



**King'ori v Nawiri DT Sacco Limited (Cause E002 of 2024)  
[2025] KEELRC 2109 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2109 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
CAUSE E002 OF 2024  
ON MAKAU, J  
JULY 17, 2025**

**BETWEEN**

**PETER NJUGUNA KING'ORI ..... CLAIMANT**

**AND**

**NAWIRI DT SACCO LIMITED ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. By a statement of claim dated 29<sup>th</sup> January 2024, the claimant sought the following reliefs: -
  - a. A declaration that the claimant was unfairly and unlawfully constructively dismissed by the Respondent.
  - b. Compensation for unfair and unlawful termination equivalent to twelve (12) months salary of the claimant at the time of his termination 01.09.2023, to wit Kshs.1,560,000.00
  - c. Damages for breach of the contract in the sum of Kshs.3,770,000.00 on account of legitimate expectation for the remainder of the 29 months the claimant would have served under the contract were it not for the unlawful termination by the respondent as explicit herein.
  - d. One-month payment in lieu of notice Kshs.130,000.00
  - e. General damages for discrimination, frustration, embarrassment and suffering Kshs.1,000,000.00
  - f. Interest on b), c), d), e) and f) above
  - g. Certificate of service.
  - h. Costs of the suit.



- i. Any other remedy that the court shall determine.
2. The respondent opposed the claim vide a Response to claim dated 13<sup>th</sup> May 2024. The pleadings were closed after the claimant filed a Reply to the respondent's Response to the claim.

## **Background**

3. The claimant was employed by the respondent as Operations Manager from 1<sup>st</sup> February 2023. His gross salary was Kshs.130,000 per month. He was placed on six months' probation. He missed work on three occasions on account of sickness and that did not go down well with the respondent. On the third occasion, he was accused of absence from work without permission from 7<sup>th</sup> -25<sup>th</sup> August 2023. He was served with a show cause letter dated 15<sup>th</sup> August 2023 and thereafter he was dismissed vide a letter dated 25<sup>th</sup> August 2023.
4. The claimant averred that he fell ill and the respondent sent Credit Risk Manager James Mbeu and IT Manager Benjamin Daka to visit him on 8<sup>th</sup> August 2023. On 9<sup>th</sup> August, he became worse and visited hospital where he was admitted until 13<sup>th</sup> August 2023 when he was discharged. He was however given three days sick off and medical report which he gave James Mbeu at the hospital. All through he kept communicating and updating his CEO and the HR Manager via WhatsApp texts.
5. He reported back to work on 15<sup>th</sup> August 2023 but the CEO served him with a show cause letter dated the same date and he was further given a compulsory leave of five days to report back on 21<sup>st</sup> August 2023. His office keys were also taken away and thereby denied access to the office. He averred that he responded to the show cause letter vide his letter dated 17<sup>th</sup> August 2023 explaining his medical condition.
6. When he reported back on 21<sup>st</sup> August 2023, the CEO told him to go back home and wait for the feedback. He complied and on 28<sup>th</sup> August 2023, the company driver delivered to him a termination letter. The letter was dated 25<sup>th</sup> August 2023 and it was conveying a decision of the Board made on 24<sup>th</sup> August 2023. He averred that the termination was unfair and unlawful because there was no valid reason and he was never accorded a hearing before the termination. He also averred that as at the time of termination he was not on probation.
7. The respondent maintained that the claimant absented himself from work on three occasions, 2<sup>nd</sup> to 4<sup>th</sup> May 2023, 6<sup>th</sup> to 9<sup>th</sup> June 2023 and 7<sup>th</sup> to 14<sup>th</sup> August 2023 only to report back on 15<sup>th</sup> August 2023 alleging that he was on sick off for three days. On 15<sup>th</sup> August 2023 he was served with show cause letter to explain why disciplinary action should not be taken against him and he was expected to respond by Friday 18<sup>th</sup> August 2023 and report back on 21<sup>st</sup> August 2023 but he neither responded to the show cause letter nor reported back from the 5 days leave on Monday 21<sup>st</sup> August 2023. Instead, he posted the show cause letter on the Respondent's Senior Manager's WhatsApp group.
8. The respondent averred that it's Board met on 24<sup>th</sup> August 2023 and resolved that it will not confirm the claimant in the position of Operations Manager because of his conduct of absenting himself from duty during the probation period. It is the respondent's case that the WhatsApp text by the claimant to the CEO on 10<sup>th</sup> August 2023 at 5.42pm does not help the claimant's case because he was absent without permission or communicating his whereabouts from 7<sup>th</sup> -9<sup>th</sup> August 2023.
9. The respondent maintained that the termination was done during the probation period after the claimant squandered the chance to defend himself after being served with a show cause letter on 15<sup>th</sup> August 2023. Therefore, the court was urged to dismiss the suit with costs.



