



REPUBLIC OF KENYA



KENYA LAW
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**Adejo v Kenya Kazi Limited (Cause E205 of 2025)
[2025] KEELRC 2150 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2150 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E205 OF 2025**

**AK NZEI, J
JULY 18, 2025**

BETWEEN

YEWANDE MABINUORI ADEOJO CLAIMANT

AND

KENYA KAZI LIMITED RESPONDENT

RULING

1. The Claimant sued the Respondent herein vide a Memorandum of Claim dated 4th March, 2025 and sought the following reliefs:-
 - a. A declaration that the Respondent unfairly and unlawfully terminated the Claimant's employment.
 - b. An order directing the Respondent to pay the Claimant:-
 - i. Compensatory damages for wrongful and unfair termination of employment calculated at 12 months' salary (12 x USD 5,666 per month)USD 67,992
 - ii. Severance pay at the rate of 15 days USD 2,833
 - iii. Pay in lieu of 3 months' noticeUSD 16,998.
 - iv. Pay in lieu of outstanding leave daysUSD 2,877
 - v. Relocation support USD 3,000
 - vi. USD 1,920 being notice period for lease termination.
 - vii. An order for refund of lease payments in the sum of USD 3,840, being lease payment for two months following the abrupt termination of employment.
 - viii. Bonus payment for the year 2024.



- ix. Exemplary damages for unfair labour practices and inhumane/degrading treatment.
- x. Costs of the suit.

2. The Claimant pleaded, *inter alia*:-

- a. that the Claimant, then based in the United Kingdom, was employed by the Respondent vide a letter of employment in the position of Digital Marketing, Content and Strategy Manager, and that the Respondent secured a work permit for the Claimant, on the basis of which she relocated to Kenya where she was required to discharge her contractual obligations.
- b. that following her relocation to a different country, the Claimant had to establish herself from the scratch and to start life in a new country.
- c. that hardly had the Claimant fully settled when she was called into a meeting convened by the Respondent's Human Resource Director on 15th January, 2025 and informed that her services would be terminated henceforth since the role she had been undertaking would, going forward, be undertaken from the parent company's headquarters located in Canada. That the Claimant's last day of work would be 17th January, 2025 (some 2 days later).
- d. that by a letter dated 11th February, 2025, the Respondent notified the Immigration Department that the Claimant was no longer their employee, and called upon the department to cancel the Claimant's work permit immediately.
- e. that the mode of termination of the Claimant's employment offended the provisions of Sections 40 and 45 of the Employment Act and Cardinal Principles of human dignity and fair labour practices as enshrined in Articles 28 and 41 of the Constitution of Kenya; as the Respondent's actions rendered the Claimant a complete destitute in a foreign country with no means to provide for her needs, to secure travel back to her country or to even seek alternative employment.
- f. that the Claimant rejected the Respondent's proposal contained in a document titled "Mutual Separation Agreement And Release" which the Respondent shared with the Claimant, and which the Claimant was required to sign in order to create the impression that both parties had agreed to mutually terminate the contractual relationship. That on perusing the said document, the Claimant noted that the Respondent had failed to include the correct reason for termination, which was redundancy, and on that basis failed to provide reasonable compensation.
- g. that a letter of demand was issued to the Respondent by the Claimant's Advocates, prompting the exchange of a series of correspondence. That it was whilst the negotiations were ongoing, with the Claimant having rejected the Respondent's proposal, that the Respondent shortly thereafter notified the department of immigration to forthwith revoke the Claimant's work permit as she was no longer the Respondent's employee. That the Respondent did this despite its assurances to the Claimant that she would be allowed reasonable time to get her footing before the permit could be revoked.
- h. that the act of asking the immigration department to revoke the Claimant's permit was retaliatory in nature following the Claimant's refusal of the Respondent's proposal, and was meant to bear pressure on the Claimant, knowing too well that she had no other means of survival.



