



Orori v Public Service Board – Kisii County Government & 2 others (Cause E096 of 2024) [2025] KEELRC 2008 (KLR) (9 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2008 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E096 OF 2024**

JK GAKERI, J

JULY 9, 2025

BETWEEN

ZACHARY BOSIRE ORORI CLAIMANT

AND

**PUBLIC SERVICE BOARD – KISII COUNTY GOVERNMENT 1ST
RESPONDENT**

**COUNTY SECRETARY & HEAD OF PUBLIC GOVERNMENT – KISII
COUNTY GOVERNMENT 2ND RESPONDENT**

KISII COUNTY GOVERNMENT 3RD RESPONDENT

JUDGMENT

1. The claimant commenced this suit vide a Memorandum of claim dated 21st October, 2025 and filed on 18th October, 2024 alleging unfair and unlawful termination of his employment by the respondents.
2. The claimant’s case is simply that he was employed by the respondents on 2nd January, 2018 under a 3 year term contract which the respondent’s renewed vide letter dated 4th December, 2020 effective 2nd January, 2021 to 31st December, 2023 at Kshs.191,440.00 per month.
3. That he was a Director of Administration/Person Assistant to the Governor.
4. The claimant avers that vide letter dated 5th September, 2022 the respondent reviewed his employment contract by reducing his duration of employment from 3 years to less than 2 years citing the provisions of Section 74 and 75 of the *County Governments Act* and salary was stopped on 5th September, 2022.
5. The claimant faults the respondents as they had no justification to terminate by varying the terms of his contract.

The claimant prays for:



- a. A declaration that termination of contract of employment by the respondent was unfair unlawful and irregular.
- b. Damages including special, exemplary, compensatory and punitive damages.
- c. Costs of the suit with interest at court rates.
- d. Any other auxiliary compensation relief that the court will deem fit to grant.

Respondent's case

6. By a response dated 29th April, 2025, the respondents averred that termination of the claimant's employment was valid and the 2nd respondent applied the law and no procedural flaws were demonstrated.
7. The respondents deny having acted contrary rules of natural justice and the findings of the disciplinary committee were arrived at in a fair and just manner and the claimant adduced no evidence to prove his case.
8. Finally, the respondents averred that the claimant's contract was due to expire upon the end of the governor's term.
9. The claimant's reply to the respondent's response, raised no new issue.

Claimant's submissions

10. As to whether termination of the claimant's employment was unfair, counsel cited the provisions of the [Employment Act](#) to submit that the claimant was not served with a notice to show cause, was accorded insufficient notice, no hearing was conducted and no reason for termination was provided.
11. Reliance was also placed on the decisions in *Muthaiga County Club V Kudheiha Workers* [2017] eKLR and *Josephine M. Ngungu & Others V Plan International* [2019] eKLR.
12. Concerning the provisions of Sections 74 and 75 of the [County Governments Act](#) counsel submitted that the provisions did not disqualify the provisions of the [Employment Act](#) on termination of employment, the respondents did not conduct any investigations and the claimant was neither involved nor interviewed.
13. That the allegation of forgery and/or fraud was not substantiated and the termination of employment was not conducted in accordance with the provisions of the [Employment Act](#).
14. As regards the reliefs sought, counsel submitted that the claimant was seeking salary in lieu of notice, compensation under Section 49 of the [Employment Act](#), compensation for wrongful termination at Kshs.5,000,000 unpaid salary for September 2023, exemplary damages, costs and interest.

Analysis and determination

15. Documentary evidence provided by the claimant revealed that he was employed by the Kisii County Government as the Governor's Personal Assistant effective 2nd January, 2018 for 3 years and was by letter dated 9th April, 2018 promoted to the position of Acting Personal Assistant in the Office of Governor effective 9th April, 2018. He was later promoted to the position of Personal Assistant effective 1st March, 2019 at Kshs.118,290.



16. Records further revealed that the claimant's employment contract was extended/renewed for a further period of 3 years effective 2nd January, 2021 to 31st December, 2023 and he accepted the extension by letter dated 30th March, 2021.
17. However, vide letter 5th September, 2022 the 2nd respondent unilaterally reviewed the terms of the claimant's employment and terminated it on 31st August, 2022.
18. Vide letter dated 6th September, 2022 the claimant appealed the termination of employment on various grounds.
19. However, vide letter dated 21st October, 2022 the 2nd respondent declined the appeal stating that he had attained the mandatory retirement age.

