



Mutugi & another v Career Readiness Social Initiative Ltd (Cause 646 of 2019 & E525 of 2021 (Consolidated)) [2025] KEELRC 2002 (KLR) (8 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 2002 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 646 OF 2019 & E525 OF 2021 (CONSOLIDATED)**

HS WASILWA, J

JULY 8, 2025

BETWEEN

PAULINE WANGUI MUTUGI 1ST CLAIMANT

PRISCAH JEPNG'ETICH 2ND CLAIMANT

AND

CAREER READINESS SOCIAL INITIATIVE LTD RESPONDENT

JUDGMENT

1. The 1st Claimant instituted this claim herein vide a Memorandum of Claim dated 1st October 2019 and prays for judgment against the Respondent for:
 - a. A declaration that the termination of the Claimant from employment was unfair and unlawful.
 - b. 12 months gross salary for unfair and/or unlawful termination.
 - c. Three (3) months' salary in lieu of notice.
 - d. Service pay.
 - e. Damages.
 - f. An order for issuance of a Certificate of Service.
 - g. Costs of the suit.
2. Subsequently, the 2nd Claimant instituted her claim vide a Memorandum of Claim dated 28th June 2021 in ELRC E525 of 2019 and prays for judgment against the Respondent for:
 1. The Claimant be paid her due salary for the remainder of her contract.



2. The Claimant be paid her one months' notice in lieu.
 3. General damages for unilateral breach of contract.
 4. Punitive damages.
 5. A declaration that the Claimants termination by the Respondent was unlawful and unfair.
 6. Costs of the cause.
3. *Vide* a ruling delivered on 6th April 2022, this court ordered that the two files be consolidated and the ELRC Cause 646 of 2019 be the lead file.

Claimants' Case

4. The 1st Claimant avers that she was employed by the Respondent as a technical coordinator in August 2017, she discharged her mandate religiously and was never subjected to any disciplinary proceedings.
5. The 1st Claimant avers that she worked in this position until January 2019 when she was given a further 2-year permanent contract and promoted to a higher position due to her great performance to Programme Regional Lead. Her new role included getting youth between 18-25 years, training and placing them in employment and had 21 instructors under her.
6. To accomplish the objective and purpose of the programme, weekly meetings were held with the trainers to discuss and confront the challenges facing the programme. The 1st Claimant avers that on 19th February 2019, there was a meeting in Athi River Dala Center which was attended by the instructors and supervisors including the Claimant.
7. The 1st Claimant avers that several months after the meeting, the Respondent claimed that the meeting was used to demand for contributions from instructors for the programme manager identified as Damaris. According to the Respondent, the meeting was to be used as a platform to raise money to appreciate the manager and the 1st Claimant was the chief architect of the initiative which information the 1st Claimant was not privy to.
8. It is the 1st Claimant's case that the Respondent terminated her service without proper investigations into the veracity of the allegations and without due regard to the evidence tendered in opposition to the unfounded allegations.
9. The 1st Claimant avers that the Respondent's action amounted to unfair termination and was done without due regard to procedure thus unlawful.
10. The 2nd Claimant avers that she was employed by the Respondent as a Sewing Machine (SMO) Instructor under yearly contracts commencing on 1st January 2019. She maintains that she worked dutifully and diligently until July 2019 when she was terminated on grounds of alleged misconduct.
11. The 2nd Claimant avers that she was earning Kshs. 96,874 which was reviewed from time to time.
12. It is the 2nd Claimant's case that purported misconduct was of an undisclosed person, an undisclosed offence and without a definitive finding of the Respondent and disclosure of the undisclosed person was guilty of the alleged malfeasance. This amounted to unfair proceedings as it was impossible for her to defend herself.
13. It is the 2nd Claimant's case that the Respondent did not follow the proper procedure of terminating an employee under fixed terms contract.



