



**Simiyu v Buke Tours & Safaris Limited & another (Cause
E025 of 2023) [2025] KEELRC 2050 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2050 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E025 OF 2023
BOM MANANI, J
JULY 10, 2025**

BETWEEN

EMMANUEL SIKUKU SIMIYU CLAIMANT

AND

BUKE TOURS & SAFARIS LIMITED 1ST RESPONDENT

BUCKNER KENYA 2ND RESPONDENT

JUDGMENT

Introduction

1. This claim challenges the lawfulness of the Respondents' decision to terminate the Claimant's contract of service. Whilst the Claimant's position is that his services were unlawfully terminated, the Respondents express a contrary position. And hence the suit.

Claimant's Case

2. The Claimant avers that he has been an employee of the Respondents since 12th August 2019 when the two allegedly hired him as their Business Development Manager before he was subsequently engaged as the 1st Respondent's Coordinator. He contends that his engagement with the Respondents was on the basis of fixed term contracts of service which were renewed from time to time.
3. The Claimant avers that on 23rd June 2022, the Respondents issued him with a letter of show cause raising a number of accusations against him. He contends that he responded to the accusations through his letter of 28th June 2022 where after the matter went quiet.
4. The Claimant avers that on 1st August 2022, the Respondents sent him on compulsory leave for twenty one days in order to carry out investigations against him. He contends that the decision to send him on leave was notwithstanding that the Respondents had not reacted to his letter of 28th June 2022.



5. The Claimant avers that the letter sending him on compulsory leave did not state when he was to resume duty. He further avers that the letter did not speak to when the investigations were to be concluded or whether he was going to be given an opportunity to react to the results of the said investigations.
6. The Claimant contends that the Respondents did not share with him the findings of the investigations. As such, he avers that he did not get a chance to know the outcome of the process.
7. The Claimant contends that on 2nd September 2022, the Respondents issued him a letter terminating his services. He contends that the decision to terminate his employment was taken without according him an opportunity to be heard in contravention of the law.
8. The Claimant avers that the Respondents did not have justifiable reasons to terminate his contract of service. He further avers that the Respondents did not terminate his contract in accordance with fair procedure.
9. The Claimant avers that during the tenure of his service to the Respondents, he was not granted his annual leave. He further contends that he was required to work overtime and during public holidays without compensation.
10. The Claimant avers that although he executed his contract of service with the 1st Respondent, he was required to perform tasks that fell within the docket of the 2nd Respondent because the two were sister companies. He contends that despite this, the Respondents did not remunerate him for services which he rendered to the 2nd Respondent.
11. The Claimant avers that the decision to terminate his contract of service was illegal. He denies that he was involved in activities which were in conflict with his duties as an employee of the Respondents.
12. The Claimant avers that termination of his contract of service subjected him to financial hardship and embarrassment since he was unable to meet his financial obligations. Consequently, he seeks the various reliefs that have been set out in the Memorandum of Claim.

Respondents' Case

13. The Respondents admit that they had an employment relationship with the Claimant during the tenure of his service. They contend that the Claimant was hired as a Business Development Coordinator for 2nd Respondent's business units which included the 1st Respondent.
14. The Respondents aver that the Claimant was expected to give priority to fulfilling his responsibilities to them. However, they contend that he did not live up to this expectation.
15. The Respondents deny that the Claimant was forced to work for the 2nd Respondent. They contend that the nature of their (the Respondents') relationship necessitated that the Claimant serves both of them. They further contend that the Claimant was aware of this reality from the inception of their relationship.
16. The Respondents aver that during the Claimant's engagement with them, it was discovered that he was engaged in another business which was in direct competition with their business. They contend that when the Claimant was confronted about the matter, he admitted his missteps and apologized.
17. The Respondents aver that they asked the Claimant to put the apology in writing but he declined. Hence the decision to issue him with a letter of show cause.



18. The Respondents aver that although the Claimant responded to the letter of show cause, the response was unsatisfactory. As such, they contend that they sent him on compulsory leave for twenty one days in order to carry out further investigations into the matter.
19. The Respondents contend that after the investigations were completed, they summoned the Claimant to a meeting on 2nd September 2022 with the intention of discussing the outcome of the investigations. However, they aver that the Claimant became unruly at the meeting making it impossible to consider the investigation report. As a result, they contend that they were left with no option but to terminate his contract of service.
20. The Respondents deny that they withheld the investigation report from the Claimant. They contend that they intended to share the report with him during the session of 2nd September 2022 which he disrupted and walked away from.
21. The Respondents aver that the Claimant was accorded a fair opportunity to be heard through the series of meetings they held with him. As such, they deny that the decision to terminate his contract was in contravention of the requirements of fair procedure.
22. The Respondents deny that the Claimant was required to work overtime or during public holidays. They further deny that he was not allowed to utilize his annual leave during his tenure of service with them.

