



Njaramba v Mombasa Water Supply & Sanitation Co. Limited (Cause E073 of 2024) [2025] KEELRC 2360 (KLR) (8 August 2025) (Judgment)

Neutral citation: [2025] KEELRC 2360 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E073 OF 2024
M MBARŪ, J
AUGUST 8, 2025

BETWEEN

ANTHONY NJARAMBA CLAIMANT

AND

MOMBASA WATER SUPPLY & SANITATION CO. LIMITED RESPONDENT

JUDGMENT

1. The respondent employed the claimant as the managing director on a term contract of 3 years with effect from 21 January 2019.
2. The claim is that on 30 July 2021, while the claimant was on duty, he received a letter dated 29 July 2021 terminating his employment immediately. There was no prior notice, hearing or any justified reasons for the termination of employment.
3. On the same date, the claimant was issued with a letter dated 14 July 2021, indicating that he had been promoted to the position of County Executive Committee Member of Youth, Gender and Sports in the County Government of Mombasa. This letter was not addressed to the claimant, nor was he copied, and the contents were strange to him. This cannot justify the termination of his employment.
4. At the time of summary dismissal, the claimant had served as the managing director for 2 years and 6 months and under his term contract, had 6 more months left. He was not paid any terminal dues and hence claims the following:
 - a. Notice pay Ksh. 550,000.
 - b. 12 months' compensation Ksh. 6,000,000.
 - c. Unpaid salary from August 2021 to January 2022 Ksh.3,300,000
 - d. Costs of the suit.



5. The claimant testified in support of his case that upon being contracted by the respondent as the managing director, he worked diligently until 30 July 2021, when he was served with notice terminating his employment. The Board met, and he was asked to step out as they deliberated. He was then issued with the termination letter without any regard for due process. Attached to the notice was another letter dated 14 July 2021, indicating that he had been promoted to the position of County Executive Committee member for Youth, Gender, and Sports with the County Government of Mombasa, but this letter was not directed to him. To date, that position has not been allocated to him.
6. The claimant testified that the respondent acted unfairly in the termination of his employment by failing to give him an opportunity for a hearing. Under his term contract, he had served for 2 years and 6 months and had 6 more months to serve. He was denied a fair chance to complete his contract.
7. The termination of employment exposed him to distress and uncertainty since he remained jobless, and no other employer was willing to take him. The employment contract had provided for 3 months' notice or payment in lieu thereof, which the respondent failed to adhere to.
8. The claimant testified that the respondent paid terminal dues, including;
 - a. Accrued leave days,
 - b. 3 months basic pay
 - c. House allowance for 3 months
 - d. Gratuity pay.
9. At the time his employment terminated, the claimant was following up on two cases with the court involving previous managing directors of the respondent. The matters related to the termination of contracts due to unfair and unjustified circumstances. This also happened to him, which is unfair and without justification.
10. In response, the respondent admitted that the claimant was an employee through a letter of appointment dated 14 January 2019 for a term of 3 years, with effect from 21 January 2019.
11. On 14 July 2021, the Board received written communication from the County Government of Mombasa with information that the claimant had not been nominated as the County Executive Committee member for Youth, Gender and Sports. It was an express directive in the communication that the respondent should ensure the smooth transition in the office of the Managing Director following the nomination of the claimant by the County Government of Mombasa.
12. Following the board meeting held on 29 July 2021, acting on the directive from Mombasa County Government, the Board resolved to invoke clause 29 of the claimant's letter of appointment, which allowed for termination of employment through 3 months' notice or payment in lieu thereof.
13. The claimant has since been paid his terminal dues and allowed to serve the Mombasa County Government in a different capacity. His terminal dues were paid in full;
 - a. 51 leave days Ksh.955,477.
 - b. 3 months basic pay in lieu of notice Ksh.1,217,952.
 - c. 3 months house allowance Ksh.180,000.
 - d. Gratuity for 3 months, Ksh. 377,565 remitted to CPF Financial Services.
14. The claims made are without merit and should be dismissed.



15. In evidence, the respondent called Tim Munyi Mugo, advocate and the legal and Board affairs manager of the respondent. He testified that the respondent is a limited liability company and, through a contract dated 14 January 2019, the claimant was employed as the managing director for 3 years. The contract allowed termination of employment upon 3 months' notice or payment in lieu thereof.
16. Mugo testified that the respondent Board received communication from the Mombasa County Government directing the smooth transition of the claimant to the nomination of a CECM. The letter dated 14 July 2021 to the board was express and required the release of the claimant. During the Board meeting held on 29 July 2021, the board resolved to invoke clause 29 of the contract of employment and pay the claimant in lieu of notice. He has since been paid all his terminal dues.
17. As the managing director, the claimant was at the meeting held on 29 July 2021. During the discussion of his contract termination, he was asked to step out, and the matter was discussed, and a resolution was passed. The witness was recalled and advised to issue the termination notice to the claimant.
18. Mugo testified that by the time the claimant received the termination notice, he was unaware of his nomination to the Mombasa County Government. There was no hearing or notice given before the Board resolution. He is aware that the Mombasa County Government did not appoint the claimant. In addressing the matter, the Board exercised its discretion.
19. The claimant had the right of appeal against the decision taken by the respondent but failed to apply. The respondent acted within the law and per the contract, and hence paid for 3 months in lieu of notice.
20. At the close of the hearing, parties filed written submissions, which were analysed.

