



Churchil Winstones Ochieng v I & M Bank Limited (Cause E866 of 2023)
[2025] KEELRC 3338 (KLR) (27 November 2025) (Judgment)

Neutral citation: [2025] KEELRC 3338 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E866 OF 2023
CN BAARI, J
NOVEMBER 27, 2025

BETWEEN
CHURCHIL WINSTONES OCHIENG CLAIMANT
AND
I & M BANK LIMITED RESPONDENT

JUDGMENT

Introduction

1. This suit was lodged by way of a Statement of Claim dated 24th October, 2023. Under the claim and the supporting documents filed therewith, the Claimant seeks the unpaid house allowance for 12 months, Gratuity, 3 months' salary in lieu of notice, damages for unfair termination, overtime pay, leave days not taken, damages for breach of constitutional freedom, damages for breach of constitutional rights, a desist order from publication or sharing of defamatory information, amongst others.
2. The Respondent entered an appearance and subsequently filed a Response to the Statement of Claim dated 14th December, 2023, denying that the Claimant was unfairly or unlawfully terminated, and states that his probationary contract was terminated after the Respondent made a decision not to confirm the Claimant in the position.
3. The Claimant filed a reply to the Response to the claim dated 4th June, 2024.
4. The Claimant's case was heard on 2nd February, 2025. The Claimant testified in support of his case, adopted his witness statement, and produced the documents filed in support of his case. The Respondent's case was heard on 5th March, 2025, and concluded on 10th June, 2025, with the further re-examination of RW2 and the testimony of RW3, Shameer Patel. The Respondent presented John Nyamaiko and Lydia Lubanga to testify on its behalf. The Respondent's witnesses similarly adopted their witness statements and produced documents filed in support of the Respondent's case.



5. Submissions were filed for both parties and have been duly considered.

The Claimant's Case

6. The Claimant's case is that he was employed by the Respondent on 12th August 2022 and commenced work on 15th August 2022, at a monthly salary of Kshs.900,000 without housing allowance. He states that his probation period, which was set at six months, ended on 14th February 2023.
7. The Claimant states that after probation, he continued working and received consistent praise from senior executives for exemplary performance and successful strategic initiatives. He avers that confirmation of the position was subject to review, and that he was not reviewed since he ranked top, and he assumed that he was confirmed.
8. He states that despite his performance, he was summoned regarding allegations based on an anonymous whistleblower report by Deloitte, which contained a disclaimer stating the information was unverified.
9. The Claimant states that he rejected a proposed change to his job role and requested details of the allegations. He avers that the Respondent subsequently subjected him to a disciplinary process that he alleges was irregular and biased, and in violation of the Respondent's HR policies and the rules of natural justice.
10. It is his case that a second investigation report tabled during the disciplinary hearing cleared him of key allegations, including claims of tribal discrimination and improper recruitment. It is his position that, being Luo, he was discriminated against on ethnic grounds.
11. The Claimant states that on 11th August 2023, he was issued a Show Cause letter for alleged poor performance, and he requested more time to respond due to an ongoing work conference. He avers that, nonetheless, on the night of 14th August, 2023, at 7:43 p.m., the Respondent terminated his employment under the guise of "Termination of Probation," although probation had ended six months prior.
12. The Claimant states that he was humiliated, subjected to unfair labour practices, subjected to excessive working hours without compensation, and his constitutional rights were violated, specifically, his rights to fair labour practices, non-discrimination, human dignity, and fair administrative action. He states the termination was unlawful, unfair, discriminatory, and procedurally improper.
13. On cross-examination, the Claimant confirmed that he was still on probation when complaints against him came up. He further confirmed that the Respondent had an anonymous complaint receiving mechanism and that the Respondent indeed received an anonymous complaint about his department.
14. It is the Claimant's testimony that the report had many anonymous complaints against him. The Claimant again confirmed on cross-examination that the probation clause in his contract provided for extension of the probation period and that the Respondent was justified in extending the probation.
15. It is the Claimant's testimony that efforts to help him fit in were made. He confirmed that internal investigations into the complaints were carried out, and that he was interviewed regarding the issues. The Claimant further confirmed that he was heard and that he attended the hearing.
16. The Claimant told the court that he complained about the composition of the committee, but did not write down the complaint. He stated that he was given a physical report of the investigation just before the hearing.