Issues of Determination

23. After evaluating the pleadings, evidence and submissions by the parties, the following issues present for determination:-
 - a. Whether the Claimant was jointly employed by the two Respondents at the time of termination of his contract of service.
 - b. Whether the Claimant's contract of service was legitimately terminated.
 - c. Whether the Claimant is entitled to the reliefs which he seeks in the Memorandum of Claim.

Analysis

24. From the evidence that was tendered by the parties, it is apparent that they have clouded the Claimant's employment status. At one point, the Claimant claimed that he was in the employment of the 1st Respondent but was forced to undertake some duties which fell within the purview of the 2nd Respondent. Yet, at some other point, he contended that he was in the actual employment of the two Respondents.
25. On the other hand, the Respondents' witness stated that the Claimant was employed as a Business Development Coordinator for purposes of coordinating the 2nd Respondent's business units including the 1st Respondent. He further averred that the 1st Respondent is a subsidiary of the 2nd Respondent.
26. By these averments, I understand the Respondents to have been saying that the Claimant was an employee of the 2nd Respondent hired for purposes of managing what their witness described as the 2nd Respondent's business units. In effect, they (the Respondents) implied that the Claimant was not an employee of the 1st Respondent.



27. Despite the aforesaid averments in the Respondents' witness statement, their witness contended in his oral testimony in court that the Claimant was an employee of both Respondents. In effect, it was his testimony that the Claimant was a joint human resource for the two Respondents.
28. The evidence on record demonstrates that the Claimant entered into distinct contracts of service with each of the Respondents at different stages during the three years that the parties interacted. Whilst one of the contracts was for an indefinite term, the others were for a fixed duration.
29. On 8th August 2019 the Claimant entered into an indefinite term contract of service with the 2nd Respondent. However, on 1st January 2020, the term of the contract was converted from indefinite to fixed term. Accordingly, the two (Claimant and 2nd Respondent) executed a one year contract dated 6th March 2020.
30. The first contract entitled the 2nd Respondent to deploy the Claimant to work for its associates and subsidiaries. However, it (the contract) did not make any direct reference to the 1st Respondent. Similarly, the 2nd contract executed on 6th March 2020 did not make any reference to the 1st Respondent.
31. On 7th January 2021, the Claimant and 2nd Respondent concluded yet another one year contract which was to run until 31st December 2021. Again, this contract did not make any reference to the 1st Respondent. However, there is evidence that the 2nd Respondent issued the Claimant with a Job Description on 9th March 2021 which indicated that part of the Claimant's mandate was to coordinate the 2nd Respondent's units including the 1st Respondent.
32. On 1st March 2022, the Claimant entered into a one year fixed term contract of service with the 1st Respondent. Save for mentioning that the Claimant was to operate from the 2nd Respondent's offices and that any disputes arising from the contract between him and the 1st Respondent were to be referred to the 2nd Respondent's Chief Executive Officer, the contract did not suggest that he (the Claimant) was in the employment of the 2nd Respondent.
33. Notwithstanding that the Respondents are affiliate companies (the 1st Respondent is said to be a subsidiary of the 2nd Respondent), they are distinct legal entities (see *Salomon v. Salomon & Company Ltd* (1895-95) All ER Rep 33). As such and in order not to conflate their separate corporate personalities, it is important that their directors appreciate this fact and keep it in mind whenever they (the directors) are transacting on behalf of either or both of the companies.
34. Despite the insinuation that the Claimant was concomitantly in the employment of the two Respondents at the time his contract of service was terminated, the evidence on record demonstrates otherwise. According to the contract dated 1st March 2022, the Claimant was employed by the 1st Respondent for a term of one year which was to run from 1st January 2022 to 31st December 2022. Although he was to be housed at the 2nd Respondent's offices or such other place as was to be designated by the employer (the 1st Respondent) during the term of the contract, there is nothing in the contract to suggest that he was concomitantly hired by or on behalf of the 2nd Respondent.
35. The Claimant may have been executing some tasks for the benefit of the 2nd Respondent during the currency of the contract dated 1st March 2022 between him and the 1st Respondent. However, this of itself cannot have converted him into an employee of the 2nd Respondent.



