



**Mbuvi v Jays Pyrotechnics Limited (Cause 254 of 2019)
[2025] KEELRC 2026 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2026 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 254 OF 2019
B ONGAYA, J
JULY 10, 2025**

BETWEEN

KEVIN MBUVI CLAIMANT

AND

JAYS PYROTECHNICS LIMITED RESPONDENT

JUDGMENT

1. The claimant filed the Statement of Claim on 17.04.2019 through Kipsang & Mutai Advocates. The claimant prayed for judgment against the respondent for:
 - a. Kshs 560,000/=
 - b. Compensation for unlawful termination
 - c. Costs of the suit
 - d. Interest on (i) and (ii) above at court rates from the date of filing of this claim until payment in full; and
 - e. Any other or further relief that this honourable court may deem fit and just to grant.
2. The Respondent's Response to Statement of Claim was dated 02.11.2019 and filed through Farrah Munoko & Company Advocates. The respondent prayed that the Memorandum of Claim dated 05.04.2019 be referred to Court Annexed Mediation and the subsequent mediation agreement be adopted as an order of this court.
3. Parties appear to have attempted mediation and negotiation but they failed to reach a compromise or consent.
4. The claimant's case was that he was employed by the respondent on an oral contract as Head of the Creative Department on permanent basis and commenced work on 12.11.2018.



5. The agreed pay was Kshs 250,000/= payable monthly in arrears at the end of each calendar month.
6. The respondent failed to pay the claimant's November and December, 2018 salaries on time.
7. The claimant stated that the respondent failed to enrol him in NHIF and NSSF s required by law and neglected to provide him with a written contract.
8. The claimant stated that the respondent refused to pay his January, 2019 salary, two months after the same became due and payable.
9. It is the claimant's case that at the end of January, 2019 the respondent dismissed him from employment unlawfully, without a hearing and failed to pay him in lieu of notice.
10. The claimant stated that respondent unilaterally changed his terms of employment from employee to contractor.
11. The claimant stated that the dismissal was done in a disrespectful manner, having found that the respondent's office, his place of work, had been changed without his notification, to a place unknown to him, and his calls and texts went unanswered.
12. On the part of the respondent, it is stated that the claimant was contracted on or about 12.11.2018 in the Creative Development Department, earning a consolidated salary of Kshs 250,000/=.
13. Through the months of November, 2018 and December, 2018 the claimant's salaries were duly paid to him through his mobile number despite there being laxity in reporting time, absence from duty without proper notice and general disregard to lawful supervisory directives by the claimant from the respondent's senior personnel.
14. The respondent stated that sometime in January, 2019 it was faced with clientele reduction which prompted a change in the core operation mandates of the company. The claimant was reassigned several other clientele to coordinate, which he did not wish to undertake. Instead the claimant opted to work on a job per job basis which was untenable to the respondent.
15. Throughout the months of December, 2018 to January 2019 the claimant on several occasions without leave, absconded from duty, severe punctuality concerns from the claimant's reporting attendances which caused a near break down of the respondent's operations for the period covering the festive season, and a warning letter to this effect, was electronically sent to the claimant.
16. Subsequently, the claimant permanently failed to report for duty and the respondent later received an electronic mail from the claimant, wherein he was demanding payment of all his dues.
17. The respondent stated that it processed all the claimant's dues and paid the same to him.
18. The respondent maintains that it does not owe the claimant any terminal dues as claimed.
19. The parties filed their respective submissions. The court has considered the parties' respective cases and makes finding as follows.
20. To answer the 1st issue, the respondent admits that it employed the claimant in its Creative Development Department on 12.11.2018. The Court returns that parties were in a contract of employment.
21. The 2nd issue is whether the respondent terminated the contract of employment. The respondent's case is that the claimant absconded duty. The claimant's case is that the respondent unilaterally changed the terms of service from employee to contractor and the respondent unilaterally changed the place of



work to a place unknown to the claimant. The claimant testified by adopting his witness statement. The respondent did not call any witness. The circumstances of the separation are in paragraph 7 of the claimant's witness statement thus, "Further to this at the end of January 2019, the Respondent dismissed me from employment unlawfully without a hearing and failed to pay me in lieu of notice. The respondent unilaterally changed the terms of employment from that of being an employee to that of a contractor. The said dismissal was done in a very disrespectful manner as I found out that the respondent's office and my place of work, had been changed without my being notified, to a place that is unknown to me. I tried enquiring but my calls went unanswered." The Court finds that the respondent failed to rebut the claimant's testimony in that respect. The Court finds that the claimant was dismissed as testified.

22. To answer the 3rd issue, in absence of any other material evidence on record, it appears to the Court that the dismissal was unfair to the extent that even if the claimant had resisted the restructuring of enterprise as urged for the respondent, the respondent ought to have invoked due procedure. It cannot be said that the respondent adopted a fair procedure to dismiss the claimant such as on account of redundancy in section 40 of the *Employment Act*, 2007 or a notice and hearing in view of the alleged absenteeism per section 41 of the Act.
23. To answer the 4th issue on remedies the Court returns as follows:
 - a. The claimant claims salary for January 2019. He earned Kshs.250, 000.00. He appears to have walked away and abandoned work upon restructuring by the respondent. The Court has considered the correspondence between the parties in February 2019. The respondent appears not to dispute that the claimant had worked in January 2019 but was under a financial difficulty to pay. No evidence is provided by the respondent that after the correspondence, the January 2019 salary was paid. The Court awards the Kshs. 250,000.00 and part of the amount was paid as submitted for the claimant leaving a balance of Kshs.190, 000.00.
 - b. The claimant has claimed for pay in lieu of annual leave but no particularised leave days due and payable leave was pleaded. Being a liquidated claim, the same will fail for want of particularised pleading and strict proof. In any event, the claimant had not served for cumulative or an aggregate of 12 months per section 28 of the Act and had not earned annual leave at all.
 - c. While the Court has found that the respondent was unfair for want of due procedure, the claimant fully contributed to his separation by simply walking away instead of seeking to arrive at a compromise on the best way forward in view of the restructuring. It appears the claimant did not have a clean record of service in view of the warning letter on record. Further, the claimant appears to have absented himself in the middle of a negotiation in view of the restructuring. In the circumstances, the Court finds that the claimant full contributed to the separation and is undeserving of the one-month payment in lieu of notice or compensation for unfair termination.
 - d. The Court has considered all circumstances of the case including that the claimant's contact caused the separation negotiations to collapse and each party to bear own costs of the suit.
24. In conclusion judgment is hereby entered for the claimant against the respondent for orders:
 - a. The respondent to pay the claimant Kshs. 190,000.00 by 01.09.2025 failing interest to run thereon at court rates from the date of filing the suit till the date of full payment.
 - b. Each party to bear own costs of the suit.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
THURSDAY 10TH JULY, 2025.**

BYRAM ONGAYA

PRINCIPAL JUDGE