Determination

21. It is a common cause that the respondent employed the claimant as the managing director on a 3-year contract, which terminated before completion. The respondent sought to exercise its right under clause 29 of the contract, which allowed termination of the contract by 3 months' notice or payment in lieu thereof.
22. The claimant contested the termination of his employment, which had 6 months to go. The respondent relied on a letter from the Mombasa County Government stating that he had been nominated for a CECM position. He was not aware of this letter and was not appointed.
23. The *Employment Act* (the Act) has introduced a new paradigm in employment relations. An employer cannot enforce the employment contract at will. Recourse must be the Act as the bare minimum.
24. This is appreciated in the case of *Kenfreight (E.A.) Limited v Benson K.Nguti* [2016] eKLR, the Supreme Court held that;

The *Employment Act*, for example, introduced and prescribed minimum terms which the parties must consider as they contract. It established the concept of fair hearing and placed a duty on an employer to give reasons before dismissing or terminating the services of an employee. These developments are a stark departure from the traditional power of the employer to terminate or dismiss at will as demonstrated in the earlier decisions of the courts.
25. This position is reiterated in *International Planned Parenthood Federation v Pamela Ebot Arrey Effiom* [2016] KECA 429 (KLR), which states that under sections 43 and 45 of the Act, there is a significant change from the previous statutory regime, including the employer's power to terminate employment at will. The employee must be provided with reasons for the termination. These reasons must be



genuine, valid, and reasonable. Furthermore, the due process of notice and hearing must be observed under section 41 of the Act.

26. Termination of employment is therefore unfair if there is no substantive justice or procedural fairness, or if the reasons given are based on invalid grounds, or if either the reason itself or the process of termination are not fair, as held in *Gateway Marine Services Limited v Muia* (Employment and Labour Relations Appeal E010 of 2023) [2023] KEELRC and the case of *Ibrahim v Reliance Hospital Limited* [2023] KEELRC 2539 (KLR). The Act has introduced a paradigm shift towards the realm of fairness. Before termination of employment, even where the written contract allows for termination and payment in lieu of notice, procedural and substantive fairness remain mandatory.
27. *The Constitution* 2010 appears to have introduced a paradigm shift by entrenching the need for fair labour practice and fair administrative action whilst making administrative decisions that affect employees including those serving on casual terms. Thus, by virtue of section 7 of the sixth schedule to *the Constitution*, the *Employment Act* must be read with the necessary adjustments to fit into the current constitutional dispensation.
28. In *Agatha Bugosi Said v Vegpro Kenya Limited* [2014] KEELRC 1154 (KLR), the court emphasised that section 41, 43, and 45 of the Act are couched in mandatory terms. The employer cannot purport to rely on an employment contract outside the law.
29. In this case, the respondent relied on communication from a third party, the County Government of Mombasa, to terminate the claimant's contract of service. The employment relationship was governed by the written contract between the claimant and the respondent. The assertion that the respondent received communication and directives to ensure a smooth handover and to facilitate the claimant's promotion to the position of CECM was devoid of due process; it lacked both substantive and procedural fairness. Whatever justification the respondent believed existed, based on the letter dated 14 July 2021, the due process of the Act required the claimant to be invited to address such matter.
30. The payment of terminal dues does not absolve the respondent from the mandatory provisions of sections 41, 43, and 45 of the Act. The conduct of the respondent was unlawful.
The termination of employment was unfair and lacked justification.
31. The claimant is seeking the remaining balance of his six-month contract that was not fulfilled. This is a fair and legitimate expectation. Based on his written contract, the claimant was denied a fair chance to complete his contract. The claim for Ksh. 3,300,000 is justified.
32. Regarding the claim for compensation at 12 months, under section 49(1) of the Act, the Court is permitted to award single or multiple reliefs based on the case, as acknowledged in *Kenfreight (E.A.) Limited v Benson K.Nguti* [2016] eKLR. Once pleaded, the court is guided to award as necessary and provide reasons for each award. See *Kenya Ports Authority v Munyao & 4 others* [2023] KESC 112 (KLR) that;

Section 49 of the *Employment Act* provides for remedies for wrongful dismissal and unfair termination when it provides as follows:

1. Where, in the opinion of a labour officer, summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following — [emphasis added].
33. In this case, the respondent board was guided by the Legal & Board Affairs Manager, who also testified in court that the termination of employment was based solely on a letter from the Mombasa County



Government. The respondent had access to legal expertise but chose to ignore all procedures and the law to effect the termination of employment.

34. The claimant also testified that he was the third managing director of the respondent to face a similar fate. At the time of his employment, he was dealing with two such cases. Objectively considered, the respondent has taken the view that it can do as it pleases despite the law. Such blatant abuse of procedure should not be tolerated in a democratic and organised society such as ours.

35. The claimant was at the peak of his career and was unaware of the alleged nomination to the County Government of Mombasa, a position admitted by Mugo for the respondent. The claim for compensation, in addition to the award above, is justified.

36. The claimant had a 3-year contract and a compensation of 3 months' gross salary is hereby found appropriate, all at Ksh. 1,650,000.

On the claim for notice pay, this was acknowledged as paid in full.

On costs, the claim is successful, and the costs are due.

37. Accordingly, judgment is entered for the claimant against the respondent in the following terms;

- a. Employment terminated unlawfully and unfairly;
- b. Compensation Ksh. 1,650,000;
- c. 6 months unexpired term contract Ksh. 3,300,000;
- d. Costs of the suit.

DELIVERED IN OPEN COURT AT MOMBASA THIS 8 DAY OF AUGUST 2025.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

