



REPUBLIC OF KENYA



**Onyango v Ekaterra Tea Kenya PLC (Cause E011 of 2024)
[2025] KEELRC 2389 (KLR) (29 August 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2389 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE E011 OF 2024**

**J RIKA, J
AUGUST 29, 2025**

BETWEEN
MILLICENT ACHIENG' ONYANGO CLAIMANT
AND
EKATERRA TEA KENYA PLC RESPONDENT

JUDGMENT

1. The Claimant filed her Statement of Claim, dated 24th April 2024.
2. She avers that she was employed by the Respondent on 10th September 2011, as a tea-plucker / general worker.
3. She was issued a letter of termination by the Respondent, dated 14th November 2022. She was advised that termination was for medical reason.
4. She was not given a hearing. She was merely told to go home on 14th November 2022, and wait to be called.
5. She was not called. She was earning a monthly salary of Kshs. 23,492 at the time of termination.
6. She prays for: -
 - a. 2 months' salary in notice at Kshs. 46,492.
 - b. Gratuity for 11 years completed in service at Kshs. 174,180.
 - c. 20 years lost based on termination on medical ground at Kshs. 5,638,228.
 - d. Leave pay at Kshs. 18,783.
 - e. One way bus fare at Kshs. 2,000.



Total... Kshs. 5,879,685.

- f. Costs.
 - g. Interest.
 - h. Any other suitable relief.
7. The Respondent's position is that the Claimant was its Employee, as pleaded. Her contract was not terminated by the Respondent. She voluntarily agreed to retire, on 14th November 2022 on medical ground. The Respondent received the medical board's report dated 22nd September 2022, recommending the Claimant's retirement on medical ground. The report was discussed by the parties, before the Claimant retired. It is not true that her contract was terminated by the Respondent without hearing her.
 8. She was paid her terminal dues, in accordance with her contract. She does not merit the prayers sought. The Respondent prays for dismissal of the Claim, with costs to the Respondent.
 9. The Claimant, and the Respondent's Estate Manager Caroline Mitei, gave evidence for the respective parties, on 5th May 2025, closing the hearing. The Claim was last mentioned on 25th June 2025.
 10. The Claimant relied on her witness statement and 5 documents [exhibits 1-5], in her evidence-in-chief. She repeated that she was retired unfairly and unlawfully, on medical ground. She was only paid her salary for November 2022. She was denied terminal benefits.
 11. She went for medical check-up, on 14th October 2022. She was thereafter referred to various hospitals. Her N.H.I.F facility was inaccessible. She was advised to pay her bills in cash, which she did not have.
 12. The Respondent advised her that it would facilitate her to be treated at Kenyatta National Hospital. She was compelled by the Respondent to sign a document while still in pain, and told that she had been retired on medical ground. She worked for 11 years. The Respondent was aware about her medical condition. She had been on light duty for 1 year prior to retirement.
 13. Cross-examined, she told the Court that she was subscribed to N.S.S.F. She went before the medical board. She did not know how to read. The Respondent told her that she had been retired on medical ground. She told so by Julia, Assistant Manager. She had not reached the age of receiving pension dues. She saw her last pay slip. It provided for salary and bus fare only.
 14. Caroline Mitei relied on her witness statement, and exhibited documents [1-7] filed by the Respondent, in her evidence-in-chief.
 15. Cross-examined, she told the Court that she was not present, when the letter of retirement issued. She signed the letter. The Claimant was informed of the reason for her retirement. This was done through her supervisor. She attended a meeting with the medical board, before retirement. It is not true that the decision was made without her consent. Mitei did not have any document, stating that the Claimant agreed to voluntarily retire. She was not coerced. It is important that an Employee is consulted, before retirement on medical ground.
 16. Redirected, Mitei told the Court that she was present, when the Claimant handed in her retirement letter.
 17. The issues are whether the Claimant's contract was terminated by the Respondent on medical ground, fairly and lawfully or at all; and whether the Claimant merits the remedies sought.



The Court Finds: -

18. The Claimant worked for the Respondent for 11 years, as a tea-plucker / general-worker, effective 10th September 2011. She was retired by the Respondent on medical ground, on 14th November 2022.
19. The letter of retirement is dated 14th November 2022. It indicates that the Respondent retired the Claimant following the recommendation of the Respondent's own medical board.
20. The letter states that the decision to retire the Claimant, was made by the Respondent. It is not indicated that the Claimant volunteered to retire on account of illness and inability to continue working. She was informed by the Respondent that a decision had been made, to retire her with immediate effect.
21. She was not required to serve notice. Termination took effect on the date the decision was made and communicated to the Claimant- 14th November 2022.
22. The medical board sat on 22nd September 2022, examined and reviewed 13 Employees, the Claimant included.
23. Its report states that the Claimant had lumbar spondylolisthesis /LBA for 8 years. She had been on light duties for over 2 years. MRI reports confirmed this illness. She had been on follow up treatment at Central Hospital and Tenwek Hospital. The board recommended that she is retired on medical ground.
24. The Respondent writes in the letter that, there were other discussions held between the Claimant and the Respondent's doctor, and between the Claimant and Caroline Mitei.
25. There is no evidence presented by the Respondent, establishing that any discussions were held between the Claimant and the Respondent's doctor, and between her and Caroline Mitei, after the recommendations of the Respondent's own medical board.
26. There is no record of such discussions, or any form of hearing, where the recommendations of the board were discussed, prior to retirement.
27. The recommendations of the board do not in the view of the Court, disclose whether the Claimant had become so sick, as to be incapacitated, to continue serving.
28. The Report states that she had been sick for 8 years. She worked for 11years, meaning that she was only free from the illness for 3 working years. If she was manageable for 8 years, what made her incapacitated in 2022?
29. The report states that she had been on light duty for about 2 years. What happened to her or to the light duty in 2022, warranting retirement?
30. Was the Claimant given the opportunity to seek the medical opinion of an independent medical practitioner outside the Respondent's own medical board, or was the opinion of the medical board final?
31. Without further justification after the recommendations of the medical board, the Respondent cannot be deemed to have established valid reason, justifying termination of the Claimant's contract.
32. In Supreme Court of Kenya decision, *Gichuru v. Package Insurance Brokers Limited* [Petition No. 36 of 2019] [2021] KESC 12 [KLR] [22nd October 2021] [Judgment], it was held that the [*Employment Act*](#), does not specifically mention retirement on medical ground, but refers to termination on account