10. During the hearing, the claimant testified as CW1 and called no other witnesses while the respondent called its HR Manager, Ms. Rose Nancy Waithaka as RW1. The two witnesses adopted their written statements and produced bundles of documents as exhibits. Their evidence echoed the facts summarised above.
11. In brief, the claimant admitted that he missed work after falling sick on 7<sup>th</sup> August 2023, and failed to communicate in the morning because he was not able to do so until evening. He further stated that the following day the CEO sent James Mbeu and Benjamin Daka to visit him at home and he sent them to explain to the CEO about his condition.
12. He further testified that he was admitted in hospital on 10<sup>th</sup> August 2023 and he notified the HR Manager and the CEO via WhatsApp texts. He was discharged on 13<sup>th</sup> August 2023 and placed on sick off for 3 days. The medical documents were taken by the credit Manager to the HR Manager. He reported to work on 15<sup>th</sup> August 2025 when he was served with a show cause letter and granted leave of 5 days.
13. He admitted that he fell ill from 2<sup>nd</sup> - 4<sup>th</sup> May 2023 and he presented the medical evidence from Equity Hospital. No warning was given to him by the CEO for that absence.
14. He admitted that from 7<sup>th</sup> -14<sup>th</sup> August 2023 he was absent due to illness and he was issued with show cause letter on 15<sup>th</sup> August 2023. He responded by letter dated 17<sup>th</sup> August 2023, which he gave to the secretary of the CEO because the CEO, and other officers were away at the Safari Park.
15. He admitted that he posted the show cause letter on the staff WhatsApp group and made brief comments about the HR Manager reaching out to his wife in March when he was sick. He maintained that he responded to the show cause letter, presented medical evidence to the employer and that he never received any complaint about his absence while away. He maintained that he was dismissed without being accorded any disciplinary hearing.
16. RW1 admitted that James Mbeu is the Credit Risk Manager and Benjamin Daka is the ICT Manager of the Sacco, and the two managers are still working there. She denied having communicated with the claimant via WhatsApp but she admitted that she once contacted his wife via normal SMS text when he failed to attend work and his phone was off.
17. She contended that the claimant was given 2 verbal warnings by the CEO in her presence for absenting himself from work in May 2023. Thereafter, he was dismissed for absenting himself without permission in August 2023. Before the dismissal, the claimant was served with a show cause letter and he failed to respond or to report back to work on the scheduled date.
18. She admitted that the termination letter did not mention that the claimant failed to respond to the show cause letter. She further admitted that SMS texts are proper means of communication but maintained that an employee is still required to fill sick leave forms thereafter. She admitted that she received the SMS texts on page 5 and 6 of the respondent's bundle of documents.
19. After the hearing, both sides filed written submissions. I have considered the pleadings, evidence and submissions. There is no dispute that the claimant was employed by the respondent as its operations manager from 1<sup>st</sup> February until 28<sup>th</sup> August 2023 when he received a termination letter. The issues for determination are: -
  - a. Whether the termination occurred during probation period.
  - b. Whether the termination was unlawful and unfair.



- c. Whether the reliefs sought are merited.

### **Probation period**

20. It is a fact that the claimant was to serve 6 months' probation period from the date he started work. He started working on 1<sup>st</sup> February 2023 and as such the 6 months' probation period ended on 31<sup>st</sup> July 2023. Consequently, I find that the termination of the claimant's employment was not done during his probation period.

### **Unfair and unlawful termination**

21. Section 45(1) & (2) of the [Employment Act](#) provides that: -

- “(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 and compatibility; or
- (ii) based on the operational requirements of the employer; and
- (c) that the employment was terminated in accordance with fair procedure.”

