



**Wanga v Brodman & 2 others (Sued in their Capacity of Trustees of Mudzini Kwetu Centre Trust) (Cause 199 of 2015) [2024] KEELRC 2783 (KLR) (8 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2783 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 199 OF 2015  
AK NZEI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**AGATHA AMBALE WANGA ..... CLAIMANT**

**AND**

**MARIA BACK BRODMAN ..... 1<sup>ST</sup> RESPONDENT**

**VICTOR KAMAU ..... 2<sup>ND</sup> RESPONDENT**

**ANTONY MULONGO ..... 3<sup>RD</sup> RESPONDENT**

**SUED IN THEIR CAPACITY OF TRUSTEES OF MUDZINI KWETU CENTRE TRUST**

**JUDGMENT**

1. Vide a Memorandum of Claim dated 23<sup>rd</sup> March, 2015 and filed in this Court on 18<sup>th</sup> April, 2015, the Claimant sued the Respondent and sought the following reliefs:-
  - a. One month salary in lieu of notice .....Kshs.45,000/=.
  - b. Salary for the month of January 2015 ..... Kshs.45,000/=.
  - c. Pending leave days for one full year (June 2013 – June 2014) (one month salary) ..... Kshs.45,000/=.
  - d. Pending leave days for June 2014 to January 2015 ..... Kshs.30,000/=.
  - e. Compensation for unfair termination (Kshs.45,000 x 12) ..... Kshs.540,000/=.
  - f. Severance pay for 1<sup>1/2</sup> years worked ..... Kshs.33,750/=.
  - g. Off-days worked (84 days) 84 x Kshs.1,500/= .....Kshs.126,000/=.



- h. Public holidays (24 x Kshs.3,000/=) ..... Kshs.72,000/=.
  - i. Certificate of service.
2. The Claimant pleaded that she had been hired by the Respondent as an educator on permanent and pensionable basis vide a Letter of Appointment dated 8<sup>th</sup> August, 2014 after a successful completion of probation which had taken effect on 15<sup>th</sup> June, 2013.
  3. It was the Claimant's pleading that she was wrongfully dismissed from employment without reasonable reasons and notice, as stipulated in the contract, vide a letter dated 20<sup>th</sup> January, 2015. That the Respondent acted contrary to International Labour Laws, *the Constitution* and the *Employment Act*.
  4. Documents filed alongside the Claimant's Memorandum of Claim included written witness statements of the Claimant and one Faith Nafula Sowayi, and a list of documents dated 23<sup>rd</sup> March, 2015, listing 8 documents. The listed documents included a letter of appointment dated 8<sup>th</sup> August, 2014, termination letter dated 20<sup>th</sup> January, 2015, a bundle of emails to the management, a bundle of payslips/salary vouchers for the year 2014, leave application form (dated 15<sup>th</sup> September to 6<sup>th</sup> October – 18 days), a demand letter dated 20<sup>th</sup> February, 2015, a copy of the Claimant's identity card, and a letter dated 26<sup>th</sup> March, 2015 from Kilifi County Labour Department.
  5. The Respondent filed response to the Claimant's claim on 4<sup>th</sup> May, 2015 and admitted having employed the Claimant as pleaded by her (in paragraphs 3 and 4 of her Memorandum of Claim). The Respondents however denied having unlawfully terminated the Claimant's employment, and denied her claim.
  6. Documents filed together with the Respondent's response to claim included written witness statements of Alice Waguthii Kinya and Anthony Mutali Mulongo, both dated 30<sup>th</sup> April, 2015, and an evenly dated list of documents listing one document. The listed document was the Respondent's response to the Claimant's demand letter (dated 9<sup>th</sup> March, 2015).
  7. On 9<sup>th</sup> December, 2015, the Claimant filed a further list of documents dated 8<sup>th</sup> December, 2015, listing the termination letter dated 20<sup>th</sup> January, 2015, final dues email dated 16<sup>th</sup> February, 2015 and response to the demand letter, dated 9<sup>th</sup> March, 2015.
  8. On 22<sup>nd</sup> February, 2016, the Claimant filed an evenly dated amended Memorandum of Claim, bringing into the suit Maria Beck Brodman, Victor Kamau and Anthony Mulongo, sued as Trustees of Mudzini Kwetu Centre Trust.
  9. On 13<sup>th</sup> April, 2016, the third Respondent filed response to the (amended) Memorandum of Claim, and replicated all the averments made in the initial response to claim earlier filed by Mudzini Kwetu Centre Trust.
  10. The 2<sup>nd</sup> Respondent, Victor Kamau, entered appearance on 20<sup>th</sup> September, 2022. The Claimant's claim against the 1<sup>st</sup> Respondent, Maria Beck Brodman, is shown to have been withdrawn by the Claimant vide a Notice of Withdrawal dated 21<sup>st</sup> September, 2022 and filed in Court on even date.
  11. Trial opened before me on 6<sup>th</sup> June, 2023. The Claimant testified that she was a teacher by profession, and that she worked at Mudzini Kwetu Centre Trust where Victor Kamau (2<sup>nd</sup> Respondent) was a member of the Trust and was in the Human Resource Office. That Anthony Mulongo (3<sup>rd</sup> Respondent) was also a member of the Trust. The Claimant adopted her filed witness statement as her testimony and produced in evidence the documents listed on her list of documents dated 23<sup>rd</sup>