- i. that the Claimant was forced to seek assistance from relatives and friends for her survival, and felt humiliated by the Respondent's actions.
 - j. that despite having abruptly terminated the Claimant's employment for no fault of hers and thereupon purporting to seek amicable solution, the Respondent was all along not acting in good faith, but was seeking to exploit the Claimant's condition in the belief that the Claimant would have no other option but to accept its proposal, in view of her prevailing circumstances.
 - k. that termination of the Claimant's employment was not preceded with a 3 months' notice in line with the contract or payment in lieu of thereof, and neither was the procedure provided in law followed.
 - l. that the Respondent's attempt of having the Claimant commit to termination of employment under the guise of mutual separation amounted to an unfair labour practice, while the abrupt revocation of her work permit and leaving her with no option of earning a living degraded her human dignity and subjected her to mental anguish and stress.
 - m. that at the time of termination, the Claimant was earning USD 5,666.
3. The Claimant's suit was filed contemporaneously with an urgent Notice of Motion dated 11th February, 2025, which the Court declined to certify as urgent. The application, expressed to be brought under Section 12 of the [Employment Act](#) and Rule 45 of the [Employment and Labour Relations Court \(Procedure\) Rules](#), and all enabling provisions of the law, seeks the following Orders:-
- a. That pending hearing and determination of the claim herein, the Court be pleased to order the Respondent to pay the Claimant the undisputed sums payable pursuant to the [Employment Act](#), following the declaring of the Claimant redundant, for the benefit [purpose] of the Claimant's basic survival, as follows:-
 - i. Severance pay at the rate of 15 days USD 2,833
 - ii. Pay in lieu of 3 months' notice USD 16,998
 - iii. Pay for days worked but not paid USD 3,912
 - iv. Pay in lieu of outstanding leave days USD 2,877
 - b. That in the alternative, the Court do order the Respondent to pay the Claimant such amount as the Court may deem necessary for the Claimant's survival pending hearing and determination of the suit.
 - c. That costs of the application be provided for.
4. The application sets out on its face the grounds on which it is brought, and is anchored on the Claimant's supporting affidavit sworn on 4th March, 2025. The said supporting affidavit re-states the averments made in the Memorandum of Claim filed herein and set out in paragraph 2 of this Ruling. It is specifically deponed in the said supporting affidavit:-
- a. that following termination of the Claimant's employment, and following a subsequent meeting between the Claimant and the Respondent's Mr. Komu during which the Claimant was assured that her work permit would not be revoked and that the Claimant would be allowed time to find her footing, the Respondent issued the Claimant with a document titled "Mutual Separation Agreement And Release". That the document was issued to the Claimant



after the Respondent indicated to her during the aforesaid meeting the amounts that the Respondent desired to pay to the Claimant.

- b. that dissatisfied with the manner of termination of her employment and proposed payment which did not take into consideration the unfair manner of termination, the Claimant sought legal Counsel, and a demand letter dated 24th January, 2025 was issued.
 - c. that parties thereupon exchanged correspondence, with the Respondent giving an offer which the Claimant believed was grossly unfair. That the Claimant wrote to the Respondent on 11th February, 2025 indicating that the Claimant had declined the offer.
 - d. that upon the said decline, the Respondent wrote to the Immigration Department to cancel the Claimant's work permit as she was no longer the Respondent's employee and did not require it for her stay in Kenya.
 - e. that termination of the Claimant's work permit was intended to bear pressure on the Claimant to accept whatever offer the Respondent was giving to her so that she could leave the Country.
 - f. that in the meantime, following her termination, the Claimant had no other means of survival, including even money to fund her travel back home. That the Claimant send an email to the Respondent, airing her desperation due to the manner in which the Respondent was handling her matter.
 - g. that the Respondent reverted/responded with the same offer that the Claimant had declined.
 - h. that the Claimant's Advocates wrote to the Respondent to consider paying the Claimant the amounts expressly provided for by law for termination on account of redundancy, which letter the Respondent did not respond to.
 - i. that the Claimant resorted to seeking assistance from relatives and friends as she could no longer work or travel, even as she instructed her Advocates to come to Court and seek recourse.
 - j. that the Claimant is now destitute, unable to work and fend for herself, or even afford a ticket to return back home or to terminate her lease, for which she has to pay and cannot afford.
5. Documents annexed to the said supporting affidavit include copies of the Claimant's employment contract executed by the Claimant and the Respondent, an electronic letter dated 15th January, 2025 inviting the Claimant for a "Comms Catchup" (meeting), a copy of a draft mutual separation agreement and release, a screenshot of the meeting invitation depicting an offer to the Claimant, a copy of a demand letter dated 24th January, 2025, a letter dated 11th February, 2025, a letter to the Immigration Department dated 11th February, 2025, the Claimant's email dated 17th February, 2025, the Claimant's Advocates letter dated 27th February, 2025, and the Claimant's emails to relatives and friends seeking assistance (as deponed by her).
6. The application is opposed by the Respondent vide a replying affidavit of Maureen Onyango, the Respondent's Legal Director, sworn on 5th May, 2025. It is deponed in the said replying affidavit:-
- a. that the Claimant seeks several heads of compensatory reliefs in her application, which are fundamentally compensatory in nature; and final under the guise of interim orders.
 - b. that the Claimant has not demonstrated an arguable case beyond preliminary assertion, dissipation or concealment of the Respondent's assets or irreparable harm that would justify interim monetary relief. That there has been no undertaking on damages offered to protect



the Respondent's interest in the event the Court later determines the Claimant's claim to be unfounded.