17. It is his case that he was issued with notice to show cause, he responded to the notice, and further requested more time to give a formal response since he was attending a conference.
18. The Claimant told the court that his second probation was ending on 14th August, 2023. He stated that his contract provided a gross salary, but the house allowance was not clearly stated. He confirmed that the contract did not provide for payment of gratuity.
19. It is his position that he was not issued a confirmation letter and that the notice period for a probationary contract was 7 days, and that he worked for one year.
20. The Claimant told the court that he did not provide a schedule of overtime worked. He further told this court that it is not degrading for HR to seek to find out what was happening in the department, but the process was the issue.
21. In re-examination, the Claimant told the court that he was to respond to the show cause notice on 15th August, 2023, but he was terminated on 14th August, 2023.
22. It is his prayer that his claim be allowed.

The Respondent's Case

23. The Respondent states that the Claimant was employed in August 2022, but shortly after joining the service of the Respondent, numerous complaints emerged about his inappropriate leadership style and his treatment of junior staff.
24. It states that to address these issues, the Human Resources (HR) Department organized an induction, a leadership and team-assimilation session on 2nd February 2023, and several open forums where staff voiced concerns, and the Claimant was given a chance to respond. It avers that HR guided the Claimant on how to address the feedback positively, but he reacted defensively, aggravating the situation.
25. The Respondent states that HR continued to coach and mentor the Claimant through follow-up sessions held on 6th and 9th February 2023, and shared detailed staff feedback with him. It is the Respondent's case that, despite these interventions, staff reported worsening conditions, including victimization and harassment of those who had spoken openly, and more complaints followed, leading to an employee-engagement meeting on 24th February 2023, which the Claimant left midway. It avers that Staff concerns persisted, and from March to June 2023, employees escalated issues anonymously through a whistleblowing system.
26. The Respondent states that in response, HR conducted investigations into the whistle-blower allegations, and their findings showed that the Claimant was culpable in several respects, prompting a disciplinary hearing. It avers that the hearing required the Claimant to respond to allegations including appointing "spies," discouraging team leads from associating with other staff, and encouraging defamation of colleagues. It states that a balanced committee of senior officers conducted the hearing, and accurate minutes were shared with all participants, including the Claimant.
27. It is the Respondent's case that the Claimant largely denied the allegations and demanded the identities of anonymous reporters, contrary to confidentiality principles. It avers that, based on the investigations and the Claimant's responses, the committee found it necessary for the Claimant to show cause why his employment should not be terminated for unprofessional and unethical conduct.
28. The Respondent further states that its HR emphasized that their engagement with the Claimant was strictly professional, conducted under the direction of the Head of Human Resources, and aimed



at resolving issues within his department. It asserts that the Claimant's own conduct led to the disciplinary action and eventual termination of his employment.

