



Ogola v Strathmore University (Employment and Labour Relations Cause E060 of 2021) [2025] KEELRC 2173 (KLR) (24 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2173 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E060 OF 2021**

HS WASILWA, J

JULY 24, 2025

BETWEEN

ANNE ACHIENG OGOLA CLAIMANT

AND

STRATHMORE UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide an Amended Memorandum of Claim dated 12th January 2024 and prays for judgment against the Respondent for: -
 - a. That the Claimant should be paid all underpayments totalling to Ksh. 82,596.
 - b. That the Claimant should be paid: (i) service pay – Ksh. 13,572; (ii) pay in lieu of notice Ksh. 9,714; and (iii) compensation for unfair termination Ksh. 192,000.
 - c. Costs of this suit and interest at court rates.
 - d. Any other orders that the court may deem fit.

Claimant's Case

2. The Claimant avers that she was initially employed by the Respondent as a casual in April 2018, however in August the same year, it was agreed that she works on full time basis from Monday to Saturday weekly.
3. Subsequently on 18th February 2019, the parties entered into a written agreement that the Claimant be employed as a monthly paid catering steward for a fixed term one year.



4. The Claimant avers that she joined the Kenya Private Universities Workers Union on 4th May 2019 and the Respondent expressed dissatisfaction in her union membership and even attempted to discourage her from participating in union activities.
5. The Claimant avers that during her employment, the Respondent provided lunch daily and kitchen staff were given left over chapati for lunch. On 1st February 2020, she worked through lunch hour with a colleague, as such, they were unable to have their lunch during the designated hour; since they did not eat their chapatis, upon heading home, she decided to carry all the left over chapatis totalling the six chapatis.
6. The Claimant avers that she made the decision as she had a detour visiting her cousin who was hospitalised. As she was leaving the school premises, she was summoned and questioned by a member of the Respondent's staff regarding the chapatis.
7. She explained the circumstances verbally and provided a brief written explanation on how she ended up leaving the school with six chapatis. She then discussed with her manager on Monday, 3rd February 2020, how baffling it is that picking four extra chapatis which would otherwise be thrown away was an offence, and her manager reassured her that the same will be resolved. She was summoned later at the Respondent's Human Resource office where she was further interrogated and she was subsequently informed by the Chef on 5th February 2020 that the management was deliberating on the case.
8. The Claimant avers that on 6th February 2020, she was invited to a meeting by the Respondent which was attended by the HR Officer, Manager and the Chef wherein, she was informed that her employment had been terminated; she was then given a letter stating that her fixed term contract was expiring on 17th February 2020.
9. The Claimant avers that she was paid in lieu of her accrued annual leave and wages up to 17th February 2020.
10. The Claimant avers that she initiated a complaint through her union to the labour officer pursuant to the mechanism for conciliation of labour dispute under the *Labour Relations Act*. Subsequently, the Conciliator issued a certificate on 14th January 2021 indicating that the dispute had not been resolved, however, no substantive report/ minutes of the conciliation meetings were provided.
11. It is the Claimant's case that she was summarily dismissed for taking four extra left over chapatis that would otherwise be thrown away in the bins.
12. The Claimant avers that no adequate investigation was undertaken nor was she given any hearing as mandated by Section 41 of the *Employment Act*. Additionally, she was coerced into signing documents that were suited to promote the Respondent's narrative; she was also not paid service pay for the completed year as a full-time employee.
13. The Claimant avers that during her employment, she was paid below the prevailing and relevant minimum wage and not paid housing allowance prior to 18th February 2019. The minimum wage as per Legal Notice No. 20 of 19th December 2018 indicated cooks/ caterers should be paid a minimum wage of Ksh. 13,572 whereas she received a salary of Ksh. 9,000.
14. It is the Claimant's case that during her tenure as a casual worker between April – July 2018 working 3 days a week, she earned Ksh. 500 per day instead of the prescribed Ksh. 622 per day. Subsequently, her terms were converted to full time basis, she was therefore entitled to a monthly wage of Ksh. 13,572 plus housing allowance of Ksh. 6,000. Based on this, the Claimant therefore claims for salary underpayment.