- c. that the Claimant has failed to produce any correspondence or agreement indicating that her relocation from the United Kingdom was initiated solely at the instance of the Respondent; or that the Respondent undertook to be responsible for her repatriation. That this is not evident from the contract.
 - d. that the Claimant's work permit automatically lapsed upon termination of her employment; and that the Respondent had no further obligation to regularise the Claimant's presence in the country, as this responsibility squarely rests with the Claimant.
 - e. that the sums claimed can only be awarded after a full hearing and determination of the substantive issues, including whether the Claimant's employment was terminated unlawfully and/or unprocedurally; and whether the Claimant is entitled to leave days and the number of those days, whether she qualifies for severance pay or notice pay, and whether she is owed any remuneration for days worked and not paid. That Clause 22 of the contract provides that payment of terminal dues be subject to presentation of evidence.
 - f. that the Claimant's last working day was 21st January, 2025, and that a gross salary of USD 4,598 (which corresponds to 21 days' gross pay, was paid to her, subject to statutory deductions.
 - g. that the Claimant was employed in the position of Digital Marketing, Content and Strategy Manager Africa, and that following strategic organizational structuring and a shift in business priorities across the Respondent's African operations, the Respondent decided to consolidate its regional marketing functions under a centralized global team; and that consequently, the Claimant's position was no longer aligned with the company's current operational models and objectives.
 - h. that in a meeting called to discuss restructuring of the Claimant's position, the Claimant expressed willingness to proceed with a mutual separation, provided that parties could agree on the terms.
 - i. that terms of separation were discussed and agreed with the Claimant and were reduced into writing for formalization; but on being issued with the mutually agreed separation agreement, the Claimant appeared to have sought legal advice and subsequently rejected the agreement, demanding additional terms that had neither been discussed nor agreed.
 - j. that the Claimant was paid her salary at the end of January 2025 following mutual termination of her employment, and that any other payment would have been made ex-gratia and in good faith, but which could not be paid as the Claimant reneged on the agreed upon terms.
 - k. that the Claimant's work permit automatically lapsed after termination of her employment pursuant to Sections 41(1)(b) and 45(2) of *Kenya Citizenship and Immigration Act*, and could not have been used lawfully for other employment thereafter.
 - l. that the Respondent's position is that as the Claimant's contract was terminated by mutual consent of parties and the Claimant consequently opted to file the current claim in Court, the Court has jurisdiction to determine what, if at all, the Claimant would be entitled to; as the Claimant.
7. A copy of what is shown to be the Claimant's payslip for January 2025 is annexed to the replying affidavit.



