



**Mumali v Blink Studio Limited (Cause E080 of 2022)
[2025] KEELRC 2112 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2112 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E080 OF 2022**

**B ONGAYA, J
JULY 17, 2025**

BETWEEN

BILLY FANUEL MUMALI CLAIMANT

AND

BLINK STUDIO LIMITED RESPONDENT

JUDGMENT

1. The memorandum of claim dated 08.02.2022 was filed through Aziz & Associates Advocates. It was for judgment against the respondent for:
 - a. A declaration that the termination of the claimant's employment was unfair and unlawful.
 - b. The respondent be ordered to pay the claimant Kshs. 3,832,190.78 for unfair termination as per paragraph 13 being:
 - i. 12 months compensation Kshs.2, 316,689.64.
 - ii. Severance pay for 9-years Kshs.868, 758.62.
 - iii. Bonus for the year 2021 Kshs.193, 057.47.
 - iv. House allowance 9 years x 15% basic pay Kshs.260, 627.58.
 - v. One month leave pay Kshs.193, 057.47.
 - c. Refund of pension contribution deducted over the years for the claimant.
 - d. Costs of the suit for the claimant plus interest thereon at court rates.
 - e. The respondent to issue the claimants with a Certificate of Service.
2. The claimant's case was as follows:



- i. The respondent employed the claimant as a Designer from 01.12.2012 to 30.11.2021. At the time of termination of his employment, the claimant was earning a basic pay of Kshs. 193,057.47 per month without house allowance.
 - ii. It was a term in the claimant's contract that a bonus would be payable at the end of each calendar year, equivalent to one month's salary. However, the same was never paid for the period January to December 2021 and is therefore due and owing.
 - iii. On 29.10.2021, the claimant was issued with a letter terminating his employment effective 30.11.2021, was forced to clear with the relevant department and was dismissed without being issued with a certificate of service as required in law.
 - iv. The termination of the claimant's employment was unlawful and abrupt. There was no fair and or valid reason to terminate his services, and the respondent failed to accord him a hearing before effecting the said termination. Additionally, the respondent did not issue him with notice before the termination, and failed to pay him his terminal and accrued dues upon termination.
 - v. The respondent's act in unlawfully terminating the claimant's employment services was based on an ulterior and improper motive, was malicious, and warrants an award of aggravated damages from the Court.
 - vi. Consequently, the claimant seeks from the respondent terminal dues comprising 12 months' salary compensation, severance for years worked, bonus for the year 2021, house allowance, and one month's leave pay, as particularised in the memorandum of claim.
3. The respondent's statement of response to memorandum of claim & counterclaim dated 13.04.2022 was filed through Mburugu & Kanyonge Associates Advocates. The respondent prayed for judgment against the claimant as follows:
- A. A declaration that the claimant was in breach of the contract of employment.
 - B. General damages for breach of employment contract.
 - C. A declaration that the claimants absconded duty.
 - D. An order directing the claimants to return all property belonging to the respondent.
 - E. A mandatory injunction restraining the claimants from using, sharing or disclosing any information or trade secrets of the respondent acquired while in employment.
 - F. The costs of the claimants' suit and the respondent's counter-claim together with interests thereon at court rates be paid by the claimants.
 - G. Any other orders this Honourable Court may deem fit and just to grant in the interest of justice.
4. The respondent's case was as follows:
- i. The claimant's salary was negotiated and was inclusive of all applicable allowances and emoluments. Furthermore, all bonuses payable under contract were subject to individual performance and the company's general performance. The claimant was therefore not automatically entitled to a bonus in December 2021.



- ii. Since the claimant absconded from duty, a letter of termination was sent to his last known address. The issuance of a certificate of service to him was not effected as his whereabouts were unknown, and the respondent had never cleared him.
 - iii. The claimant absconded from duty and failed to communicate his whereabouts from September 2021, and the communication of termination of his employment was a mere formality.
 - iv. The claimant never responded to communication from the respondent on various issues, including the status of his employment, thereby demonstrating that he was no longer interested in continuing his employment with the respondent. By conduct, he contemptuously breached the terms of his contract.
 - v. Further, in counter-claim, numerous concerns were raised about the claimant's productivity, quality of work and general work attitude, but did not receive any response. When the technical team returned to in-person work in March 2021, the claimant failed and/or neglected to return to work.
 - vi. The claimant also failed to attend a mandatory ISO 9001:2015 External Audit exercise held on 27.09.2021, despite knowing its importance. He similarly, without reason, failed to attend an important and mandatory ISO 9001:2015 Awareness and Internal Auditors Training scheduled for both in-person and virtually on 18th, 19th, 21st and 22nd October, 2021.
 - vii. In disregard of his terms of contract, the claimant overtly and blatantly engaged and worked for the respondent's competitors, whose work he advertised on social media sites.
 - viii. The claimant has refused and continues to use the respondent's CAD workstation computers worth over Kenya Shillings One Million each, causing the respondent grave losses.
5. The claimant then filed a reply to respondent's response to claim and response to counter-claim dated 01.08.2022, praying that the counter-claim be dismissed with costs. He denied the respondent's assertions and further averred as follows:
- i. Parties herein have always been in constant communication with each other via email, and since the claimant eventually received his original termination letter, the certificate of services should have similarly been issued to him by the respondent.
 - ii. The claimant replied to all correspondence or communication from the company, and the issue of computers was raised as an afterthought to blackmail him.
 - iii. The claimant's work has always been remote-based, even before the COVID pandemic and until the time of resignation, and the same was never part of the reason for his unlawful termination from employment.
 - iv. The claimant's department was under the technical team and an add-value service to the projects being undertaken, and at no point did the company ever communicate that the subject meetings were mandatory for his attendance. In any case, such meetings and ISO audits were still conducted without his presence from the time he was employed by the respondent, without any notice being issued to him to show cause for such absence.
 - v. As the company's directors and the claimant formed another company offering similar services to other clients, the directors are precluded by conduct from raising any such issues in the instant case, and the same shows how malicious the company is.