36. The above position derives from the definition that is assigned to the term “employee” under the *Employment Act*. Section 2 of the *Act* defines the term as follows:-
- “employee means a person employed for wages or a salary and includes an apprentice and indentured learner.”
37. The law only perceives one as an employee of another if he is offering the other a service in return for an agreed wage or salary. If there is no agreement that the service which is being rendered will be rewarded by payment of a wage or a salary, there is no employment relation. This position was highlighted in the case of *Kamurasi v Absa Bank Kenya PLC & another* (Employment and Labour Relations Cause E612 of 2021) [2023] KEELRC 3229 (KLR) (7 December 2023) (Judgment).
38. A similar position was expressed by the Employment and Labour Relations Court (ELRC) in *Gladys Muthoni Mwangi & 20 Others v Barclays Bank of Kenya Limited & Another* [2016] eKLR and affirmed by the Court of Appeal in *Barclays Bank of Kenya Ltd & another v Gladys Muthoni & 20 others* [2018] eKLR. The Claimants in the suit had entered into contracts of employment with Barclays Bank of Kenya Limited. However, they were deployed to work for Barclays Africa Group Limited, the parent company of Barclays Bank of Kenya Limited.
39. When Barclays Africa Group Limited decided to relocate its operations to South Africa, it issued the Claimants with redundancy notices. Unhappy with the development, the Claimants moved to court to challenge the redundancy process. During the proceedings, the court was invited to, inter alia, determine who the Claimants’ actual employer was.
40. Both the ELRC and the Court of Appeal expressed the view that although the Claimants were deployed to work for Barclays Africa Group Limited, they remained employees of Barclays Bank of Kenya Limited. This is because the contracts they had entered into were with Barclays Bank of Kenya Limited and not Barclays Africa Group Limited.
41. Guided by the above decisions, I find that although the Claimant in the instant suit may have been assigned some duties at the 2nd Respondent during the currency of his 2022 contract with the 1st Respondent, he remained an employee of the 1st Respondent with whom he had executed the contract of service. Consequently, I arrive at the conclusion that at the time of termination of the impugned contract, the Claimant was an employee of the 1st Respondent.
42. The law on disciplinary processes against an employee is encapsulated in, inter alia, sections 41, 43, 44 and 45 of the *Employment Act*. Before an employer can terminate an employee’s contract of service for alleged misconduct, he is required to inform the employee of the offense which he is accused of. The employer is further required to allow the employee an opportunity to respond to the charges in a disciplinary hearing. The employee is entitled to have a representative during this process.
43. Under section 45 of the *Act*, termination of an employee’s contract of service will be deemed unfair if the employer is not able to demonstrate that: he had a valid reason to terminate the contract; he terminated the contract in accordance with fair procedure.
44. Under section 43 of the *Act*, the employer bears the burden of proving the validity of the reason for termination of a contract of service. If he (the employer) fails to discharge this burden, the decision to terminate the employee’s contract will be deemed as unlawful.
45. In the instant case, the Respondents contend that the Claimant’s contract of service was terminated because he was secretly running a business which was in direct competition with their business. As such, they contend that he was conflicted.