- of physical incapacity. Termination on such ground must be preceded by medical investigation. Incapacity must be established. The Employee must be accorded a fair hearing.
33. The position has been adopted in decisions of the E&LRC, including Kennedy Nyanguncha Omanga v. Bob Morgan Services Limited [2013] e-KLR; Kenya Plantation & Agricultural Workers Union v. Rea Vipingo Plantation Limited [2015] e-KLR; Samuel Wanyonyi Wamalwa v. Wells Frago Limited [2017] e-KLR; Lucy Chepkemei v. Sotik Tea Company Limited [2022] e-KLR; and Ndung'u v. Safaricom Limited [2025] KEELRC 181 [KLR].
 34. The Respondent did not take the Claimant through a fair hearing, and failed to establish that she was incapacitated, to continue working.
 35. There is no evidence that she consented to the decision by the Respondent.
 36. Termination was unfair and unlawful, under Sections 41, 43 and 45 of the *Employment Act*.
 37. She was promised that she would be paid 2 months' salary in lieu of notice; salary earned up to 14th November 2022; pro-rata leave if any; gratuity for 11 years completed in service in line with clause 32 [b] of the CBA; and one-way bus fare home. She was also offered her certificate of service.
 38. She was not truthful in her evidence, when she told the Court that she was only paid her salary for the month of November 2022, on termination.
 39. Her Advocates wrote to the Respondent in October 2023, stating that upon receiving the letter of retirement from the Respondent, she was paid Kshs. 174,180, which she was advised was her gross terminal benefits.
 40. Why does she not disclose this in her Statement of Claim, and evidence before the Court?
 41. Termination was unfair and unlawful. The Claimant had worked for 11 years. She is not shown to have caused or contributed to the circumstances leading to her termination.
 42. She pleads that was 37 years old, on termination. In her submissions, she states that she was 40 years old at the time of termination, and expected to continue working until retired at the age of 60 years.
 43. Her identity card shows that she was born in 1982, and was therefore 40 years old, at the time of termination. Clause 31 of the CBA set retirement age at 55 years, and optional retirement age at 50 years.
 44. The Claimant would at most, be expected to go on working for 15 years, not 20 years as pleaded. But would this be a reasonable expectation, given her health challenges? The contract did not guarantee that the Claimant would serve until mandatorily retired. It had provision for premature exit. Her claim for Kshs. 5,638,228 in anticipatory salaries to the date of retirement, is unreasonable and not legally justifiable. It amounts to pursuit of unjust enrichment.
 45. The Court would instead grant her equivalent of 11 months' salary in compensation for unfair and unlawful termination, at Kshs. 258,412.
 46. She is granted 2 months' salary in lieu of notice as offered by the Respondent, at Kshs. 46,492.
 47. Clause 32 [b] of the CBA entitled her to gratuity at the rate of 23 day's salary, for each of the 11 years completed in service. This was offered by the Respondent in the letter of retirement. This translates to Kshs. 228,595 in gratuity.
 48. The Respondent offered pro rata leave if any, but did not specify before the Court if any was found due, and how much was offered. The Claimant pursues annual leave at Kshs. 18,783. It is granted as prayed.



49. One-way bus fare, offered at Kshs. 2,000 is not disputed, and is allowed as prayed.
50. The above awards total Kshs. 554,282. Less the amount received by the Claimant at Kshs. 174,180, the Respondent shall pay to the Claimant Kshs. 380,102 in compensation for unfair and unlawful termination, and terminal dues.
51. Certificate of Service to issue.
52. Costs to the Claimant.
53. Interest granted at the court rate, from the date of Judgment, till payment is made in full.

It is ordered: -

- a. Termination of the Claimant's contract on medical ground was unfair and unlawful.
- b. The Respondent shall pay to the Claimant notice, gratuity, compensation, leave and bus fare adding at -Kshs. 554, 282, less Kshs. 174,180 – total at Kshs.380,102.
- c. Certificate of Service to issue.
- d. Costs to the Claimant.
- e. Interest allowed at court rate, from the date of Judgment, till payment is made in full.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, PURSUANT TO RULE 68[5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 29TH DAY OF AUGUST 2025

JAMES RIKA

JUDGE

