



**Gachuri v County Government of Kiambu (Cause E028 of 2023)  
[2023] KEELRC 3329 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3329 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E028 OF 2023  
SC RUTTO, J  
DECEMBER 20, 2023**

**BETWEEN**

**GEORGE KAGOTHO GACHURI ..... CLAIMANT**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... RESPONDENT**

**JUDGMENT**

1. Through a Memorandum of Claim filed on 26<sup>th</sup> January 2023, the Claimant avers that he was appointed by the Respondent as an Administrative Officer (II) job group CSPB 08 with effect from 1<sup>st</sup> September 2017. It is the Claimant's case that on 21<sup>st</sup> February 2020, he was served with a termination letter without any prior notice or any lawful reason for any misconduct on his part. Consequently, he seeks against the Respondent the sum of Kshs 9,499,120.00 being notice pay, unpaid allowances, gratuity and compensation for the remaining 28 months' salary as per his contract.
2. The Respondent upon being served with the Memorandum of Claim, entered appearance through its County Attorney but did not file a Response. Consequently, on 27<sup>th</sup> July 2023, the Court directed that the matter proceeds for formal proof hearing on 31<sup>st</sup> October 2023.

**Claimant's case**

3. The Claimant testified in support of his case and at the outset, adopted his witness statement to constitute his evidence in chief. He further sought to have the documents filed on his behalf produced as exhibits before Court.
4. It was the Claimant's evidence that his contract ran for a period of 3 years and was to lapse on 12<sup>th</sup> June 2022. That on 21<sup>st</sup> February 2020, he was served with a termination letter without any prior notice or any lawful reason for any misconduct on his part.



5. He further averred that he was not a personal appointee or employee of the former Governor Ferdinand Waititu Babayao but a County Government employee.
6. According to the Claimant, he should therefore have been deployed back as a Senior Administrative Officer in the County Public Service. He termed his termination unlawful, illegal, bad in law, wrongful and contrary to *the Constitution* and the *Fair Administrative Action Act*.
7. The Claimant further stated that he had 28 months left to the expiry of his employment contract hence his rights were violated and he was prejudiced by the unfair termination of his employment.
8. It was his further evidence that the Respondent failed to pay his terminal benefits as per his termination letter, despite availing his clearance certificate duly signed by all Heads of Department and the County Secretary.

### **Submissions**

9. The Claimant submits that he has satisfied this Court that his termination by the Respondent was illegal and unjust. He posits that his termination was simply an excuse by the Respondent to terminate his employment and employ another person. In support of the Claimant's submission, reliance was placed on the case of *Onesmus Kinyua Magoiya v Prudential Life Assurance Kenya* [2022] eKLR.

### **Analysis and determination**

10. Arising from the pleadings on record, the evidentiary material placed before me as well as the Claimant's submissions, it is apparent that this Court is being called to resolve the following questions:
  - a. Whether the Claimant's termination was unfair and unlawful;
  - b. Is the Claimant entitled to the reliefs sought?

### **Whether the Claimant's termination was unfair and unlawful**

11. Section 45(2) of the *Employment Act*, qualifies a termination of employment by an employer 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 employee's 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.
12. Fundamentally, an employer ought to prove that an employee's termination was fair substantively and procedurally. Substantive fairness which is also addressed under Section 43 of the *Employment Act*, relates to the reasons for which the employee's employment was terminated while procedural fairness has to do with the procedure applied in effecting the employee's termination.



13. In the instant case, the termination of the Claimant's contract of employment was communicated through a letter dated 21<sup>st</sup> February 2020, in which he was addressed in part:

“We regret to advise that your engagement with the County Government of Kiambu will be terminated effective 1<sup>st</sup> March 2020 due to the removal from office of HE Governor Ferdinand Waititu Babayao, under whom you had been appointed as his Chief of Staff.”
14. To put the issue in context, the record reveals that the Claimant had been initially appointed to the position of an Administrative Officer on a contractual basis for a period of three years from 1<sup>st</sup> September 2017 to 31<sup>st</sup> August 2020.
15. Subsequently, vide a letter of appointment dated 12<sup>th</sup> June 2019, the Claimant was appointed to the position of Chief of Staff, Office of the Governor. His appointment was for a period of three years with effect from 3<sup>rd</sup> June 2019.
16. Notably, the Claimant's appointment as Chief of Staff was during the pendency of his initial contract which had commenced on 1<sup>st</sup> September 2017. Therefore, his service with the County Government of Kiambu continued for a further three years from 3<sup>rd</sup> June 2019. In my considered view, the Claimant's employment with the Respondent was not tied to the term of the Governor. He still remained an employee of the Respondent save that he was now serving in a different capacity. Therefore, the exit of the Governor from office did not result in the automatic termination of the Claimant's employment with the Respondent. His termination was still subject to the provisions of the *Employment Act*.
17. Revisiting the provisions of Section 45(2) (a) and (b) of the *Employment Act*, the Respondent was bound to prove that the Claimant's termination was fair, valid and related to his conduct, capacity or compatibility.
18. As stated herein, the Claimant's termination from employment was on grounds of removal of the Governor who was previously holding office and who had appointed him as Chief of Staff. With due respect, the said reason cannot be said to have been fair and valid within the meaning of Section 45(2) (a) and (b) of the Act.
19. It is my view that following the exit of the appointing Governor, the Respondent would have redeployed the Claimant to conclude his term in his previous capacity as an Administrative Officer or such other suitable capacity as opposed to terminating his employment. The only implication was that he could no longer continue to serve in the position of Chief of Staff, Office of Governor but his employment with the Respondent was unaffected.
20. Ultimately, the manner in which the Claimant was terminated from employment was substantively unfair.
21. On the question of procedural fairness, the Respondent was required to prove that it complied with the requirements of a fair process. Pursuant to Section 41 of the *Employment Act*, the Respondent was required to notify the Claimant of the intended termination in a language he understands and in the presence of another employee.
22. By law, it was incumbent upon the Respondent to notify the Claimant of the intended termination, the reasons thereof and accord him an opportunity to defend himself. From the record, there is no evidence that the Respondent complied with the requirements of Section 41 of the *Employment Act*.
23. In the circumstances, I arrive at the inescapable conclusion that the Claimant's termination was procedurally unfair hence unlawful.



24. In view of the foregoing, I cannot help but find that the termination of the Claimant was neither fair nor lawful for want of compliance with Sections 41, 43 and 45 of the Act.

### **Reliefs**

25. Notably, the Claimant has prayed for compensation equivalent to the salary for the remaining 28 months of his contract of service. Noting that this is an anticipatory relief, the same is declined and instead, I am inclined to award the Claimant compensatory damages under Section 49(1) (c) of the [Employment Act](#), having found that his termination was not fair substantively and procedurally.

26. Accordingly, the Claimant is awarded compensatory damages equivalent to five (5) months of his gross salary. This award also takes into consideration the length of the employment relationship, the remainder period of the Claimant's contract of service, as well as the circumstances surrounding his termination from employment.

27. The Court further awards the Claimant one (1) month's salary in lieu of notice.

28. The Claimant is also entitled to his gratuity for the period served, which upon assessment, is 30 months.

29. Equally, the Claimant is entitled to unpaid allowances from 1<sup>st</sup> February 2019 to 31<sup>st</sup> January 2020.

### **Orders**

30. Against this background, I enter Judgment in favour of the Claimant against the Respondent and he is awarded: -

- a. One (1) month's salary in lieu of notice being the sum of Kshs 212,000.00.
- b. Compensatory damages in the sum of Kshs 1,060,000.00 being equivalent to five (5) months of his gross salary.
- c. Unpaid allowances from February 2019 upto January 2020 being the sum of Kshs 656,600.00.
- d. Unpaid gratuity being the sum of Kshs 1,971,600.00
- e. The total award is Kshs 3,900,200.00.
- f. Interest shall apply to the amount in (e) at court rates from the date of Judgment until payment in full.
- g. The Claimant shall also have the costs of the suit.

**DATED, SIGNED and DELIVERED at NAIROBI this 20th day of December, 2023.**

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**STELLA RUTTO**

**JUDGE**

**Appearance:**

**For the Claimant Mr. Gitau Mwara**

**For the Respondent No Appearance**

**Court Assistant Abdimalik Hussein**

**ORDER**



**In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.**

**STELLA RUTTO**

**JUDGE**