Respondent's Case

15. In opposition, the Respondent filed Response to the Statement of Claim dated 20th November 2024.
16. The Respondent avers that the Claimant was issued with an offer letter dated 31st January 2019 to be employed as a steward in its catering department on a fixed term contract commencing 18th February 2019.
17. The terms of the contract were: 40 working hours per week, Monday to Friday, 8.30 a.m to 5. 30 p.m; starting salary of Ksh. 9,000; monthly housing allowance Ksh. 6,000; annual leave of 24 days; reduced working hours to 6 hours per day after maternity leave until the baby is 9 months old; medical cover up to Ksh. 189,000 inpatient and Ksh. 92,750 outpatient per annum; and membership to a provident fund which the University and the employee shall contribute 10% of the basic monthly salary.
18. The Respondent avers that the contract was due to terminate on 17th February 2020 and was subject to a probationary period.
19. The Respondent avers that the Claimant was paid a monthly gross salary of Ksh. 15,000 above the minimum wage of Ksh. 13,750 stipulated in the minimum wage for the year 2018; the Claimant's gross salary was inclusive housing allowance.
20. The Respondent denies that the Claimant and her colleagues were given any left over chapatis and her employment was terminated as alleged.
21. It is the Respondent's case that the Claimant's employment came to an end on 17th February 2020 owing to its fixed term nature of a period of one year.
22. The Respondent avers that the letter dated 5th February 2020 was issued to the Claimant as an administrative reminder of the expiry date of her fixed term contract.

Evidence in Court

23. The Claimant (CW1) adopted her witness statements dated 12th January 2024 and 19th January 2024 as her evidence in chief and produced her documents as her exhibits.
24. During cross examination, CW1 testified that she was employed on a fixed term contract and she was a member of NSSF.
25. CW1 testified that she was injured at work and she went to hospital, however, she did not report the injury.
26. CW1 testified that her employment was terminated on account of her fixed term contract and not in relation to her back injury.
27. CW1 testified that her MPESA statements do not show she was being paid with the university. She was also testified that she was not tabled any witnesses to show she worked for the Respondent in 2018
28. CW1 testified that the minimum wage at the time was Ksh. 13,500 inclusive housing allowance, the Respondent paid her a total of Ksh. 15,000 which was increased to Ksh. 16,000.
29. The Respondent's witness (RW1) Jacinta Makau, stated that she works to the Respondent in charge of catering services. She adopted her witness statement dated 20th November 2024 as her evidence in chief and produced her list of documents dated even dated as her exhibits 1 to 10.



30. During cross-examination, RW1 testified that the Claimant had a medical cover and she is not aware of any injury she suffered.
31. RW1 testified that no theft occurred on 3rd February 2019.
32. RW1 testified that she went for her half day off in the week depending on her work schedule.
33. RW1 testified that the Claimant cleared earlier than 17th February 2020.

