



REPUBLIC OF KENYA



**Mucheru v Gikoe Mung'aria Investments Co. Ltd (Cause 439 of 2015)  
[2023] KEELRC 694 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELRC 694 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 439 OF 2015  
L NDOLO, J  
MARCH 23, 2023**

**BETWEEN**

**JAMES MWANGI MUCHERU AKA MUGO ..... CLAIMANT**

**AND**

**GIKOE MUNG'ARIA INVESTMENTS CO. LTD ..... RESPONDENT**

**JUDGMENT**

1. This is an old matter which was initially heard ex parte by Abuodha J who, on April 15, 2016, entered judgment in favour of the Claimant in the sum of Kshs 164,355.
2. By a ruling delivered by Makau J on November 5, 2020, the ex parte judgment was set aside and the Respondent allowed to defend the claim.
3. In a strange twist, Peter Kimani Waraho and New Mung'aria Investments Co. Ltd filed a response in which they called themselves as 2<sup>nd</sup> and 3<sup>rd</sup> Respondents respectively.
4. Having looked at the record, the Court did not find any instance in which Peter Kimani Waraho and New Mung'aria Investments Co. Ltd were admitted as parties in these proceedings. Their purported response is therefore incompetent and is struck out.
5. For the same reason, the witness statement of Peter Kimani Waraho and the submissions filed on behalf of the purported 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are struck out.
6. The net effect of this is that the claim is undefended and I will proceed to determine it on this basis.

**The Claimant's Case**

7. In his Statement of Claim dated February 23, 2015, the Claimant states that he was employed by the Respondent as a caretaker, effective January 3, 2003. He was not issued with a letter of appointment.



8. The Claimant further states that he worked for the Respondent until January 8, 2014, when his employment was unlawfully and unfairly terminated.
9. The Claimant claims that from early 2013, he had a strained working relationship with his supervisors, who he accuses of frustrating him and demeaning his work and standing before the tenants he was supposed to supervise.
10. The Claimant's case is that the termination of his employment was tainted with malice, bad faith and illegality. He further claims to have been underpaid and now seeks the following remedies.
  - a. Salary *in lieu of* notice.....Kshs 20,283.00
  - b. Salary for days worked in January 2014.....5,888.60
  - c. Service for 11 years.....111,556.50
  - d. Unpaid leave for 11 years.....223,124.00
  - e. Rest days for 11 years.....386,729.20
  - f. 12 months' salary in compensation.....243,396.00
  - g. Underpayment.....685,556.00
  - h. Costs plus interest

### **Findings and Determination**

11. There are two (2) issues for determination in this case:
  - a. Whether the Claimant has made out a case of unlawful termination of employment;
  - b. Whether the Claimant is entitled to the remedies sought.

### **Unlawful Termination?**

12. The Claimant produced a letter dated 8<sup>th</sup> January 2014, addressed to him by the Respondent as follows:

“Ref: Management of Our House In Makadara

At the meeting of board of directors of this company held on December 18, 2013 the following was noted;

1. That despite employing you and giving you the duty of collecting rent and maintaining cleanliness in the building, you absconded and appointed one Mr. Maina to perform these duties on your behalf without our knowledge.
2. That you have not been depositing rent collected in the company account as instructed. For the year 2013, you collected a total of Kshs 1,300,000 and only deposited Kshs 566,200 in our account.
3. That you have been collecting rents and deposits from tenants without issuing receipts.
4. That you refused to attend our general meeting so as to avoid responding to these issues.

The board now directs as follows;



1. That your employment is terminated with immediate effect and you vacate the room given to you immediately.
2. That you provide the board with tenant details including any deposits paid and any rent arrears.
3. That you deposit all the rent you collected last year in the company account immediately.
4. That you avail yourself at our special general meeting on 18<sup>th</sup> January 2014 to respond to these issues.

Yours truly,

(signed)

Kimani Waraho”

From the foregoing letter, it is evident that the Claimant’s employment was terminated without any regard to the procedural fairness requirements set by Section 41 of the Employment Act. It follows therefore that the allegations levelled against the Claimant were not proved at the shop floor and there was no valid reason for the termination as contemplated by Section 43 of the Act.

13. In the result, I find and hold that the termination of the Claimant’s employment was substantively and procedurally unfair and he is entitled to compensation.

**Remedies**

14. I therefore award the Claimant twelve (12) months’ salary in compensation. In arriving at this award, I have taken into account the Claimant’s long service and the Respondent’s unlawful conduct in the termination transaction.
15. I further award the Claimant one (1) month’s salary in lieu of notice.
16. The claims for salary for days worked in January 2014, service pay, leave pay, rest days and underpayment were not proved and are disallowed.
17. Ultimately, I enter judgment in favour of the Claimant as follows:
  - a. 12 months’ salary in compensation.....Kshs 243,396
  - b. 1 month’s salary *in lieu of* notice.....20,283
  - Total.....263,679
18. This amount will attract interest at court rates from the date of judgment until payment in full.
19. The Claimant will have the costs of the case.
20. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF MARCH 2023**

**LINNET NDOLO**

**JUDGE**

**Appearance:**



**Mr. Enonda for the Claimant**

**No appearance for the Respondent**