- March, 2015, save for the email dated 16<sup>th</sup> February, 2015. The Claimant also produced in evidence the documents listed on her list of documents dated 8<sup>th</sup> December, 2015 and 22<sup>nd</sup> February, 2016 respectively.
12. Cross-examined by counsel for the 3<sup>rd</sup> Respondent, the Claimant testified that she holds a Masters degree and works as a lecturer. That she started working for the Respondents in June 2013 but was not given an appointment letter until 8<sup>th</sup> August, 2014 when she signed it. That she worked for one and a half years.
  13. The Claimant further testified that she worked until 20<sup>th</sup> January, 2015, that she had filed an email dated 13<sup>th</sup> February, 2015 stating that she had taken leave between 5<sup>th</sup> September, 2014 and 6<sup>th</sup> October, 2014, and that she had also exhibited leave application forms. That the application forms had nothing to show that the application had been disapproved. That National Social Security Fund deductions were made from her salary, though not all the deductions were remitted. That she worked in a children home, which was located within her area of accommodation, having been accommodated by the Respondents. That it was not possible for the Claimant to remain in her residence on public holidays without working.
  14. Re-examined, the Claimant testified that when she was terminated, the (Respondents') Manager gave her a call while she was out collecting some materials, and was told that the director had directed that her services be terminated. That she was told to pass by and collect the termination letter. That she was not given any reasons for the termination. That at the time she left employment, the 1<sup>st</sup> Respondent was elderly and sickly, and that the Claimant could not trace her after the suit herein was filed; hence withdrawal of the suit against her.
  15. When the suit herein came up for defence hearing on 3<sup>rd</sup> October, 2023, Counsel for the 3<sup>rd</sup> Respondent told the Court that he was not calling any evidence on the part of the 3<sup>rd</sup> Respondent. He closed the 3<sup>rd</sup> Respondent's case. On his part, the 2<sup>nd</sup> Respondent did not participate in the trial herein, though shown to have been duly served.
  16. In the absence of any evidence by the Respondents rebutting the Claimant's evidence, I will proceed to determine the Claimant's suit based on the evidence presented by the Claimant.
  17. It was stated as follows in the case of Trust Bank Limited – vs – Paramount Universal Bank Limited & 2 others – Nairobi (Milimani) HCCC No. 1243 of 2021:-

“It is trite that where a party fails to call evidence in support of his case, that party's pleadings remain mere statements of fact since in so doing, the party fails to substantiate its pleadings. In the same vein, the failure to adduce any evidence means that the evidence adduced by the plaintiff against them is uncontroverted and therefore unchallenged.”
  18. In my view, issues that present for determination are as follows:-
    - a. Whether termination of the Claimant's employment was unfair.
    - b. Whether the reliefs sought by the Claimant are merited.
  19. On the first issue, the Claimant produced in evidence two different copies of her letter(s) of termination issued to her by the Respondents, both dated 20<sup>th</sup> January, 2015. One letter stated:-

“Re: Termination Notice

We make reference to the above subject matter.



The Management of Mudzini Kwetu Centre hereby notifies you that your services at the Centre are no longer required and are therefore terminated with immediate effect.

You will be paid your final dues as tabulated herein below:-

Monthly pay in lieu of notice ..... Kshs.45,000/=

Severance pay for each completed years (15 days) ..Kshs.22,500/=

January salary ..... Kshs.31,500/=

Total = Kshs.99,000/=

20. The second termination letter, also dated 20<sup>th</sup> January, 2015, tabulated the Claimant's final dues as follows:

“Monthly pay in lieu of notice ..... Kshs.45,000/=

Severance pay for each completed  
year (15 days) ..... Kshs.22,500/=

Unpaid leave ..... Kshs.24,500/=

January salary .....Kshs.31,500/=

Total = Kshs.123,000/=”