Respondent's Case

14. In opposition to the 1st Claimant's Claim, the Respondent filed a Statement of Response dated 6th November 2019. Subsequently, the Respondent filed a Statement of Response dated 27th August 2021 in opposition to the 2nd Claimant's claim.
15. The Respondent avers that the 1st Claimant was employed as a Technical Coordinator until January when she was employed as an SMO Regional Lead.
16. The Respondent admits that its employees participate in regular SMO Check in meetings where the departmental issues are discussed.
17. The Respondent avers that on 19th February 2019, during the SMO weekly meetings, the 1st Claimant directed the SMO instructors to contribute money towards appreciating the SMO leadership for facilitating the salary increase of the SMO instructors at the beginning of the year. The 1st Claimant indicated she would contribute Kshs. 20,000 and directed each instructor to contribute Kshs. 10,000.
18. In fear of victimization and of losing their jobs, the instructors unwillingly contributed the amount towards the appreciation scheme framed by the 1st Claimant. The contribution was received by the 1st Claimant and the 2nd Claimant who acted as the treasurer.
19. It is the Respondent's case that the 2nd Claimant was the designated treasure in the fraudulent scheme and received part of the contributions from the SMO instructors. Additionally, she failed and/or refused to report the matter to her employer.
20. The Respondent avers that confidential reports and a number of complaints and allegation were lodged against the Claimants in relation to the directions issued in the meeting of 19th February 2019. Based on this, it conducted investigations which found the allegations were genuine and founded.
21. It is the Respondent's case that the 1st Claimant was issued a notice to show cause dated 25th July 2019 which also directed her to attend a disciplinary meeting on 26th July 2019 to respond to the allegations against her. The letter stipulated the allegations against her.
22. The Respondent avers that the 1st Claimant attended the disciplinary meeting accompanied with her representative from the company, Benard Wafula. She was given time to represent her case to her satisfaction and her representative was given adequate time to testify.
23. The Respondent avers that upon consideration of the 1st Claimant's representation and the evidence presented, the disciplinary committee found the 1st Claimant had engaged in gross misconduct and her conduct of directing the SMO instructors to contribute money in appreciation of the management was in violation of the Respondent's Code of Conduct and HR Policy. She was then terminated vide a letter dated 2nd August 2019.
24. The Respondent avers that it arranged a meeting with the 2nd Claimant on 23rd July 2019, where she was notified of the allegations against her and given sufficient time to respond and invited for a disciplinary hearing on 25th July 2019. She attended the hearing and was given time to present her case to her satisfaction.
25. Upon considering, the witness statements, the 2nd Claimant's response and evidence presented, the disciplinary committee found that the 2nd Claimant had engaged in gross misconduct and her unethical actions violated the Respondent's Code of Conduct and HR Policy; and she was terminated vide a letter dated 25th July 2019.



26. The Respondent avers that the termination of the Claimants employment was lawful, procedural and fair and she is not entitled to any of the reliefs sought in her claim.

Evidence in Court

27. The 1st Claimant (CW1) adopted her witness statement dated 22nd August 2019 as her evidence in chief and produced her filed list of documents dated 1st October 2019 as her exhibits 1-9.

28. During cross-examination, CW1 testified that nothing about the meeting of 19th February 2019 was about collecting money for the Programme Manager, Damaris.

29. She testified that she did not record the minutes but the same was done by a trainer. She contends that she is not aware of any witness who testified about the idea of giving money.

30. CW1 testified that she was not given enough time to respond to the allegations as she was asked to respond to the NTSC within 24 hours. She was also denied an opportunity to attend with a witness as the witness who accompanied her was threatened that he would lose his job.

31. CW1 testified that he received her dues including leave days and confirmed that she was a member of NSSF.

32. The Claimant's second witness (CW2), Benard Wafula testified that he works for the Respondent as a trainer, training garment technicians. He adopted his witness statement dated 22nd August 2019 as his evidence in chief.

33. During cross-examination, CW2 testified that he was present in the meeting of 19.2.2019 and that they discussed problems facing the organisation and the SMO program supervisors and instructors, however, the minutes are not in court.

34. CW2 testified that the minutes of the meeting were taken by Evelyne and Justus Okello was present.

35. Upon re-examination, CW2 testified that he was present at the disciplinary hearing and he explained what happened in the meeting of 19.2.2019.

36. The 2nd Claimant was the third witness (CW2) and she adopted her witness statement dated 28th June 2021 as her evidence in chief and produced her bundle of documents as her exhibits.

37. During cross-examination, CW2 testified that they had a merry go round and she bought a machine for herself. The members were Benard, Clement, Nancy and herself.

38. CW2 testified that the money she collected was commitment fee for the students as their fare. The commitment fee was for the Respondent.

39. CW2 testified that she was invited for the disciplinary meeting but she instead resigned vide a letter dated 25th September 2019. She was subsequently sent Kshs 10,112 as payment of 25 days salary.

40. The Respondent's witness Justus Okello (RW1) testified that he works for the Respondent as a Machine Operator and adopted his witness statement dated 5th November 2019 as his evidence in chief.