- vi. The CAD workstations are properties of IDENT Limited, the said company formed between the respondent's directors and the claimants as part of their contribution. The said workstations are not worth Kshs. 1 million as alleged, and the claimants are nevertheless willing to donate them to the respondent.
6. The claimant testified to support his case and the respondent's witness (RW) was the respondent's Director, Peter Wasilwa. The parties filed their respective final submissions. The Court makes findings as follows.
7. To answer the 1st issue the parties are in agreement that they were in a contract of service. The respondent employed the claimant as a Creative Designer. The initial gross salary was Kshs.149, 000.00 raising to Kshs. 193,057.47 per month. The contract was signed on 01.08.2012.
8. To answer the 2nd issue, the Court returns that the employment contract was terminated by the letter of notice of termination of employment dated 29.10.2021 and effective 30.11.2021. The reason for termination was stated in the letter thus "We are cognizant of the significance of this decision and be assured that it was reached after considerable deliberation and analysis of our working relationship and your role in Blink Studio Ltd. We have concluded that this arrangement is no longer productive to either party and thus needs to be discharged."
9. To answer the 3rd issue, the Court finds that the termination was not unfair both in procedure and merits. The Court particularly returns as follows:
 - a. The claimant testified and confirmed that he received a written communication to all staff requiring a mandatory ISO 9001:2015 External Audit exercise held on 27.09.2021. Further evidence was that he similarly, without reason, failed to attend an important and mandatory ISO 9001:2015 Awareness and Internal Auditors Training scheduled for both in-person and virtually on 18th, 19th, 21st and 22nd October, 2021. The claimant's explanation was that the training was not relevant or useful to his role and he did not need to attend. However, the Court finds for the respondent that the training was mandatory and per the testimony of RW it was required for maintaining quality assurance standards by the respondent in its service delivery. The contract of employment specifically provided in clause 4 that the claimant was to satisfactorily deliver outcomes normally associated with his position including but not limited to, inter alia, "Be committed and adhere to the current company's Quality Management System". Clause 18 provided that the respondent may require the claimant to attend, from time to time, training courses or development programs in order to improve skills, knowledge or experience – the attendance being at the discretion and expense of the respondent. The Court finds that by failing to attend the trainings as notified, the claimant breached the mandatory job description on being committed and adhering to the respondent's quality management system, and the requirement to continuously improve his performance by attending the training as required by the respondent and at the respondent's expense.
 - b. The Court finds that the claimant failed to attend physically at work as was agreed and expected. The contract in clause 5 provided for 45 hours of work for Monday – Friday from 0755 hours to 17 30 hours with a 60-minute lunch break commencing at 1306 hours. The necessary implication was that he had to attend at office during the working hours as was agreed.
 - c. The claimant admitted that he was bound by the confidentiality clause 17 of the contract not to divulge confidential information to anyone. He testified that he was engaged in a very sensitive contract involving the government for which he swore a secrecy oath not to divulge



any information relating to the work. He confirmed he participated in the project and he confirmed the respondent's accusation that he divulged the information in breach of the confidentiality oath and clause.

- d. The Court has considered the foregoing evidence in (a), (b) and (c) and returns that the respondent has established that the claimant's conduct amounted to breach of the respondent's operational requirements and the claimant thereby became unsuitable or not compatible for continued employment as envisaged in section 45 of the *Employment Act, 2007*. The Court finds that in the circumstances, including the claimant's admission that he was not reporting at work (in misconceived view that he was entitled to work from home), the respondent's stated reason for termination that the arrangement was no longer productive to either party and thus needs to be discharged is found to have existed as genuine per section 43 of the Act and it was fair. The claimant had absconded and it was just that the respondent deems the contract to have come to an end.
- e. The Court considers that in the circumstances the respondent had adopted a fair procedure to terminate as envisaged in sections 42(1) and 45 of the Act. As submitted for the respondent, desertion occurs when an employee by remaining absent for an extended period, manifests by his conduct an intention never to resume his employment. In *Kenya Union of Domestic, Hotels, Educational Institutions & Hospital Workers v Cool Rivers Hotel Ltd [2017] KEELRC 1018 (KLR)* where Radido J held as follows:

- “ 10. The question of what constitutes desertion in employment law is not a straight forward one.
11. Desertion is not the same as being absent from the place appointed for work without permission or lawful cause as envisaged under section 44(4) (a) of the *Employment Act, 2007*.
12. It needs no debating that absence without permission or lawful cause attracts summary dismissal. But the employee who is absent has no intention of not resuming work.
13. Desertion on the other hand in employment law is a repudiation of the contract of employment. The employee who deserts is in breach of contract and an employer is entitled to dismiss him on the ground of repudiation of contract. This is because he has no intention of turning up for work.
14. Repudiation of contract, as a general rule in common law, does not terminate an employment contract. The innocent party should accept the repudiation (see my decision in *Philomena Aromba Mbalasi v Uni-Truck World Ltd (2015) eKLR* citing with approval *London Transport Executive v Clarke (1981) IRLR 166*).
15. The Court also wishes to observe that in *Geys v Societe Generale, London Branch (2012) UKSC 63*, the Supreme Court of the United Kingdom confirmed the principle that a repudiated employment contract does not end until the repudiation is accepted.
16. Where an employer alleges desertion, it must prove the ingredients of desertion. A primary ingredient of desertion to be proved by the



employer is that the employee has no intention of returning to work. The employer must also demonstrate that it accepted the repudiation (the same would apply to an employee who asserts an employer has repudiated a contract).

17. Establishing the intention not to return to work will depend on the facts as presented in evidence.”
 - f. In the instant case, the evidence is that the claimant did not plan to return to work but left the employment taking with him the laptop belonging to the respondent which he continued to use. The Court finds that the respondent’s notice of termination of the contract of employment substantially amounted to acceptance of the claimant’s repudiation of the contract of service and in view of the desertion or absconding with no intention to return. The claimant has not also denied that he breached the express provision of clause 8.2 of the contract which stated “8.2 The Employee agrees that should he fail to report to work for more than 3 (days) consecutive days without notifying the Company, s/he shall be deemed to have deserted and the Company shall have the right to terminate this agreement.” The Court finds that the respondent acted in accordance with that clause and the termination was not unfair or unlawful. The evidence was that the claimant was to work from home during COVID 19 situation and his last work related communication had been in March 2021 and in particular failed to attend the ISO 9001; 2005 awareness and Internal Auditors training despite having been notified to attend. There is no reason to doubt RW’s testimony that while other staff had resumed in-person physical working, the claimant had failed to do so. Thus, he deserted work.
 - g. It was submitted for the claimant that he ought to have been accorded a notice and a hearing per section 41 of the Act. However, besides the findings of desertion as per the contractual clause, the Court finds that the respondent was otherwise entitled to dismiss with no or with shorter notice than was agreed and looking at the misconducts, they would in any event amount to gross misconduct that would trigger section 44 (1) of the Act thus “(1) Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.” And further, section 44(2) and (3) thus “(2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term. (3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.” The Court has already found that the claimant fundamentally breached his obligations arising under the contract of service. He fully contributed to his termination and the procedure adopted by the respondent to terminate the contract of service is found fair.
10. The 4th issue is on remedies. The Court returns that except for the statutory certificate of service per section 51 of the Act, the claimant has failed to establish the justification for the reliefs prayed for. The bonus was due to the claimant for every completed year or part thereof during Christmas December holidays. The claimant was terminated effective 30.11.2021 in circumstances that December 2021 had not come for the 2021 bonus to have fallen due per clause 10 of the contract. The clause also reserved the respondent’s discretion to vary the amount based on performance. It appears that bonus was not due in the circumstance that the claimant had not served until December and his performance has been shown to have been undeserving of bonus. The claimant was entitled to two working days of leave for each completed year of service. Effective March 2021 it appears he did not report at work and his



at-home work has been shown to have been unsatisfactory. He has not particularized and computed the months for which he has claimed leave payment. The Court finds that the claim is wanting in particulars and strict prove as required for special damages. The Court has found he deserted and was not unfairly terminated thus undeserving of the notice pay and compensation as was prayed for.

11. The 5th issue is on the counterclaim and the reliefs sought therein. The Court finds that the respondent has established that it is entitled to the return by the claimant of the CAD workstation computer in the claimant's possession and the claimant having admitted to be in possession of the computer. The respondent has also shown that the claimant was bound by the confidentiality clause but which he breached.
12. The Court has considered the margins of success and returns that each party to bear own costs of the suit.

In conclusion the claimant's suit by the statement of claim and the respondent's counterclaim are hereby determined with orders as follows:

- a. The claimant to deliver the respondent's CAD workstation computer in sound operational status by 01.08.2025.
- b. The injunction hereby issued restraining the claimant from using, sharing or disclosing any information or trade-secrets of the respondent acquired while in respondent's employment and per the contractual confidentiality clause.
- c. The respondent to deliver the claimant's certificate of service by 01.08.2025 per section 51 of the *Employment Act*, 2007.
- d. Each party to bear own costs of the claimant's suit and the counter-claim.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 17TH JULY, 2025.

**BYRAM ONGAYA,
PRINCIPAL JUDGE**