21. It was neither pleaded nor demonstrated by the Respondents that any of the above-tabulated sums was paid to the Claimant.
22. The Claimant's contract of employment dated 8<sup>th</sup> August, 2014, signed long after the Claimant's employment had commenced in June 2013, stated that the Claimant's gross monthly salary was Kshs.45,000/=. The contract also had a termination clause which stated that the contract could be terminated by either party giving a one month notice or one month salary in lieu of notice. That some of the reasons for termination would be gross misconduct (disrespect to others, fighting, defamation or deliberate harm to staff or child), insubordination, intentional absconding of duty without valid reasons, misuse of company property, and liaising with the organization's rivals.
23. Despite the foregoing clause, the Claimant's termination letter (issued by the Respondents) did not give any reason or reasons for termination of employment. This was wrongful. Further, Section 43(1) of the *Employment Act* 2007 provides as follows:-

“(1) (1) In any claim arising out of a termination of 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.”

24. Section 45(2)(a) of the *Employment Act* provides that termination of employment by an employer is unfair if the employer fails to prove that the reason for the termination is valid. As already demonstrated in this Judgment, the Respondents did not state any reason or reasons for terminating the Claimant's employment in the termination letters dated 20<sup>th</sup> January, 2015. To that extend, termination of the Claimant's employment was substantively unfair; and I so find and hold.



25. It was stated as follows in the case of *Walter Ogal Anuro – vs – Teachers Service Commission* (2013) eKLR:-
- “ . . . For a termination of employment to pass the fairness test, there must be both substantive justification and procedural fairness. Substantive justification has to do with establishment of a valid reason for the termination while procedural fairness addresses the procedure adopted by the employer in effecting the termination.”
26. Even where a contract of employment contains a termination clause, that clause can only be invoked by an employer if there is a valid reason for terminating an employee’s employment; which termination must be effected in accordance with a fair procedure. Section 41 of the *Employment Act* sets out a mandatory procedure that must be adhered to by an employer who wishes to terminate an employee’s employment on account of misconduct, poor performance or physical incapacity.
27. As stated by the Court of Appeal in the case of *Naima Khamis – vs – Oxford University Press (E.A) Limited* [2017] eKLR, termination of employment may be substantively and/or procedurally unfair.
28. Having made a finding that termination of the Claimant’s employment was unfair, I award the Claimant the equivalent of six months’ salary being compensation for unfair termination of employment. That is Kshs.45,000/= x 6 = Kshs.270,000/=.
29. The claim for one month salary in lieu of notice is hereby allowed, and the Claimant is awarded Kshs.45,000/= in that regard.
30. On the claim for January 2015 salary, the Claimant pleaded and testified that she worked upto 20<sup>th</sup> January, 2015. The claim for Kshs.45,000/= is declined, and the Claimant is awarded Kshs.30,000/= being salary for days worked in January 2015.
31. The claim for pending leave days is allowed at Kshs.24,000/= as tabulated by the Respondents in the letter(s) of termination dated 20<sup>th</sup> January, 2015. The Claimant testified and demonstrated by evidence that she took some leave days between September and 6<sup>th</sup> October, 2014.
32. The claim for severance pay is allowed as tabulated by the Respondents, and the Claimant is awarded Kshs.22,500/= in that regard.
33. The claims for off-days and public holidays worked were not proved, and are declined. Such claims are in the nature of special damages and must always be specifically pleaded and strictly proved.
34. The Claimant is entitled to be issued with a Certificate of Service pursuant to Section 51(1) of the *Employment Act*.
35. In sum, and having considered written submissions filed on behalf of the Claimant and the 3<sup>rd</sup> Respondent, Judgment is hereby entered against the 2<sup>nd</sup> and the 3<sup>rd</sup> Respondents, jointly and severally (in their capacity as Trustees of Mudzini Kwetu Centre Trust) as follows:-
- a. Compensation for unfair termination of employment .....Kshs.270,000/=.
  - b. Payment in lieu of notice ..... Kshs.45,000/=.
  - c. Severance pay .....Kshs.22,500/=
  - d. Days worked in January 2015 ..... Kshs.30,000/=.
  - e. Pending leave days ..... Kshs.24,000/=.



Total = Kshs.391,500/=

36. The awarded sum shall be subject to statutory deductions pursuant to Section 49(2) of the [Employment Act](#).
37. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents shall issue the Claimant with a Certificate of Service pursuant to Section 51(1) of the [Employment Act](#). This shall be done within thirty days of this Judgment.
38. The Claimant is awarded costs of the suit and interest on the awarded sum. Interest shall be calculated at Court rates from the date of this Judgment.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8<sup>TH</sup> DAY OF NOVEMBER 2024.**

**AGNES KITIKU NZEI**

**JUDGE**

**Order**

This Judgment has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

**Appearance:**

.....Claimant

.....Respondent