The issues for determination are:

- i. Whether termination of the claimant's employment was unfair.
 - ii. Whether the claimant is entitled to the reliefs sought.
20. As regards the 1st issue, while the claimant submitted that termination of his employment was unfair, the respondent's counsel contended that the termination was in accordance with the law.
 21. Strangely, the respondents alleged that the claimant amended his employment contract by upgrading his designation and pay grade and shockingly, that he was aware that his employment contract would lapse at the end of the Governor's term.
 22. Equally, the respondents alleged that the appeal was declined because the claimant had attained the age of 61 years.
 23. Notably, the respondents did not deny having unilaterally altered the terms of the claimant's contract of employment which is unlawful.

Section 10(5) of the *Employment Act* provides that:

24. Where any matter stipulated in sub-section (1) changes, the employer shall in consultation with the employee revise the contract to reflect the change and notify the employee of the change in writing.
25. Relatedly, under Section 10(2)(e) of the Act, the particulars of the employment contract covered by subsection 10(1) of the Act include "the form and duration of the contract" and in the instant case, the duration was varied from 3 years to 1 year and 8 months.
26. Puzzlingly, the respondents letter dated 5th September, 2022 provided no reason for variation of the terms of the contract and the termination pre-dated the letter.
27. In *James Ang'awa Atanda & 10 Others V Judicial Service Commission* [2017] eKLR, the court held:

"Further, in my view, the common law principle that a unilateral variation of an employment contract is unlawful and amounts to repudiation and/or breach of contract, and the statutory requirement to consult with an employee where there is a variation to the employment contract, and more specifically to an essential of the contract such as duration and remuneration where the employee would be adversely affected are ingredients of and are subsumed in the fair labour practice principle".

28. Clearly, a unilateral variation of a fundamental term of a contract of employment is a repudiation of the contract and entitles the employee to treat the contract of employment repudiated and would in those



circumstances be entitled to resign from employment and sue for constructive dismissal as elucidated by Lord Denning in *Western Excavating ECC V Sharp* [1978] ICR 222.

29. However, in this case the claimant could not resign as his employment was terminated by the variation.
30. It is trite law that for a termination of employment to pass muster it must be proved that the employer had a substantive justification to terminate the employment relationship and did so in accordance with a fair procedure as held by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR and the Court of Appeal in *Naima Khamis V Oxford University Press (EA) Ltd* [2017] eKLR.
31. Put in alternative terms, the employer must have had valid and fair reasons to terminate the employee's employment and the procedure used must have been fair as ordained by the provisions of Section 45(2) of the *Employment Act*.
32. In this case, as far as the reason for termination of the claimant's employment was concerned, the respondents provided none. However, they alleged but failed to substantiate three reasons namely: first, the claimant acted fraudulently by amending his employment contract, by upgrading his designation, job group and pay grade; second he was aware that his employment was to expire at the end of the Governor's term; and third he had attained retirement age.
33. It is trite law that fraud must be specifically pleaded and proved as held in *Vijay Morjaria V Nansingh Madhusingh Darbar & another* [2000] eKLR, *Patel V Lalji Mkanji* [1957] EA 314.

In the latter case the Court of Appeal held:

“Allegations of fraud must be strictly proved; although the standard of proof may not be so heavy as to require proof beyond reasonable doubt something more than a mere balance of probabilities is required”.

34. See also *Ndolo V Ndolo* [2008] IKLR 742, *Belmont Finance Corporation V Williams Furniture Ltd and Urmilla w/o Mahendra Shah V Barclays Bank International Ltd and another* [1979] eKLR.
The court is guided accordingly.
35. In the instant case the respondents failed to prove or set out the particulars of fraud or show how the claimant perpetrated it as it did not contest any of the letters availed by the claimant as evidence.
36. As regards the Governor's terms, it is common knowledge that the claimant's letters of employment dated 2nd January, 2018 and 4th December, 2020 made no reference to the Governor's terms of office or indicated that the claimant's employment was dependent on the Governor's term of office.
37. The allegation lacked any factual or legal basis and nothing turned on it.
38. Concerning retirement age, the respondents made reference to the claimant's age in the letter of termination of employment yet the claimant's employment contract was a fixed term contract for a duration of three (3) years and was not tied to his age and was due to lapse on 31st December, 2023.
39. Analogous to the argument on the Governor's term of office, the claimant's fixed term contract was not subject to or based on the claimant's age and it was supposed to be the appointment letter ought to have been phrased accordingly.
40. Without express reference to age, it was disingenuous for the respondent to introduce an extraneous fact to the contract.