29. The Respondent denies that the Claimant was unfairly terminated, stating instead that his probation was lawfully discontinued in accordance with the appointment letter, and the termination letter was handed to him physically and not emailed late at night as alleged.
30. The Respondent states that the probation clause allowed extension of the probationary period if necessary, and which term was mutually agreed upon, and the probation extended to 14th August 2023 without an objection from the Claimant. The Respondent denies any implied confirmation of employment.
31. The Respondent further states that although the Claimant received praise for a one-off task, it argues that this did not amount to exemplary overall performance warranting his confirmation.
32. The Respondent denies allegations of discrimination, unfair labour practices, or improper alteration of investigation reports. It is its case that concerns about the Claimant's professional conduct were raised through an anonymous Deloitte-managed whistleblowing system, and that the allegations were investigated, and although some claims were unfounded, others had basis, leading to the Claimant's disciplinary hearing. The Respondent states that the Claimant was provided with details of the allegations against him.
33. The Respondent further states that the disciplinary process followed its Human Resources Manual (2021), was fair, unbiased, and compliant with natural justice. It avers that the presence of HR Business Partners in the hearing was proper and allowed under the HR policy.
34. The Respondent states that the Claimant underperformed, mishandled junior employees, and failed to meet the standards required for an Assistant Manager in Personal and Business Banking.
35. The Respondent states that the Claimant's termination was lawful under the probation clause and Section 44(4)(c) of the Employment Act for failing to perform his duties.
36. It is the Respondent's case that the Claimant's salary was comprehensive, and his rights were fully respected in line with Articles 41 and 47 of the Constitution. It further states that it rejects all claims for additional payments, damages, or declarations, insisting that the Claimant was lawfully terminated while on probation and that none of his rights were violated.
37. The Respondent's first witness, RW1, John Nyamaiko, told the court that house allowance is a component of the gross pay, out of which 80% comprises salary and 20% forms the allowances, including house allowance.
38. It is RW1's testimony that the HR policy of the Respondent allows payment of gratuity if the employee is not a member of the pension scheme. He confirmed that the Claimant was serving on probation and that NSSF deductions were made.
39. On cross-examination, RW1 told the court that he reached out to the Claimant over a background reference he was supposed to write and to congratulate him on his new appointment. He admitted that he asked the Claimant to withdraw the instant suit to obtain a favourable reference, but denies that this was done with the intention of intimidating or manipulating the Claimant.
40. RW1 confirmed that the Claimant's probation was extended for a further six months to 6th August, 2023, and was later, on 14th August, 2023, at about 7:43 PM, sent an email terminating his probationary contract.



41. RW1 confirmed the Claimant's assertion that he was expected to respond to the show cause notice on 14th August, 2023, but he was terminated on 14th August, 2023. He further confirmed that he sent an email dated 3rd February, 2023, to the Claimant at 5:35 a.m., which was outside working hours.
42. RW1 further told the court that the Claimant was terminated on account of complaints received against him from the whistleblower report.
43. RW2 on her part told the court that an employee of the Respondent who had complaints of sexual harassment still works with the Respondent. It is her testimony that the Respondent did not rely on the security report in terminating the Claimant's contract.
44. RW2 further told the court that the Claimant was given a fair hearing. She stated that he was invited for a hearing on 15th August, 2023, and terminated on 14th August, 2023. It is her case that the Claimant was summarily dismissed under Section 44 of the *Employment Act*.
45. RW3 told the court that the congratulatory messages sent to the Claimant in January 2023 were meant for his entire department and that the message was to encourage them to do better.
46. It is RW3's position that the Claimant's role covered all the Branches of the Respondent, out of which 27 were not doing well. He states that the Claimant's overall performance was poor relative to the targets set. It is his position that numerous discussions were held with the Claimant and his entire team, during which areas for improvement were agreed upon; however, the effort ultimately bore no fruit, and HR took over to drive the termination.
47. RW3 maintains that the Claimant was terminated for poor performance and personal issues. It is RW3's position that the report produced is not signed and that the consent of the author was required for its production, but there is no proof of that consent. He told the court that the investigation report was the basis of the Claimant's disciplinary hearing and termination.
48. The Respondent prays that the court dismiss this claim as baseless and lacking legal justification.

Analysis and Determination

49. I have considered the pleadings, the parties' oral testimony, and the rival submissions. The issues for determination are:-
 - i. Whether the Claimant was on probation at the time of termination.
 - ii. Whether the termination was lawful and procedurally fair.
 - iii. Whether discrimination or violation of constitutional rights occurred.
 - iv. Whether he is entitled to the remedies sought.

Whether the Claimant was on probation at the time of termination.

50. The Claimant was employed by the Respondent on 15th August, 2022, with his contract expressly providing a 6 months' probation period that was to end on 14th February, 2023. The Respondent argues that this probation period was extended by a further 6 months to 6th August, 2023, and the Claimant confirmed on cross-examination that the probation clause allowed extension.
51. Further, the Claimant stated that his "second probation" was to end on 14th August 2023, and did not lead evidence showing that he contested the extension. He, instead, seems to have continued working without protest. In the case of Aga Khan Hospital Kisumu v. Erick Wanjohi (2020) eKLR, the Court



of Appeal reaffirmed that Section 42(2) of the *Employment Act* imposes an initial probationary period of 6 months, extendable by up to another 6 months with the employee's agreement.