Claimant's Submissions

34. The Claimant submitted on four issues: Whether the Claimant was unlawfully and unfairly dismissed; whether the Claimant was under paid as a casual and as an employee under fixed annual contract; whether the Claimant ought to be awarded the prayers as sought; and cost of suit
35. On the first issue, the Claimant submitted despite the fact that the her fixed contract was almost up, the Respondent for one reason or another could not wait to throw her out and have her gone from the premises as soon as they possibly could. This is clearly evidenced by the Discharge and Indemnity voucher as well as the Clearance form that she was made to clear and have her out by 6th February 2020.
36. It is the Claimant's submission that employee clearance form is crucial to the employer as it ensures that all company property is returned and that financial matters are settled, which helps avoid legal or financial disputes and vice versa for the employee where it is a formal confirmation that all dues have been cleared and company property returned. The Claimant having done hers on the 6th February 2020 and handed it could only symbolize that she was no longer part of the Respondents institution.
37. On the second issue, the Claimant submitted that the disciplinary process was unfair on grounds that despite having sufficient knowledge he was unwell, the Respondent proceeded to call the Claimant on several occasions for a disciplinary hearing disregarding his health. Further, the Claimant was neither accorded sufficient time to prepare for the hearing nor furnished with any documents to rely on.
38. The Claimant submitted that the true reason for her dismissal originated from the events that happened on Saturday, 1st February 2020, when the Claimant while leaving work carried 4 chapatis together with 2 of hers, in total they were 6 chapatis that she had placed in her bag and carried was going to carry home for her hospitalized cousin. The Claimant was summoned by security about this and made to write the letter issuing an apology over the same.
39. The Claimant submitted that the matter albeit ridiculous as the institution more often than not throw away left over foods once the staff are done eating escalated the matter to the following work day on Monday and it is because of the 6 chapatis that the Claimant was eventually dismissed. The dismissal could have born a solid ground had she stole the Respondent's resources like flour or cooking oil; but carrying away food that still ended up in the bin was baseless.
40. The Claimant submitted that her dismissal was unfair as whilst the management was discussing this matter, at no given time was the Claimant summoned to even defend herself. She attempted to defend herself on Monday, 3rd February but the only time she was summoned was on Wednesday, 5th February when she was handed the termination letter. She relied in [*Kenya Union Of Commercial Food And Allied Workers v Meru North Farmers Sacco Limited*](#) [2014] KEELRC 813 (KLR) wherein the court held that whatever reasons for an employer to terminate an employee, that employee must be taken through the mandatory process as outlined under Section 41 of the [*Employment Act*](#).
41. The Claimant submitted that to further contribute to the unlawfulness and unfairness of the dismissal, she was not given a one-month notice prior to her termination and neither was she paid a full month's



salary in lieu of the notice. Therefore, the Respondent owes her total of Ksh. 21,141 which is the monthly minimum wage of Ksh. 15,141 plus the housing allowance of Ksh. 6,000.

42. It is the Claimant's submission that the termination was unfair was due to the Respondent human resource character, demeanor and choice of words when they learnt that the Claimant had joined the union that fight for the rights of workers. Further, this is an early dismissal as the clearance form had been filled and the Claimant was forced to sign and to which she had not consented.
43. On the second issue, the Claimant submitted that while working as a casual for 3 days a week from April to July 2018, she was paid 500/- instead of 653/- hence earning a cumulative total of Kshs 24,000 instead of Kshs. 31, 344. She continued as a casual worker from Monday to Saturday from August 2018 to February 2019 where she was paid 650 instead of 653 hence earning a cumulative total of Kshs. 101,400 instead of Kshs. 101,868. She then worked during probation for the months of February and March earning a salary of 15,000 inclusive of housing allowance instead of 15,141 plus housing allowance of 6,000; hence earning a cumulative salary of Kshs. 30,000 instead of Kshs. 42,282. Ultimately, her contract was confirmed contract and she worked from April 2018 to February 2019 earning a salary of 16,000 inclusive of housing allowance instead of 15,141 plus Housing allowance of 6,000 hence earning a cumulative salary of Kshs. 176,000 instead of Kshs. 338,256. The cumulative underpayment owed to the Claimant is Kshs 182,350.
44. The Claimant submitted that the court must not buy the Respondent's assertion that she was never hired as a casual as it is on facts that she worked for the Respondent as a casual since 2018. Aside from the fact that there is never any paper work to prove any work relation between a casual and an employer in most cases, the same goes for payments as one is paid at the end of the day either by cash or by through Mpesa. The Mpesa statements availed by the Claimant are meant to show that upon working if paid in cash or Mpesa she would either deposit on her number outside the institution or withdraw from her number depending on the intended use for the money.
45. It is the Claimant's submission that she was underpaid while working at the Respondent and based on the legal notices availed against the salaries as per the pay slips and as such due compensation for the same ought to be considered.
46. On the reliefs sought, the Claimant submitted that having satisfactorily established and demonstrated that she was unfairly and unlawfully dismissed, she ought to be granted the prayers sought.
47. The Claimant submitted that she takes responsibility that some of the figures as prayed do not tally or are not a true reflection of the fact due to the bad math. She therefore urges the court to award her: underpayment totaling to Ksh. 182,350; payment in lieu of termination notice totaling to Ksh. 21, 141 which is the monthly minimum wage of Kshs. 15,141 plus the housing allowance of Ksh. 6,000; 12-month salary for the unfair and unlawful termination all totaling to Ksh. 253,692; and any other orders it deem fit. Especially in light of the medical expense the Claimant had incurred and continues to this very day to incur.
48. The Claimants further prayed that the court be pleased to dismiss the prayer for the service pay as she is a member of the pension scheme, NSSF.