46. On his part, the Claimant avers that prior to taking up employment with the Respondents, he was running a family business which is similar to the Respondents' business. However, he contends that when he began working for the Respondents, he entrusted management of the business to members of his family.
47. The Claimant maintains that when he took up employment with the Respondents, he disclosed to them the fact of his family having business which was similar to theirs. As such, he denies that there was conflict of interest due to his association with the family business.
48. Apparently, the 1st Respondent conducted investigations into the controversy and prepared an investigation report which was tendered in evidence. According to the report, the Claimant had been actively posting the Respondents' photographs on his family business website without the Respondents' permission.
49. In the court's view, the Claimant's conduct had the potential of casting aspersions on his loyalty to the Respondents. The 1st Respondent was legitimately entitled to conclude that the Claimant was promoting his family business using their (the Respondents') material at the expense of their business. And hence the accusations of conflict of interest.
50. Under section 43 (2) of the *Employment Act*, an employer is entitled to terminate an employee's contract of service if he (the employer) has genuine grounds to believe that the employee is involved in some form of misconduct (see *Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others* [2019] eKLR). He (the employer) need not have infallible evidence of the suspected infraction before he can act on the matter.
51. From the evidence on record, I find that the 1st Respondent had reasonable grounds to genuinely believe that the Claimant was promoting his family business at the Respondents' expense. As such, I arrive at the conclusion that the 1st Respondent had legitimate grounds to consider terminating the Claimant's contract of service.
52. However, the fact that the employer has a valid reason to terminate an employee's contract of service is not enough to validate the decision to sever an employment relationship. In addition to the presence of valid grounds to terminate the contract, the procedure which the employer adopts to release the employee from service must be fair.
53. Under section 41 of the *Employment Act*, the employer is expected to conduct a disciplinary hearing at which the employee will be accorded a chance to defend himself. In addition, the employee is entitled to be accompanied by either a fellow employee of his choice or a trade union representative during the hearing.
54. The 1st Respondent contends that it complied with the foresaid requirements. However, the evidence on record does not support this contention.
55. The 1st Respondent may have held meetings in June, July and September 2022 in which the Claimant was in attendance and where the latter's conduct was discussed. However, there is no evidence that the meetings were intended to be disciplinary sessions.
56. There is no evidence to demonstrate that the 1st Respondent notified the Claimant that the issue of termination of his contract was to be considered in any of the meetings. As such, the fact that the meetings were held did not absolve the 1st Respondent of the responsibility to conduct a disciplinary trial for the Claimant.



57. The Respondents' witness alleges that the Claimant stormed out of the meeting of 2nd September 2022 thus making it difficult for the Respondents to discuss the outcome of the investigations with him. As such, it is contended that the Respondents were left with no option but to terminate his contract.
58. However, it is not contended that the session of 2nd September 2022 was meant to have been a disciplinary hearing. If the Claimant stormed out of the session as alleged, what stopped the 1st Respondent from inviting him to a formal disciplinary hearing at a future date?
59. Having regard to the evidence on record, I find that the 1st Respondent did not accord the Claimant the right to be heard at a formal disciplinary session before it terminated his contract of service. As such, I find that the 1st Respondent did not uphold fair procedure whilst terminating the Claimant's contract of service.
60. The next issue for determination relates to whether the Claimant is entitled to the reliefs which he seeks through this action. From the Memorandum of Claim, it is apparent that the Claimant seeks a series of reliefs. These include: a declaration that his contract of service was wrongfully terminated; salary in lieu of notice to terminate the contract; salary for the unexpired term of the contract; terminal benefits as per clause 7 (d) of his contract; leave commutation; compensation for unfair termination of his contract of service; payment of travel allowance as per clause 7 (g) of his contract; compensation for non-payment of salary by the 2nd Respondent; certificate of service; interest on the liquidated claims; and costs of the case.
61. As regards the plea to declare the decision to terminate the Claimant's contract of service unfair, the court has already found that although the 1st Respondent had genuine reasons to consider terminating the impugned contract, it did not uphold fair procedure in closing the employment relationship. As such, it (the court) declares that the decision to terminate the Claimant's employment was procedurally unfair.
62. The Claimant seeks compensation for unfair termination of his contract of service. At the same time, he prays for payment of salary for the unexpired term of his contract. However and in the court's view, these two reliefs cannot be issued concomitantly as to do so will amount to double compensation.
63. In any event, the general position in law is that an employee is not entitled to claim salary for the unexpired term of his contract if the contract had a termination clause and did not sanction payment of this amount in the event of its premature closure (see *Ambogo v Sameer Agriculture and Livestock (Kenya) Limited* (Employment and Labour Relations Cause 199 of 2022) [2023] KEELRC 2257 (KLR) (29 September 2023) (Judgment)). For this reason, I decline the prayer for payment of salary for the unexpired term of the contract.
64. According to the contract dated 1st March 2022, the employment relationship between the Claimant and 1st Respondent was for a fixed term of one year commencing on 1st January 2022 and ending on 31st December 2022. The evidence on record shows that at the time the contract was terminated prematurely on 2nd September 2022, it (the contract) still had approximately four months to its sunset date.
65. The contract did not have a renewal clause. As a matter of fact, clause 11 of the contract underscores the fact that it did not carry any expectancy for renewal.
66. In view of the foregoing, it is incredible that the Claimant would claim compensation for unfair termination of the contract which is equivalent to his salary for twelve months. The much that he would have earned under the contract, had it run its full term, is salary for another four months.



