocates to cease acting for the Respondent.
6. I then directed the Claimant to deal directly with the Respondent henceforth and fixed the matter for mention on 29th May 2025, with instructions to the Claimant to serve the Respondent.



7. At the mention of 29th May 2025, there was no appearance for the Respondent and noting that the Claimant had already filed final submissions, I proceeded to reserve the matter for judgment. This judgment is therefore based on the parties' pleadings, the Claimant's testimony and her final submissions.

The Claimant's Case.

8. The Claimant pleads that she was employed by the Respondent on 1st February 2018, in the position of Factory Manager, earning a monthly salary of Kshs. 140,000 which was progressively increased to Kshs. 205,432 as at the time of separation in 2023.

9. The Claimant states that her employment was unlawfully and unfairly terminated. She avers that her woes began in December 2022, when the Managing Director started giving her cold treatment.

10. The Claimant claims that she continued reporting to work but no duties were assigned to her. She adds that she was excluded from company meetings and would get briefings on matters affecting the Company, from her juniors.

11. The Claimant states that she served the Respondent with diligence and commitment. She claims to have gone as far as using her own funds for company operations.

12. The Claimant avers that on 2nd May 2023, she received a termination notice from the Managing Director, without an explanation as to the reasons for termination, and in violation of due procedure.

13. The Claimant further avers that annexed to the termination letter was a tabulation of her dues as follows:

a.	Pending dues for 8 months.....	Kshs. 1,643,456
b.	Workers advances refund.....	76,550
c.	Severance pay for 5 years.....	512,500
d.	Leave due for 1 month.....	205,432
	Total.....	2,437,938

14. According to the Claimant, the Respondent did not pay her the pending dues and instead engaged her in empty promises. She claims to have continued reporting to work even after the termination notice, following a verbal agreement with the Respondent.

15. The Claimant now claims the following:

- a. A declaration that the termination of her employment amounted to wrongful and unfair dismissal;
- b. An award in the sum of Kshs. 2,437,938 as final dues;
- c. Kshs. 2,465,184 being 12 months' salary in compensation;
- d. Costs plus interest.

The Respondent's Case

16. In its Response dated 28th December 2023, the Respondent admits having employed the Claimant as pleaded in the Statement of Claim.



17. The Respondent however denies the allegations of wrongful dismissal and states that the termination of the Claimant's employment was necessary and unavoidable, owing to the Claimant's repeated conduct that adversely exposed the Respondent to legal risks and occasioned financial losses, among other reasons.
18. The Respondent denies the Claimant's averment that she was side-lined, and states that it was not its duty to assign the Claimant tasks on a daily basis as her duties and responsibilities were already stipulated in her contract of employment.
19. The Respondent states that the Claimant was always required to attend and was invited to attend meetings as part of her job description. The Respondent avers that the Claimant chose to abscond meetings, and adds that her failure to attend was solely due to her persistent absenteeism.
20. The Respondent further states that the Claimant was not a team player and at all times sought to frustrate the Respondent's corporate social responsibility initiatives.
21. The Respondent avers that the Claimant became a liability in the following manner:
 - a. Displaying unprofessional and unbecoming conduct leading to loss of existing and potential clients;
 - b. Displaying unprofessional and unbecoming conduct leading to non-delivery or late delivery on existing orders;
 - c. Unilaterally and unfairly terminating the employment of subordinate staff, without justifiable cause and/or due regard to the Respondent's Human Resource Manual and relevant laws, leading to lawsuits against the Respondent;
 - d. Without provocation or justifiable cause, displaying arrogant and belligerent attitude towards other members of staff; and
 - e. Deliberately failing and/or neglecting to render proper and accurate account of finances received and earmarked for use in the Respondent's operations.
22. The Respondent further avers that the termination of the Claimant's employment was made more inevitable by operational reasons due to declining revenue and high operating costs.
23. According to the Respondent, as Factory Manager, the Claimant was at all times aware of the dire financial challenges faced by the Respondent, due to declining revenue occasioned by economic difficulties in the market, extremely high operating costs and unsustainable employee costs.
24. The Respondent states that in addition to the foregoing reasons, the decision to terminate the Claimant's employment was the product of consultation and mutual agreement between the parties as captured in the letter dated 2nd May 2023.
25. The Respondent asserts that as a result of the mutual agreement, the parties agreed to the termination of the Claimant's employment, with payment of Kshs. 2,437,938 being the agreed terminal dues payable to the Claimant, upon completion of the mandatory clearance and hand-over.
26. The Respondent avers that the Claimant was allowed access to her office to enable her complete the hand-over but she had refused, neglected and/or failed to comply.