22. It follows that for termination to pass muster, it must be standing on a valid reason(s) and a fair procedure must be followed. In this case, the termination letter dated 25<sup>th</sup> August 2023 cites the reason for termination as follows: -

“You absented yourself from duty on 2<sup>nd</sup> to 4<sup>th</sup> May 2023, 7<sup>th</sup> -9<sup>th</sup> June 2023 and on 7<sup>th</sup> to 25<sup>th</sup> August 2023 without knowledge and permission from your immediate supervisor.

By doing this you contravened our Human Resources Policy Clause No.8.2 which states that employee shall notify their immediate supervisor or Manager when leaving or not in the office during working hours ...

Also note that Clause 7.1 of the Human Resource policy on absence without leave clearly states that any employee who absents himself/herself from duty without permission for seven days and above will be terminated from employment.

Based on our assessment, we wish to advise you that your character is questionable and your actions amount to gross misconduct as per the [Employment Act](#)

...”

23. Having considered the evidence adduced, there is evidence that the claimant fell ill in the dates cited in the termination letter. There is also unrebutted evidence that he fell ill while at home and therefore he could not fill leave forms before taking a break. There is further unrebutted evidence that he notified the CEO about his illness in the afternoon of 7<sup>th</sup> August 2023. It is also uncontested evidence that the



CEO sent Mr. James Mbeu and Benjamin Daka to visit the claimant at his home on 8<sup>th</sup> August 2023 and also in the hospital when he was admitted from 10<sup>th</sup>-13<sup>th</sup> August 2023. Finally, the claimant presented his medical evidence to the employer through the Credit Risk Manager at the hospital upon discharge.

24. Having considered the above evidence, I find that the claimant's absence from work was not deliberate but due to illness. The claimant notified his supervisor, the CEO via SMS texts and also through colleagues (Senior managers) who were sent by the CEO to visit him. In the circumstances, I must hold that the claimant had a lawful cause for absencing himself from work and as such the employer has not proved a valid and fair reason for terminating his employment.
25. As regards the procedure followed, there is no doubt that the claimant was not accorded a hearing before the termination. He was served with show cause letter and sent on compulsory leave of 5 days from 15<sup>th</sup>-21<sup>st</sup> August 2023. He contended that he responded to the show cause letter on 17<sup>th</sup> August 2023 vide a letter that he left with the CEO's secretary because the CEO was away to Safari Park with other officers.
26. The CEO's secretary has not been called to dispute the above allegation. Likewise, the CEO has not denied that he was in Safari Park on the said date. Consequently, I find that the claimant's allegation that he responded to the show cause letter dated 17<sup>th</sup> August 2023 has not been rebutted. Consequently, I find that the respondent ought to have accorded the claimant a fair hearing as contemplated under section 41 of the Employment Act which provides that: -

“(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.”

27. Failure to accord the claimant a hearing as per the above provision rendered the procedure followed unfair. Even if the respondent had good reason not to confirm the claimant in the position of Operations Manager, which I agree is very sensitive in a financial institution, a hearing was mandatory before deciding on the separation.
28. It follows that, since the employer has failed to prove a valid reason for terminating claimant's employment, and further failed to follow a fair procedure, I must now hold that the termination was both unfair and unlawful.

## Reliefs

29. In view of the foregoing, the claimant is entitled to a declaration that, his employment was unfairly and unlawfully terminated. He prayed for 12 months' salary as compensation for the unfair termination but I award him only one-month salary considering that he had served less than seven months. I have also considered that he had a history of absenteeism due to illness even during his probation period.
30. He is further entitled to one-month salary by dint of section 35(1)(c) of the Employment Act, 2007.



31. The claim for lost salary and general damages is declined because it is not founded on the law or contract of service. However, the claimant is entitled to certificate of service and costs of the suit.

**Conclusion**

32. The claimant was unfairly and unlawfully dismissed and I enter judgment for him as follows:

- a. Notice .... Kshs.130,000.00
- b. Compensation ..... Kshs.130,000.00  
Kshs.260,000.00
- c. The award is subject to statutory deductions.
- d. The claimant will have costs plus interest from the date of this judgment.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 17<sup>TH</sup> DAY OF JULY, 2025.**

**ONESMUS N MAKAU**

**JUDGE**

**ORDER**

This judgment has been delivered to the parties via Teams video conferencing with their consent, having waived compliance with Rule 28 (3) of the [ELRC Procedure Rules](#) which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**ONESMUS N MAKAU**

**JUDGE**