41. During cross-examination, RW1 testified that on 19.2.2019, she was in a meeting which discussed payment of money to the SMO Manager, Damaris as appreciation. Upon receipt of his salary, he paid Kshs 10,000 to Prisca in cash.

42. RW1 testified that he feared victimization hence he recorded his statement late on 23rd July 2019 upon reassurance by HR.



43. RW1 testified that he is not aware that the Claimants underwent a disciplinary process and he was not called to testify.
44. The Respondent's second witness, Nancy Jepkirong (DW2) testified that she works for the Respondent as SMO instructor and adopted her witness statement dated 13th August 2019 as her evidence in chief.
45. RW2 testified that she was not in the alleged meeting and never received any call from Pauline before she sent her money to Priscah. She never sent any other amount to Priscah.
46. RW2 testified that she sent Priscah Kshs 10,112 on 6th March 2-19 as appreciation for the salary increment.
47. The Respondent's third witness, Clement Abuya (RW3) testified that he works for the Respondent as an Instructor. He adopted his witness statement dated 17th October 2019 as his evidence in chief.
48. RW3 testified that the money sent to Priscah was not chama contribution but it was requested by Doreen and Pauline as appreciation for salary increment
49. The Respondent's fourth witness, Corrine Ngurukie (RW4) adopted her witness statement dated 4th November 2019 as her evidence in chief and produced the documents dated 6th January 2019 and 8th May 2023 as her exhibits.
50. Upon cross-examination, RW2 testified that she is the one who did the investigation on the money collected and issued the show cause letter to the Claimants on 25th July 2019 and informed them of the hearing of 26th July 2019.
51. RW4 testified that the Respondent did not take any action against the Damaris as there was no evidence she received any money.
52. RW4 testified that the investigation was commenced upon information from a whistleblower but the whistleblower report is not in court.

1st Claimant's Submissions

53. The 1st Claimant submitted on two issues: whether the termination was unlawful and irregular; and reliefs.
54. On the first issue, the 1st Claimant submitted that it is a well settled principle that for termination to be fair there must be both substantive justification and procedural fairness. They relied in the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR that referred substantial justice to establishment of a valid reason for termination and procedural fairness as the procedure adopted by the employer in effecting the termination.
55. The 1st Claimant submitted that the principle of substantive fairness is provided for in Section 43 of the *Employment Act*. It provides that the employer needs to have a valid and fair reason for termination to qualify in the face of the law.
56. The 1st Claimant submitted that RW1 and CW2 were the only direct witnesses present in the meeting of 19th February 2019 and they both conceded that minutes were taken, however, they disagreed on whether there was a discussion to raise money to appreciate Damaris. The contradicting positions would have been easily resolved by the production of the minutes which are in the custody of the Respondent who declined to produce them.



57. It is the 1st Claimant's submission that the Respondent's refusal to produce the minutes in court was due to the fact that the minutes do not support its allegations against her.
58. The 1st Claimant submitted that Section 41 of the *Employment Act* provides that an employee must be informed of the allegations and afforded an opportunity to respond followed by a hearing. She was never invited to the show cause letter but the letter invited her to the hearing on 26th July 2019. Additionally, she never given sufficient time to respond to the show cause letter as the letter provided less than 24 hours to respond, which was never backed by the Respondent's Human resource policy.
59. The 1st Claimant submitted that the direct invitation to the disciplinary hearing through show cause letter supports her case that the Respondent went to the disciplinary hearing with a prejudiced mind. She was never accorded an opportunity to respond to the show cause letter in breach of section 41 of the *Employment Act*.
60. The 1st Claimant submitted that during the hearing she was denied an opportunity to cross examine the Respondent's witnesses who testified before this court that they never attended the hearing.
61. She further submitted that the investigation report relied by the Respondent was dated 7th August 2019 subsequent to the disciplinary hearing which was held on 26th July 2019; this suggest that the 1st Claimant was heard and dismissed before investigation was done. Additionally, she was never issued any warning letter prior to the show cause letter which led to the termination of her employment.