41. The respondents cited the provisions of Section 74 and 75 of the *County Governments Act* as their defence.

Section 74 provides that;

42. The County Public Service Board shall regulate the engagement of persons on contract, volunteer and casual workers, staff of joint ventures and attachment of interns in its public bodies and offices.

Section 75 provides:

If it comes to the attention of the County Public Service Board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or fraudulent manner, the County Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—

43.

- a. revoke the decision;
- b. direct the concerned head of department or lawful authority to commence the process afresh;
or
- c. take any corrective action including disciplinary action.

44. Significantly, although the term regulate generally means to control and the County Public Service Board have power to control engagement of persons as employees, neither Section 74 nor 75 of the *County Governments Act* gives the County Public Service Board a carte blanche in dealing with employee it has engaged.

45. Needless to belabour, employees are engaged in a formal matter under a contract of service which both parties are obligated to abide by. It is an agreement and any unilateral variation of the agreement entitles the other party to seek redress.

46. Relatedly, the County Public Service Board did not avail evidence to show that it invoked any of the two provisions and in particular Section 75 of the *County Governments Act* which can only be invoked in cases of irregularities of process and an investigation has been conducted.

47. Finally, the foregoing provisions do not oust the provisions of the *Employment Act* or any other law applicable to an employment relationship.

48. From the foregoing, it is clear that respondents failed to prove on a balance of probabilities that they had a reason(s) to terminate the claimant's employment as by law required.

49. Concerning procedure, it requires to belabouring that the respondent did not comply with the prescribed mandatory procedure.

50. Intriguingly, the letter of termination of the claimant's employment was dated 5th September, 2022 and his employment had already ended on 31st August, 2022.

51. Clearly, the respondent, in their endeavour to get rid of the claimant forgot to accord him the requisite one (1) month's notice period.

52. If indeed the claimant acted fraudulently, why was he not reported to the police for an investigation to be conducted or subjected to a disciplinary hearing?



53. Needless to emphasize, the procedural tenets provided by Section 41 of the *Employment Act* are mandatory. See Pius Machafu Isindu V Lavington Security Guards Ltd [2017] eKLR and Jane Samba Mukala V Ol Tukai Lodge [2013] eKLR.
54. Having failed to demonstrate that the procedural requirements under Section 41 of the *Employment Act* were complied with, it is the finding of the court that the termination of the claimant's employment by the respondent was procedurally flawed and thus unfair.
55. In sum, termination of the claimant's employment by the 2nd respondent was unfair within the meaning of the provisions of Section 45 of the *Employment Act*.

Appropriate reliefs

Declaration

56. Having found as above, the declaration that termination of the claimant's employment contract by the respondent was unfair and unlawful was unfair is merited.

Compensation

57. Bearing in mind that the claimant was an employee of the respondent for about 4 years and 8 months which is not long, did not contribute to the termination of employment, appealed the respondent's decision as he wished to remain in employment, and expected to serve the entire term of employment, the court is satisfied the equivalent of 3 months gross salary is fair.
58. The claims for special damages, exemplary and punitive damages was not substantiated and are accordingly dismissed.

Salary in lieu of notice

59. Having found that termination of the claimant's employment was unfair and indeed no notice was issued the claimant is awarded one (1) month's salary in lieu of notice.
60. The upshot of the foregoing is that judgment is entered in favour of the claimant against the County Government of Kisii as follows:
 - a. Declaration that termination of the claimant's employment by the respondents was unfair.
 - b. One (1) month's salary in lieu of notice.
 - c. Equivalent of three (3) months gross salary.
 - d. Costs of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 9TH DAY OF JULY, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

PARA 61.



In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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