Respondent's Submissions

49. The Respondent submitted on four issues: whether the Claimant was unlawfully and unfairly dismissed from her employment; whether the Claimant was paid as per the Minimum Wage for the relevant period; whether the Claimant is entitled to the reliefs sought; and who should bear the costs of the suit.



50. On the first issue, the Respondent submitted that the Claimant was employed under a fixed-term contract for one year. Clause 1.1 of the contract expressly stipulates that employment commenced on 18th February 2019 and terminated on 17th February 2020 which the Claimant unequivocally acknowledged and accepted these terms upon execution, thereby binding herself to the contractual provisions. Consequently, the Claimant was fully aware that her contract would lawfully terminate on 17th February 2020. The duration of the contract was predetermined, and it lapsed by effluxion of time.
51. The Respondent placed reliance in *Kidero & 7 others v Shurie & 2 others* (Cause 893 of 2017) [2024] KEELRC 539 (KLR) (8 March 2024) (Judgment) wherein the court held:
- “The nature of a fixed-term contract is that it binds the parties for the term stated in the contract hence such a contract automatically lapses by effluxion of time. Differently expressed, the lifespan of the contract is already predetermined. It has a start and an end date.”
52. Based on this, it is the Respondent’s submission that the Claimant’s contract explicitly stipulated a fixed duration, commencing on 18th February 2019 and terminating on 17th February 2020 by effluxion of time. Having willingly executed the contract, the Claimant was bound by its terms and cannot validly claim unfair termination.
53. The Respondent submitted that the Claimant was subjected to unfair dismissal and the letter dated 5th February 2020 merely served as a reminder of the contract’s expiration, not a termination notice contrary to the Claimant’s assertion.
54. The Respondent submitted that the Claimant’s claim that she was directed to vacate the premises by 6th February 2020 is unsubstantiated and contrary to Section 107 of the *Evidence Act*, which dictates that “whoever alleges must prove.” The Claimant failed to provide any documentary evidence or witness testimony to support this allegation, while RW1 presented uncontested evidence confirming that the Claimant continued reporting to duty until 17th February 2020, when her contract lawfully expired.
55. The Respondent submitted that signing the Discharge and Indemnity Voucher constitutes evidence of unfair termination is untenable; RW1 testified that executing such documents before the contract’s termination date is standard practice. Moreover, the Claimant continued reporting to work until 17th February 2020, when her contract lawfully expired; the mere signing of these documents before the termination date does not substantiate the Claimant’s allegation of unlawful dismissal.
56. The Respondent submitted that the Claimant’s claim that she was expected to seek renewal of the contract is baseless, unsupported by evidence, and contrary to the express terms of the fixed-term contract, which carried no renewal expectation. It relied in the Court of Appeal case of *Registered Trustees of the Presbyterian Church of East Africa & another v Ruth Gathoni Ngotho-Kariuki* [2017] KECA 194 (KLR) wherein held:
- “Bearing the foregoing in mind, we note that fixed term contracts carry no rights, obligations, or expectations beyond the date of expiry.”
57. It is the Respondent’s submission that the Claimant’s contract ran its course and was not subject to renewal. The non-renewal cannot form the basis of an unfair termination claim.
58. The Respondent submitted that the Claimant’s allegation that she was dismissed from employment due to taking six chapatis from the cafeteria is false and unsubstantiated. RW1 confirmed in her testimony that the Claimant was a diligent employee with no record of misconduct. The Exit Interview



Form described the Respondent as a good working environment with a friendly family atmosphere, it is therefore inconceivable that the Claimant would provide such positive feedback if she had been unlawfully dismissed as alleged.