Respondent's Submissions

62. The Respondent submitted on four issues: whether the Respondent had fair and valid reasons to terminate the Claimants; whether the Respondent followed due process in the termination of 1st Claimant; whether the 2nd Claimant's resignation was valid, lawful and binding on the 2nd Claimant and the Respondent; and whether the Claimants are entitled to the prayers sought.
63. On the first issue, the Respondent submitted that it had fair and valid reasons to terminate the Claimants: the 1st Claimant was terminated for raising the initiative and asking the SMO instructors to contribute money towards appreciation of the SMO leadership for facilitating salary increments; whereas, the 2nd Claimant was terminated for her involvement in the scheme to raise money as the designated treasurer and her receipt of funds from SMO instructors in the form of M-pesa and cash payment.
64. It is the Respondent's submission that the Claimants' actions amounted to breach of their contract of employment which placed an obligation on them to observe and comply with all staff rules and regulations, codes of conduct and policies made by the company.
65. The Respondent submitted that the Claimants confirmed that a meeting was held on 19th February 2019 consisting of SMO staff and the other people present were CW2 and RW1. Additionally, RW1, RW2 and RW3 testified that they gave the 2nd Claimant Kshs. 10,000.
66. The Respondent submitted that it is its evidence that it learnt of the Claimants' involvement and conduct in the scheme of demanding money from the junior employees as a form of appreciation either for recruitment and/or salary increment through a whistleblower. RW4 testified that the information came from the CEO's desk through the Human Resource department thereby prompting an investigation.



67. It is the Respondent's submission that its whistleblower policy highlights that whistleblower information may be submitted on a confidential basis and/or anonymously, therefore, there was no obligation for the Respondent to reveal the identity of the whistleblower as suggested by the Claimants.
68. The Respondent submitted that it compiled an investigation report that contained witness accounts of RW1, RW2 and RW3 and findings from the oral interviews conducted on the SMO staff at Dala Textiles and Shauri Moyo.
69. The Respondent submitted that it discharged its onus in establishing that the reasons for termination of the Claimants were valid and fair as enshrined under Section 43(2) of the *Employment Act* which provides that reasons for termination of a contract are matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.
70. On procedural fairness, the Respondent submitted that it is not in dispute that the 1st Claimant was issued with a show cause letter on 25th July 2019 and she attended the disciplinary hearing on 26th July 2019. She attended the hearing accompanied by a representative of her own, Benard Wafula. Therefore, the Respondent complied the requisite procedure in the 1st Claimant's termination.
71. It is the Respondent's submissions that the elements of procedural fairness was set under Section 41 of the *Employment Act* as the show cause letter dated 25th July 2019 conveyed: the particulars of the allegations in a language understood by the 1st Claimant; the breach occasioned as a result of her conduct; the requirement to respond to the show cause by attending the disciplinary hearing; the right to be accompanied to the hearing by a fellow employee of his choice; and the right to make representations on the matters raised either prior or during the hearing.
72. The Respondent submitted that the 1st Claimant never requested for additional time to file a written response to the show cause letter when she presented herself for the disciplinary hearing. Additionally, she did not communicate her intention to cross-examine the witnesses whose identity had been withheld pursuant to the whistleblowing policy.
73. The Respondent submitted that the *Employment Act* does not provide for cross-examination of witnesses during investigation stage or the disciplinary hearing. The *Employment Act* places an obligation on the employer to conduct a fair hearing and not a perfect hearing, thus, the Respondent was not bound to avail witnesses at the disciplinary hearing; revealing their identities of witnesses would have amounted to breach of its whistleblowing policy.
74. The Respondent submitted that an investigation was conducted prior to a disciplinary process is not an express requirement of the *Employment Act*. Further, neither the investigation reports placed before this court are dated 7th August 2019.
75. It is the Respondent's submission that the employer is not bound to issue any warning letters prior to initiating a disciplinary proceeding against the employee.
76. The Respondent submitted that the particulars of unprocedural irregularities were afterthoughts as they were never pleaded in the Memorandum of Claim or the witness statements.
77. On the third issue, the Respondent submitted that the 2nd Claimant resigned from her employment vide a letter dated 25th July 2019, which she confirmed that during cross-examination. By dint of the resignation letter, the 2nd Claimant confirmed that she had full knowledge of the allegations against her.