Findings and Determination.

27. There are two (2) issues for determination in this case:



- a. Whether the termination of the Claimant's employment was lawful and fair;
- b. Whether the Claimant is entitled to the remedies sought.

The Termination.

28. The Claimant's employment was terminated by letter dated 2nd May 2023 stating as follows:

“To: Eunice Mutisya

RE: NOTICE OF TERMINATION OF SERVICES

Shona EPZ Limited would like to thank you for your service over the last 5 years. However, unfortunately, we are unable to continue engaging you as the factory manager.

It is due to this that we serve you with a 30-day notice starting May 2, 2023.

Kindly note that all your dues including notice of termination will be settled to you by May 31, 2023, once you have satisfactorily cleared and handed all documents and information belonging to Shona EPZ Limited to the Director.

Your dues include 8 months pending salary, 5 years severance pay and any leave days that have not been taken by May 31, 2023.

We wish you well in your future endeavors.

ISAAC MALUKI

DIRECTOR”

29. In its Response dated 28th December 2023, the Respondent makes several allegations of misconduct and poor performance against the Claimant. However, in the termination letter reproduced above, there is no mention of any such allegations. In fact, all the Respondent states is that it was unable to continue engaging the Claimant as Factory Manager.
30. Under the *Employment Act*, every termination of employment must be supported by a valid reason. In this regard, Section 43 of the Act provides as follows:
 1. In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair with the meaning of section 45.
 2. The reason or reason for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
31. Section 45(1) and (2) of the Act proscribes unfair termination in the following terms:
 1. No employer shall terminate the employment of an employee unfairly.
 2. A termination of employment by an employer is unfair if the employer fails to prove-
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason-
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and



c. that the employment was terminated in accordance with fair procedure.

32. The fair procedure referred to in Section 45(2)(c) is codified in Section 41 of the Act which sets the following standard:

1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

33. In her final submissions dated 13th November 2024, the Claimant cited the decision in *Duncan Mbathi Mulevi v Wanandege Cooperative Savings & Credit Society Limited* [2018] KEELRC 281 (KLR) where it was held that:

“Under section 45(2) of the *Employment Act*, termination of an employee’s contract is unfair if the employer fails to prove that it was grounded on a valid and fair reason(s) and that it was done after following a fair procedure. A valid and fair reason is one that relates to the employee’s conduct, capacity and compatibility or based on the employer’s operational requirements. Fair procedure on the other hand is one that accords justice and equity and basically it relates to according the employee a fair hearing before terminating his services.”

34. In its decision in *Walter Ogal Anuro v Teachers Service Commission* [2013] KEELRC 386 (KLR) this Court held that for a termination of employment to pass the fairness test, both substantive and procedural fairness must be established.

35. In the present case, the termination letter did not communicate any valid reason for termination as required by law nor was the Claimant subjected to any disciplinary process. The termination was therefore substantively and procedurally unfair and the Claimant is entitled to compensation.

Remedies.

36. Pursuant to the foregoing, I award the Claimant five (5) months’ salary in compensation. In arriving at this award, I have considered the Claimant’s length of service and the finding that she did not in any way contribute to the termination.

37. I have further taken into account the Respondent’s conduct in the termination transaction; particularly, the failure to avail the Claimant an opportunity to be heard and unjustifiable withholding of her terminal dues.

38. The claims for unpaid dues for 8 months, severance pay, leave pay and workers advances refund are admitted and are payable.

39. Finally, I enter judgment in favour of the Claimant as follows:

- a. 5 months’ salary in compensation.....Kshs. 1,027,160
- b. Severance pay for 5 years.....512,500



c.	Leave pay.....	205,432
d.	Workers advances refund.....	76,550
	Total.....	1,821,642

40. This amount will attract interest at court rates from the date of judgment until payment in full.

41. The Claimant will have the costs of the case.

42. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 24TH DAY OF JULY 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Gicheru for the Claimant

No appearance for the Respondent

