



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kariuki v Mercy Corps (Cause 48 of 2016)**  
**[2021] KEELRC 1593 (KLR) (11 June 2021) (Judgment)**

*Caroline Waithira Kariuki v Mercy Corps [2021] eKLR*

Neutral citation: [2021] KEELRC 1593 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 48 OF 2016**

**J RIKA, J**

**JUNE 11, 2021**

**BETWEEN**

**CAROLINE WAITHIRA KARIUKI ..... CLAIMANT**

**AND**

**MERCY CORPS ..... RESPONDENT**

**JUDGMENT**

1. The Claimant was employed by the Respondent NGO, as a Program Assistant. Her contract was for 12 months, commencing 16<sup>th</sup> June 2015. She was to serve probation of 3 months.
2. The Respondent issued her termination notice dated 7<sup>th</sup> September 2015, to take effect 7 days later, on 15<sup>th</sup> September 2015.
3. She filed this Claim, asking the Court to declare that termination was unfair, unlawful and without basis; 1-month salary in lieu of notice; damages for unlawful termination; costs; interest; and any other order.
4. The Respondent filed its Statement of Response on 19<sup>th</sup> May 2016. Its main line of response is that termination took place within the probationary period, and was not therefore unfair or unlawful.
5. The Claimant gave evidence as did Respondent's Operations and Human Resource Director Hottensia Mumbi, on 4<sup>th</sup> December 2020. Hearing was virtual.
6. The Claimant does not dispute that her contract contained a probation clause of 3 months, but hazards the argument that she successfully completed the probationary period, on the date notice became effective.



**The Court Finds: -**

7. The Claimant's contract was terminated within the probationary period. Article 1, clause 1.4 of the contract bound her to serve probation of 3 months from the effective date.
8. The effective date was 16<sup>th</sup> June 2015, given under Article 2, clause 2.1.
9. 3 months of probation would end on 15<sup>th</sup> September 2015.
10. She was issued a notice dated 7<sup>th</sup> September 2015, indicating her contract would be terminated effective 7 days later, on 15<sup>th</sup> September 2015. This was her last date of probation. Notice was for 7 days.
11. This was in accordance with Section 42[4] of the *Employment Act* 2007, which requires that a probationary contract may be terminated through notice of 7 days, or payment of 7 days' wages in lieu of the notice.
12. Section 42[1] states that Section 41, does not apply to termination of probationary contracts. The Claimant has no reason to claim that she was not heard, or heard fairly. She was not entitled to any hearing in any form.
13. The Court fails to understand the position taken by the Claimant, that she had successfully completed probation, at the time of termination. She had not. Where is her letter of confirmation? She did not work beyond the probationary period. She was issued 7 days' notice, and advised that that her contract would be terminated, effective 15<sup>th</sup> September 2015.
14. In *Danish Jalang'o & Another v. Amicabre Travel Services Limited* [2014] e-KLR, the Court held that Section 42 of the *Employment Act* does not impose other obligations on the part of an Employer, in terminating a probationary contract, other than giving of 7 days' notice, or payment of 7 days' wages in lieu of such notice.
15. The Court is satisfied that the Claim has no merit. Termination was lawful.

It is ordered: -

- a. The Claim is declined.
- b. No order on the costs.

**DATED, SIGNED AND RELEASED TO THE PARTIES UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 11<sup>TH</sup> DAY OF JUNE 2021.**

**JAMES RIKA**

**JUDGE**

