



Awadh v Mukawa (Hotels) Holdings Limited t/a Nairobi Safari Club (Cause 2185 of 2024) [2025] KEELRC 2207 (KLR) (23 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2207 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2185 OF 2024
DKN MARETE, J
JULY 23, 2025

BETWEEN

SHEE G AWADH CLAIMANT

AND

MUKAWA (HOTELS) HOLDINGS LIMITED T/A NAIROBI SAFARI CLUB RESPONDENT

JUDGMENT

1. This matter arose out of a Statement/Memorandum of Claim filed on 10th October, 2012. It does not disclose any issue in dispute on its face.
2. The Respondent in a Memorandum in Response dated 26th January, 2015 denies the claim and prays that the same be dismissed with costs.
3. The Claimant's case is that at all material times to this cause, he was in the employ of the Respondent from 1st February, 2013. He was employed as Human Resource Manager on a two year contract confirmed on 1st May, 2013.
4. The claimant's further case is that on 22nd January, 2014 he was served with a letter of termination of his employment dated 21st January, 2014. The termination was with immediate effect. At the time of this separation he earned Kshs.120,000.00 per month. This, the claimant contends was unlawful and illegal on the following grounds.
 - i. No notice or at all was rendered to the claimant as contemplated by the *Employment Act, 2007* and the claimant was denied a hearing as contemplated by Section 42 of the *Employment Act*.
 - ii. The termination was without lawful cause or excuse.
 - iii. The termination was malicious and/or unfair.



5. The Claimant in his Affidavit in Support of the Claim and Claimant's Statement averred that his termination was unlawful, unfair and malicious. He stated that he had never been subjected to any disciplinary action, reprimand or performance-related warnings during his tenure. He further contended that the termination violated Section 41 of the *Employment Act*, 2007 which mandates a fair hearing before dismissal on grounds of misconduct, poor performance, or incapacity.
6. The Claimant further anchored his case on lack of procedural fairness in that the termination was effected without notice, hearing, or an opportunity to respond to the allegations of non-performance. This was also malicious and an act of retaliation in that the termination was precipitated by an incident involving immigration officers who visited the Respondent's premises to investigate an expatriate employee, Mr. Sanjeev Kumar Jaiswal, who was working without a valid permit. The Claimant alleged that the Finance Director, Mr. Tariq Sayani misrepresented facts to the management, blaming the Claimant for the immigration debacle thus leading to his dismissal.
7. Lastly, on the issue of breach of contract the claimant pleads in that the termination violated the fixed-term contract, which entitled the Claimant to remuneration for the unexpired period.
9. He prays as follows;
 - a. A declaration that the claimant's dismissal and/or termination of employment was unlawful, unfair and/or malicious in the circumstances.
 - b. Compensation for wrongful and/or unfair dismissal at 12 months' salary.
 - c. Kes.1,565,506 as tabulated above (exclusive of prayer (b) herein).
 - d. Costs
 - e. Any other or further relief this Honourable Court may deem fit to grant.
10. The Respondent in its Memorandum of Response dated 26th January 2015 and further elaborated in the Respondent's Written Submissions denied any wrongdoing. It admitted employing the Claimant but justified the termination on grounds of poor performance, negligence, and mishandling of the immigration incident.
11. The Respondent contended that the Claimant's dismissal was lawful and followed due process. This is on grounds that the Claimant had acknowledged receipt of his final dues amounting to Kshs. 182,560/- and signed a clearance form, thereby waiving any further claims. It is her further case that the Claimant's conduct during the immigration incident caused reputational damage and financial loss to the Respondent and also that the Claimant was not entitled to payment for the unexpired contract period, as such claims are speculative and unsupported by law.
12. The Respondent relied on case law, including the authority of *George Okello Munyolo v Unilever Kenya Limited* [2019] eKLR and *Kenya Kazi Services Ltd v Dickson Oniwaya Wasike & 42 Others* [2021] eKLR, to argue and submit that compensation for wrongful termination is capped at 12 months' salary and that claims for unexpired contract terms are untenable unless expressly provided in the contract.
13. The *Employment Act*, 2007 governs termination of employment disputes in Kenya. The key provisions relevant to this case are Sections 41 which requires an employer to notify and hear an employee before termination on grounds of misconduct, poor performance, or incapacity and Section 43 which mandates the employer to prove the reason(s) for termination with failure to do so rendering the termination unfair. This is besides Section 45 which defines unfair termination as one without a valid



reason or fair procedure and Section 49 which provides remedies for wrongful termination, including compensation capped at 12 months' salary.

14. On procedural fairness, the Claimant argued that he was not accorded a hearing or notice before termination, contrary to Section 41 of the Act. The Respondent did not produce any evidence of prior warnings, performance appraisals, or disciplinary proceedings to justify the dismissal. The termination letter merely cited "non-performance" without particulars.
15. In the authority of *Mary Mutanu Mwendwa v Ayuda Ninos De Africa-Kenya* [2013] eKLR, the court held that summary dismissal without due process is unlawful. Similarly, in *Kennedy Maina Mirera v Barclays Bank of Kenya Limited* [2018] eKLR the court emphasized that the employer must prove compliance with Section 41. The Respondent failed to discharge this burden.
16. With regards to the validity of reason(s) for termination, the Respondent alleged poor performance and negligence but provided no tangible evidence. The Claimant's Statement detailed his exemplary service including resolving longstanding staff grievances and ensuring compliance with labour laws. The Respondent's allegations appeared retaliatory, linked to the immigration incident rather than performance.
17. Section 45(2) of the *Employment Act*, 2007 provides that the employer must prove that the reason for termination was valid and fair. The Respondent's vague assertions did not meet this threshold. The section further defines unfair termination as one without a valid reason or fair procedure, while Section 49 provides remedies for wrongful termination, including compensation capped at 12 months' salary.
18. On the remedies sought, the Claimant's claim for 12 months' compensation under Section 49(1) (c) is justified given the abrupt and unfair termination. However, his claim for salaries covering the unexpired contract period (February 2014 to January 2015) is unsustainable. Courts, including in *Jamil Bora Bank Limited v Minnie Mbue* [2021] eKLR, have held that such claims are only permissible if expressly stipulated in the contract.
19. The respective cases of the parties tilt this matter in favour of the claimant. This is because having considered the pleadings, affidavits, submissions, and applicable law, the claimant's case far overwhelms that of the Respondent. I find that the Claimant's termination was procedurally unfair and substantively unjustified, the Respondent having violated Sections 41, 43, and 45 of the *Employment Act*, 2007. A case of unfair and unlawful termination of the employment of the claimant by the Respondent ensues. The Claimant is therefore entitled to the relief sought but not necessary in strata pleaded.
20. I am therefore inclined to allow the claim and order relief as follows;
 - i. A declaration be and hereby issued that the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.
 - ii. Eight (8) months salary as compensation for unlawful termination of employment.....Kshs 120,000.00 x 8monthsKshs.960,000.00
 - iii. Unpaid salary for 9 days in January, 2014.....Kshs34,838.70
 - iv. Untaken leave for 30 daysKshs.90,000.00
Total of claimKshs.1,084,838.70
 - v. The costs of the claim shall be borne by the Respondent.

DELIVERED, DATED AND SIGNED THIS 23RD DAY OF JULY 2025



D. K. NJAGI MARETE

JUDGE

Appearances:

1. Mr. Okumu instructed by Moses Mwakisha & Company Advocate for the Claimant.
2. Sandra Kavagi instructed by Oraro & Company Advocate for the Respondent.