52. It is not disputed that the Claimant's contract was terminated on 14th August, 2023, a day short of the 12th month of the extended probation period. All indications, therefore, show that the probation was validly extended and that the Claimant was still on probation at the time of termination of his contract.
53. Accordingly, I find and hold that the Claimant was a probationary employee as at 14th August 2023 when his employment was terminated.

Whether the termination was lawful and procedurally fair

54. Whether an employee serving under a probationary contract has a right to a fair hearing before termination was well articulated in the case of Monica Munira Kibuchi and 6 Others V Mount Kenya University and Another (Petition No. 94 of 2016) where the court stated: -

“Further, in addition to the inconsistencies among Sections 42(1), 42(2) and 41 considered earlier in this judgment, we find no reasonable and justifiable cause in the exclusion of an employee holding a probationary contract from the procedural safeguards contained in Section 41 of the *Employment Act*.

To this extent therefore, we find and hold that Section 42(1) insofar as it excludes an employee holding a probationary contract from the provisions of Section 41 of the *Employment Act*, is inconsistent with Articles 41 and 47 of *the Constitution* hence null and void.

55. Courts have further held that Section 42(1) of the *Employment Act*, to the extent that it excludes probationary employees from the procedural fairness requirement espoused under Section 41, is unconstitutional for being inconsistent with Article 41 on fair labour practices and Article 47 on fair administrative action.
56. The question then is whether the Claimant, though terminated while still under a probationary contract, was accorded fair process.
57. It is evident from the record that the Claimant was issued a show cause letter dated 11th August, 2023, and upon request, allowed to file what he termed as a formal response by 15th August, 2023. The Respondent, even after allowing the Claimant to forward his response to the show cause by 15th August, 2023, proceeded to terminate his contract on 14th August, 2023.
58. In light of the foregoing, there is no denying that the Claimant was not given a fair opportunity to respond to the issues subject to the show cause, either in a physical hearing or in writing. No evidence was also presented showing that he was advised of his right to have a representative present at the time of the hearing, not to mention that the Claimant's contract was eventually terminated before the date the disciplinary hearing was scheduled to take place.
59. In the premise, I find and hold that the Claimant's termination was procedurally unfair.
60. On the second limb, which is whether the Respondent had valid, fair, and justified grounds to terminate the Claimant's contract, the Respondent cited whistleblower complaints, team dysfunction, and poor performance as the grounds that informed the termination.



61. Section 43 (2) of the *Employment Act*, 2007 provides that the reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
62. Looking at the court record and the Respondent's witnesses' oral evidence, it is clear that various reasons were put forward as having informed the termination of the Claimant's contract to the extent that one would be left asking what the primary reason for his termination was.
63. One such ground was that numerous complaints emerged about the Claimant's inappropriate leadership style and his treatment of junior staff. RW1 told the court that staff reported worsening conditions, including victimization and harassment of those who had spoken openly, and that the Claimant was terminated on account of complaints received against him from the whistleblower report.
64. RW3, who was the Claimant's supervisor, testified that the Claimant's role covered all the Branches of the Respondent, out of which 27 were not doing well. He states that the Claimant's overall performance was poor relative to the targets set.
65. For starters, nothing suggests that the Claimant was placed on a performance improvement plan if indeed the issue concerned his performance. None of the Respondent's witnesses attested to the Claimant having been placed on PIP, nor is the same pleaded.
66. Although the court notes that PIP is not the only way to improve performance where the same is rated as unsatisfactory, PIPs have, in general practice, become the judicial standard. Failure to place an employee on a PIP now renders termination unfair.
67. It therefore follows that before terminating an employee for poor performance, the employer must give the employee a fair opportunity to improve.
68. In the instant case, the Respondent has not proved that poor performance was a valid, fair, and justified ground to terminate the Claimant.
69. On the whistleblower report, the court was told that staff reported complaints of victimization and harassment against the Claimant, and that the Claimant was terminated on account of complaints.
70. The Claimant confirmed on cross-examination that the Respondent had an anonymous complaint receiving mechanism and that the Respondent indeed received anonymous complaints against him and his department during his probation period. The whistleblower report was produced in evidence, and the complaints against the Claimant were indeed numerous and varied. In the case of Cooperative Bank of Kenya Limited v Banking Insurance & Finance Union [2017] eKLR, it was held that the Court looks into the validity and justifiability of the reasons for termination.
71. Although the Claimant purports to have been framed, the complaints were too many and, in large part, affected productivity. In my considered view, the numerous complaints raised by the Respondent's employees against the Claimant were fair, valid, and justified the termination of his probationary contract.
72. I therefore find and hold that the Claimant's termination was substantively fair.