8. On 1st April, 2025, while the foregoing application pending determination before this Court, the Respondent filed an evenly dated urgent Notice of Motion seeking the following Orders:-
 - a. That there be a stay of proceedings pending hearing and determination of the application.
 - b. That the Court be pleased to order that the letter dated 19th February, 2025 listed as document No. 9 in the Claimant's list of documents dated 4th March, 2025 and attached to the Memorandum of Claim dated 4th March, 2025 be expunged and struck out from the record.
 - c. That the Court be pleased to order that paragraphs 13 and 20 of the Claimant's supporting affidavit sworn on 4th March, 2025, which refer to Annex YA-5 and Annex YA-8 respectively in the Claimant's supporting affidavit sworn on 4th March, 2025 and the Claimant's bundle of documents dated 4th March, 2025 be expunged and struck out from the record.
 - d. That the Court be pleased to declare that any information shared on a without prejudice basis is inadmissible, and the Claimant be prohibited to make any reference to thereto in the proceedings by way of affidavit, witness statement, submissions, pleadings or testimony.
 - e. That costs of the application be borne by the Claimant.
9. The application is expressed to be brought under Articles 31(d), 47, 48 and 50(4) of the Constitution of Kenya, Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act; and Section 23 of the Evidence Act. The Application sets out on its face the grounds on which it is based, which grounds are substantially replicated in the affidavit of Steve Mutiso Kimathi sworn on 1st April, 2021 in support of the application.
10. It is deponed in the said supporting affidavit:-
 - a. that the Claimant seeks to rely on "without prejudice" communication by her advocates, being letters dated 11th February, 2025, 19th February, 2025 and 27th February, 2025; which correspondence was exchanged during "without prejudice" negotiations. That reliance on the said letters will contravene the provisions of Section 23(1) of the Evidence Act.
 - b. that the Claimant's letters dated 11th February, 2025 and 19th February, 2025 refer to a counter-offer to which there was no acceptance; hence the letters remain without prejudice evidence and cannot be used by the parties in evidence.
11. The application is opposed by the Claimant vide her replying affidavit sworn on 7th April, 2025. It is deponed in the said affidavit:-
 - a. that the paragraphs sought to be struck out simply allude to existence of discussions by parties and what transpired; and that there is nothing [in them] breaching confidentiality. That the Paragraphs simply notify the Court that discussions were undertaken, and the outcome thereof.
 - b. that the letters dated 11th February, 2025, 19th February, 2025 and 27th February, 2025 are by the Claimant's Advocates, and therefore the Claimant's communication. That in law, a party is at liberty to waive the application of "without prejudice" upon themselves.
 - c. that the Claimant has not attached [to her application] any correspondence by the Respondent marked "without prejudice".
 - d. That during negotiations, parties agreed that the Claimant should be paid severance pay, 3 months' pay in lieu of notice, accrued but unutilized leave days, relocation support and



notice period for lease termination; and that this agreement was confirmed by the Claimant's Advocates' letter dated 11th February, 2025 (Marked YA-5), which the Respondent seeks to have struck off.

- e. that the foregoing items had also been proposed by the Respondent through Clauses 3 and 4 of the Draft Mutual Separation agreement; hence there was fundamental agreement on items to be paid. That the only disagreement was on the issue of compensation for unlawful termination of employment.
- 12. Annexed to the replying affidavit is a copy of the Respondent's Advocates' letter dated 10th February, 2025 and written on "without prejudice" basis, making specific monetary offers to the Claimant.
- 13. The Respondent filed a further affidavit sworn by Maureen Onyango on 5th December, 2024, whose contents I have noted and considered.
- 14. On 11th April, 2025, I directed that the foregoing two applications, dated 4th March, 2025 and 1st April, 2025 respectively, be heard together (simultaneously), and be canvassed by way of written submissions. Both parties have filed their respective written submissions, and I will proceed to determine the applications, starting with the Notice of Motion dated 1st April, 2025.

The Notice of Motion dated 1st April, 2025

- 15. Orders sought in the Notice of Motion dated 1st April, 2025 are set out at paragraph 8 of this Ruling. The Respondent seeks to have some documents filed in support of the Claimant's suit herein struck off before pre-trial directions on the suit are taken in accordance with this Court's Rules of Procedure. Rule 40(1) of the *Employment and Labour Relations Court (Procedure) Rules 2024* provides as follows:-

- "(1) The parties to a suit shall, within fourteen days after the close of pleadings or such other period as the Court may, on application direct, move the court to hold a pre-trial conference to ascertain:-
 - a. points of agreement and disagreement;
 - b. the possibility of alternative dispute resolution or any other form of settlement.
 - c. whether evidence is to be oral or by affidavit.
 - d. the discovery and the exchange of documents, and the preparation of a paginated bundle of documents in the chronological order.
 - e. whether evidence on affidavit will be admitted with or without the right of any party to cross examine the deponent.
 - f. the manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or parts of documents will serve as evidence of what they purport to be; . . .
 - g. . . .
 - h. . . .
 - i. . . .



- j. ...
- k. ... “

16. Pleadings in the suit herein are not shown to have closed, and the Court is yet to be moved to hold a pre-trial conference and to ascertain, inter-alia:-

“The manner in which documentary evidence is to be dealt with, including any agreement on the status of documents and whether documents, or any parts of documents, will serve as evidence of what they purport to be.”

17. The Respondent appears to be attempting to put the cart before the horse; in view of the foregoing Rule. Let the Respondent file all its pleadings forthwith, if it has not yet done so. That way, pre-trial directions will be taken and appropriate orders will be given on any document said to be inadmissible for any lawful and/or valid reason. Otherwise, the Notice of Motion dated 1st April, 2025 is pre-mature, and therefore incompetent; and is hereby dismissed. Costs of the application shall be in the suit.