59. It is the Respondent's submissions that the Claimant's allegation that it denied her an opportunity to join a labour union is unfounded. The Respondent permits employees to join labour unions and the Claimant herself acknowledged satisfaction with workplace freedoms in the Exit Interview Form.
60. The Respondent submitted that the Claimant's claim for housing allowance lacks merit as her salary was inclusive housing allowance as evidenced in her pay slips.
61. On the second issue, the Respondent submitted that the Claimant was paid above the prevailing minimum wage as reference in the Minimum Daily and Hourly Rates (Inclusive Housing Allowance), 2018 which shows that a general labourer including a cleaner was entitled to a monthly sum of Ksh. 13,572.90. The Claimant received a monthly gross salary of Ksh. 15,000 which was increased to Ksh. 16,000 inclusive housing allowance, therefore the assertion that she was paid below the minimum wage is factually inaccurate and should be rejected.
62. It is the Respondent's submissions that the Claimant's allegation that she was underpaid while serving as a casual is untenable as she failed to produce any evidence to demonstrate she worked for the Respondent in such capacity. The Mpesa statements relied upon do not establish any payment from the Respondent during the alleged period but merely reflect withdrawals made at Fontana Services Strathmore University, an admission made by the Claimant during the cross-examination.
63. On the third issue, the Respondent submitted that the Claimant's payslips confirm deductions towards NSSF and SHIF demonstrating that she was covered under alternative retirement schemes. Section 35(5) of the *Employment Act* provides that service pay is a statutory entitlement granted to employees who are not members of a registered pension or provident fund, gratuity scheme Or the NSSF, as such, she is not entitled to service pay.
64. It is the Respondent's submission that it did not terminate the Claimant's fixed term contract but the same expired on 17th February 2020, therefore the Claimant is not entitled to pay in lieu of notice or the claim for compensation for unfair termination.
65. I have examined all the evidence and submissions of the parties herein. Given the evidence submitted, the claimant was an employee of respondent and served on a fixed term contract of one year with effect from 1st February 2019. The contract was due to expire on 17/2/2020.
66. The claimant alludes to events that occurred in February 2020 which necessitated her exit from employment the same month. The claimant contends that she was bundled out of employment before her due date.
67. The claimant signed a letter notifying her of the end of her fixed term contract i. 6th February 2020. There is no indication that the claimant was bundled out of office before 17/2/2020 as the letter rightfully informed her of the end of her contract on 17/2/2020. In fact, in cross-examination the claimant informed court that the contract came to an end and she was not terminated due to theft. The issue of unfair termination does not therefore arise.
68. The claimant has also averred that she was underpaid by the respondents. In cross examination however, she indicated that she was paid kshs 15,000/- gross and later kshs 16,000 gross with the minimum wage at the time being kshs 13,500 inclusive of house allowance.



69. The claimant however submitted that the amount of kshs 13,572 was for casuals yet she was on contract. I have looked at the wages guidelines of 2019 which show that wage for a cook then was kshs 14,658.85 minus house allowance and taking 15% of the kshs 14,658.88 as house allowance will make house allowance to be kshs 2,198.8275 and gross pay to be kshs 16,857.6775. If claimant was paid kshs 15,000/- and then kshs 16,000 it is true that she was underpaid in her contract year making her entitled to the balance of the amount for the one year = kshs $657.6775 \times 12 =$ Kshs 7892/-.
70. The claimant is also entitled to payment of her service pay = 15% of the $16,857.6775 \times 12 =$ Kshs 30,343.8/-.
- Total = Kshs 38,236/- less statutory deductions.
71. The respondents should 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 24TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