Whether discrimination or violation of constitutional rights occurred.

73. The Claimant's position is that his constitutional rights were violated, specifically, his rights to fair labour practices, non-discrimination, human dignity, and fair administrative action. He contends that he was discriminated against on the basis of his tribe.



74. The evidence before the court shows that complaints against the Claimant originated from whistleblower reports and staff feedback, which were subsequently investigated, and nothing in the investigation report indicates that ethnicity influenced decisions.
75. Section 5 of the *Employment Act* sets the threshold for proof of cases of discrimination, which, in my view, the Claimant has not met. Mere assertion without evidence does not meet this threshold.
76. Further, although the Claimant invoked Article 27 on equality and non-discrimination, Article 28 on Human dignity, Article 41 on Fair labour practices and Article 47 on Fair administrative action, none of the claims was specifically pleaded and proven. In my view, nothing shows that the workplace processes were arbitrary or degrading.
77. Accordingly, I find and hold that no discrimination or constitutional violations were proven.

Whether the Claimant is entitled to the remedies sought

78. Under this claim, the Claimant sought orders for payment of house allowance, gratuity, 3 months' notice pay, unfair termination damages, overtime, leave, and damages for violation of constitutional rights.

House allowance

79. From the Claimant's contract and the oral evidence of RW1, it is evident that the salary was gross. The contract did not provide a separate house allowance, and this claim therefore fails on this account.

Gratuity

80. The Claimant's contract did not provide for gratuity, and he further confirmed that he was under NSSF. Under Section 35(5) & (6), gratuity is not payable where NSSF applies unless expressly provided for under the employee's contract.
81. This Claim equally fails.

3 months' salary in lieu of notice

82. Both the Claimant's contract and Section 42 of the *Employment Act* carry a probation notice of 7 days or pay in lieu (Section 42). On this account, the Claimant is entitled to 7 days' pay in lieu of notice, as it is evident that the notice was not given.

Damages for unfair termination

83. The court has held the Claimant's termination unfair on account of the procedure adopted. This no doubt entitles the Claimant to an award of compensation under Section 49 of the *Employment Act*.
84. Considering his brief stint at the Respondent's employ, and his admission that he has since been able to secure alternative comparable employment, I find an award of two months' salary sufficient compensation for the unfair termination.

Overtime

85. The Claimant admitted that he did not provide an overtime schedule nor lead any other evidence to show that he was entitled to payment on account of overtime, or that he worked overtime.
86. The Claim fails.



Leave days

87. The Claimant sought payment of 10 leave days not taken. The Respondent did not controvert this assertion, and the prayer is allowed.

Constitutional damages

88. This claim was not proven. The claim thus fails.

89. In the end, the Claimant's claim partly succeeds, and orders granted as follows: -

- a. That the Respondent shall pay the Claimant 2 months' salary for unfair termination on account of the procedure at Kshs.1,800,000/-
- b. That the Respondent shall pay the Claimant 7 days' pay in lieu of termination notice
- c. That the Respondent shall pay the Claimant 10 days' pay on account of leave not taken.
- d. The suit having only succeeded partially, each party shall bear their own costs of the suit.

90. Judgment accordingly.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
27TH DAY OF NOVEMBER, 2025.**

C. N. BAARI

JUDGE

Appearance:

Ms. Sadia Carren present for the Claimant

Ms. Oigara h/b for Mr. Wangira for the Respondent

Ms. Esther S- C/A