18. It ought to be noted, however, that having noted the Respondent’s intention to object to the admissibility of the Claimant’s Advocates’ letters in issue, dated 11th, 19th and 27th February, 2025 respectively, the Court will not consider and/or refer to the said documents in determining the Claimant’s Notice of Motion dated 4th March, 2025. The admissibility or otherwise of those documents will be considered at the appropriate stage of the proceedings herein.

The Notice of Motion dated 4th March, 2025

19. Orders sought in the Claimant’s Notice of Motion dated 4th March, 2025, and matters deponed to in support of and in opposition to the application, have already been set out elsewhere in this Ruling; and I have fully considered the same. The Claimant’s said application is not articulate on the nature of the orders that the Claimant is seeking. Is she seeking Judgment and/or partial Judgment on admission; and is there a clear admission of any part of the Claimant’s liquidated claim by the Respondent? Are there any undisputed unpaid salaries that were due at the time of the undisputed termination of the Claimant’s employment? Are there some dues that are expressly provided for in law and are payable to the Claimant which both parties have agreed on but which remain unpaid as the Claimant suffers the effects of abrupt termination of her employment? These are some of the questions which arise, in view of the affidavits filed in Court and the general nature of the Claimant’s application.

20. This Court is a specialised Court, and it acts without undue regard to technicalities. Section 20(1) of the *Employment and Labour Relations Court Act* provides as follows:-

“

“(1) In any proceedings to which this Act applies, the Court shall act without undue regard to technicalities.

Provided that the Court may inform itself on any matter it considers just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.”

21. The Claimant deponed as follows in her supporting affidavit:-

“(10) That following the termination of my services, the Respondent’s Mr. Komu then informed me that the company would not immediately terminate the work permit it had



procured for me to allow me time to find my footing, and in the meantime he then issued me with a document titled “mutual Separation Agreement And Release”; and this followed a meeting I had had with him following the termination by which he had indicated to me the amounts the Respondent desired to pay to me. Annexed hereto as YA-3(a) is a copy of the draft agreement and 3(b) a screenshot of the meeting depicting the offer.”

22. The admissibility of the aforementioned two documents given to the Claimant by the Respondent, that is a written offer (as per the screenshot marked YA-3(b) and the draft agreement (YA-3(a)) has not been challenged by the Respondent. The offer (dated 8th January, 2025 – YA-3(b)) contains the following figures:-

- a. January 2025 USD 5,666
- b. Notice period USD 16,998
- c. Pay in lieu of leave not taken USD 1,397
- d. Relocation support USD 3,000
- e. Ex-gratia payment USD 11,332

23. The contents of the aforesaid offer by the Respondent and the draft agreement have not been disputed by the Respondent. It is deponed as follows in the Respondent’s replying affidavit (sworn by Maureen Onyango):-

“ 11. . . . Thereafter, the terms of the separation were discussed and agreed with the Claimant and subsequently reduced into writing for formalization. Upon issuance of the mutually agreed-upon separation, the Claimant appears to have sought legal advice and subsequently rejected the agreement, demanding additional terms that had neither been discussed nor agreed upon . . . ”

24. In my view, the fact that the Claimant made additional claims which the Respondent was not keen on paying did not mean that the Claimant could not be paid the agreed/undisputed dues; and especially the liquidated dues that are expressly provided for in law. Termination of the Claimant’s employment by the Respondent is not disputed. What is disputed is the nature of the termination.

25. In the present application, the Claimant seeks payment of severance pay at the rate of 15 days (USD 2,833), payment in lieu of 3 months’ notice (USD 16,998), pay for days worked but not paid (USD 3,912) and pay in lieu of outstanding leave days (USD 2,877); as agreed by and between the parties.

26. In all fairness, notice pay and payment in lieu of outstanding leave days will have to be paid as shown to have been agreed between both parties, even as the other agreed and unagreed items/issues await full trial of the suit.

27. Having considered written submissions filed, the Claimant’s Notice of Motion dated 4th March, 2025 is hereby allowed in the following terms:-

- a. The Respondent shall forthwith make the following payments to the Claimant:-
 - i. Payment in lieu of notice USD 16,998
 - ii. Payment in lieu of leave not taken USD 1,397
- b. The suit shall be fast-tracked, and shall be heard on priority basis.



c. Costs of the application shall be in the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY 2025

AGNES KITIKU NZEI

JUDGE

Order

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

Appearance:

Mr. Maondo for the Claimant/Applicant

Miss Mabago for the Respondent