67. That said, the court is cognizant of the fact that a contract of service can be legitimately terminated before its full term. As such, there is no guarantee that the Claimant's contract was going to run its full term. Having regard to this, I award the Claimant compensation for unfair termination of his contract which is equivalent to his salary for three months, that is to say, Ksh. 96,000.00 x 3 = Ksh. 288,000.00 to be paid by the 1st Respondent.
68. The Claimant has claimed for salary in lieu of the notice to terminate his contract. However, the 1st Respondent has provided evidence, which the Claimant has not controverted, demonstrating that his (the Claimant's) account was credited on 17th October 2022 with an amount to cover pay in lieu of notice. In the premises and taking into account this evidence, the court declines the claim for pay in lieu of notice.
69. The Claimant has sought compensation from the Respondents for the services that he rendered to the 2nd Respondent whilst working for the 1st Respondent in the last phase of his employment with the 1st Respondent. I have looked at the contract dated 1st March 2022 between the 1st Respondent and the Claimant and it is apparent that it did not provide for remuneration to the Claimant for the services he may have rendered to the 2nd Respondent.
70. Although the Claimant avers that he was forced to undertake assignments for the benefit of the 2nd Respondent, he does not speak to the scope of the alleged assignments and the time he expended executing them. Absent this evidence, the court will be acting on conjecture if it ventured to quantify the Claimant's alleged services to the 2nd Respondent for purposes of assessing his compensation. In the premises, this prayer is declined.
71. The Claimant has prayed for the benefits he would have earned under clause 7 (d) & (g) of the contract between the parties had it (the contract) been regularly brought to a close. These include: Ksh. 48,540.00 as service pay; and Ksh. 10,000.00 as travelling allowance.
72. Since the court has found the decision to terminate the Claimant's contract to have been irregular, he is entitled to draw these two benefits. There is no evidence that the 1st Respondent made good the benefits. As such, the Claimant is awarded the aforesaid amount totaling Ksh. 58,540.00 to be paid by the 1st Respondent.
73. The Claimant has also sought annual leave commutation for the period of three years that he variously worked for the Respondents. However, the Respondents produced leave application forms showing that the Claimant took his annual leave.
74. The Claimant did not controvert this evidence. As such, the court accepts the evidence as proof that he utilized his annual leave days. Consequently, the claim for leave commutation fails.
75. The amount awarded to the Claimant is subject to the applicable statutory deductions.
76. The 1st Respondent is ordered to issue the Claimant with a Certificate of Service.
77. The Claimant is awarded interest on the amount awarded at court rates from the date of this decision. Such interest to be paid by the 1st Respondent.
78. The Claimant is awarded costs of the suit to be paid by the 1st Respondent.

Summary of the Findings and attendant Orders

79. After evaluating the pleadings, the evidence, the submissions by the parties and the applicable law, the court makes the following findings and attendant orders:-



- a. The court finds that at the time the Claimant's contract of service dated 1st March 2022 was terminated, he was an employee of the 1st Respondent and not the 2nd Respondent even though he may have been performing some tasks for the benefit of the 2nd Respondent.
- b. The court finds that the Claimant's employment was terminated in disregard of due process. As such, the decision to terminate his contract of service is declared procedurally unfair.
- c. The Court awards the Claimant compensation for the unfair termination of his contract of service which is equivalent to his monthly salary for three months, that is to say, Ksh. 288,000.00 to be paid by the 1st Respondent.
- d. The Court declines to award the Claimant salary for the unexpired term of his contract of service.
- e. The Court declines to award the Claimant salary for the services he may have rendered to the 2nd Respondent during the tenure of his last contract of service with the 1st Respondent.
- f. The Court declines to award the Claimant accrued leave pay.
- g. The Court declines to award the Claimant pay in lieu of notice to terminate his contract of service.
- h. The Court awards the Claimant the sum of Ksh. 58,540.00 being benefits due to him under clauses 7 (d) and (g) of the contract dated 1st March 2022 between him and the 1st Respondent. The amount to be paid by the 1st Respondent.
- i. The Court awards the Claimant interest on the amount awarded at court rates from the date of this decision. Such interest to be paid by the 1st Respondent.
- j. The amount awarded to the Claimant is subject to the applicable statutory deductions.
- k. The Court awards the Claimant costs of the case to be paid by the 1st Respondent.
- l. The 1st Respondent is ordered to issue the Claimant with a Certificate of Service.

DATED, SIGNED AND DELIVERED ON THE 10TH DAY OF JULY, 2025

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

..... for the Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties 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.

B. O. M MANANI