78. The Respondent submitted that the submission of the resignation letter meant that the 2nd Claimant ceased being an employee of the Respondent from 25th July 2019. Therefore, the Respondent did not have the jurisdiction or authority to continue any disciplinary proceedings against the 2nd Claimant or make pronouncement over her.
79. On compensation, the Respondent submitted that at the time of termination, the 1st Claimant was serving as a SMO Regional Lead which position she served for a minimum of seven months of her contract of service.
80. On salary in lieu of notice, the Respondent submitted that the notice period for termination of the contract by either party giving a 30 days' notice period or payment of one month's salary in lieu of notice. Therefore, the claim for three months' salary in lieu of notice is unmerited.
81. The Respondent submitted that the 1st Claimant is not entitled to service pay as she was a member of NSSF and her remuneration was subject to statutory deduction towards NSSF.
82. The Respondent submitted that the claim for damages by the Claimants is baseless, unsubstantiated and not anchored in law as the same is not provided as remedies awarded by an employment court under Section 49(1) of the Employment Act.
83. The Respondent submitted that the 2nd Claimant's claim for due salary for the remainder of the contract is baseless, founded and devoid of merit. The same is not anchored in the contract of employment or anchored in law.
84. The Respondent submitted that the 2nd Claimant is not entitled to payment of one month notice in lieu as she resigned from employment on her own accord and was thereafter fully compensated for all her dues.
85. I have examined all evidence and submissions of the parties herein. The issues for this court's determination are as follows:
 1. Whether there were valid reasons to warrant claimant's dismissal.
 2. Whether the claimants were subjected to a proper disciplinary process.
 3. Whether the claimants are entitled to the remedies sought.

Issue No 1

86. The claimants were terminated vide letters dated 2/8/2018 and 25/7/2019 respectively which indicated that they were dismissed for breach of their employment contract and engaging in gross misconduct.
87. Before the termination, the claimants were each served with a notice to show cause. The notice to show cause letter for Pauline indicated that she had vide a meeting of 19/2/2019 during a SMO meeting asked SMO instructors to appreciate Damaris for facilitating a salary increment for them by contributing kshs 20,000/-. That it was agreed that each SMO instructor contributes 10,000/- each. That she also spoke to the instructors personally informing them of the need to pay towards the said appreciation to Damaris.
88. As for Prisca she was not served with any show cause letter but was just terminated for gross misconduct for no apparent reasons. The 1st claimant responded to the show cause letter denying the allegation. The said show cause letter dated 25th July 2019 informed her that she was to respond to allegations against her within 24 hours. The said letter also informed her of a disciplinary hearing within the said period.



The claimant was subjected to a disciplinary hearing on 26/7/2019 at 10.30 am as per the minutes of the meeting produced by the respondents.

89. During the hearing the claimant chose to be accompanied by Bernard Wafula, SMO instructor but as to what evidence was adduced, this is no evident from the said minutes. Pauline denied culpability as accused. Bernard also denied allegations levelled against the 1st claimant. The respondents chose not to call any witness but they averred that there was culpability against the claimant. The claimant has submitted that she attended the hearing but her witness was not allowed to testify. Bernard indicated that he was present at the meeting of 19/2/2019 but nothing was discussed about payment of kshs 10,000/- to Damaris.
90. The claimant's witness CW2 also denied any discussion of collecting kshs 10,000/- to give to Damaris. The respondents called 2 witnesses who indicated that they were at the meeting of 19/2/2019 and the issue of collecting money to give to Damaris was discussed.
91. It is however apparent that these 2 witnesses never testified during the disciplinary hearing. The respondents aver that they investigated the matter and found the 1st claimant culpable. The investigation report the respondents relied upon is dated 7/8/2019 but the disciplinary hearing was held on 26th July 2019. This indicates that the 1st claimant was heard and dismissed before investigations were done.
92. It is also clear that there is no evidence that the respondents submitted against the 1st claimant during the disciplinary hearing. It therefore follows that there was no valid reason established against the 1st claimant during the hearing to warrant termination.
93. As concern the 2nd claimant she was never subjected to any disciplinary hearing and therefore was condemned unheard.
94. Section 43 of the [Employment Act](#) 2007 states as follows:
- In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
95. Section 45(2) of the [Employment Act](#) 2007 also statse as follows:
- (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 employees conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
96. As concern the claimants, no valid reasons for termination were established and there was also no proper disciplinary hearing. This answers issue No 1 and 2 above.



Issue No 3

97. Having established as above, I find for each claimant and award them damages for unfair termination. In view of the fact that they were terminated without due process, I will find 8 months' salary as compensation adequate which I award as follows:

1. 1st Claimant

8x kshs 190,474= kshs 1,142,844

2. 2nd Claimant

8x kshs 96,874/- = kshs 774,992/-

3. I also award each 1 month salary in lieu of notice=

1st claimant kshs 190,474

2nd claimant kshs 96,874/-

Total

1ST claimant = kshs 1,333,318/- and 2nd claimant Kshs 871,866/- each less statutory deductions.

4. The respondents will issue each claimant with a certificate of service.

5. The respondents will pay cost of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

