



**Kenya Hotels Allied Workers Union & another v Crest Hotel t/
a Hotel Rio (Employment and Labour Relations Cause E6497 of 2020)
[2025] KEELRC 2507 (KLR) (22 September 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2507 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E6497 OF 2020
HS WASILWA, J
SEPTEMBER 22, 2025**

BETWEEN

KENYA HOTELS ALLIED WORKERS UNION 1ST CLAIMANT

MICHAEL NYONGESA BARASA 2ND CLAIMANT

AND

CREST HOTEL T/A HOTEL RIO RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 26th November 2020 and prays for judgment against the Respondent for:
 - a. The Honourable Court be pleased to find the Respondent's decision to terminate the grievants' employment unfair labour practice.
 - b. The Honourable Court be pleased to order the Respondent to pay the grievant his accrued rights and terminal dues and offer maximum compensation for his unfair termination as computed at paragraph 11 herein.
 - c. The Honourable Court be pleased to order the Respondent to pay cost of this suit and interest on the amount so awarded.

Claimant's Case

2. The Claimant union avers that it is a registered trade union within the provisions of section 19 of the *Labour Relations Act*, whose core functions among others is representation within the hospitality industry as mandated in its constitution read together with Article 22 of *the Constitution*. On the other



hand, the Respondent is a catering and accommodation institution and that the grievant is its former employee.

3. The Claimant union avers that the grievant was employed by the Respondent on 5th August 2017 as a general manager. However, the Respondent unfairly terminated his employment on 15th December 2018 on grounds that he had incurred doubtful debts and the Respondent had lost faith in his performance.
4. The Claimant union avers that the grievant enrolled with the union on 10th November 2014 while working at Panari Hotel and upon his departure to the Respondent's premises, he subscribed privately to union.
5. The Claimant union avers that the grievant earned a monthly consolidated salary of Kshs. 206,000.
6. It is the Claimant union's case that at the time of the grievant's termination, the Respondent failed to grant him an opportunity to be heard and defend himself in breach of the rule of natural justice that one should not be condemned unheard.
7. The Claimant union avers that the grievant did not cause any credit facility leading to the bad debts totalling Kshs. 4,000,000 as claimed in the Respondent's letter of termination, but the same were occasioned by the Front Office Manager and the Security Officer who should be held liable for the debts incurred and who were cautioned on credit lapse by the grievant before his termination.
8. It is the Claimant union's case that the Respondent's allegations do not reflect the actual bad debts of Kshs. 245,550 in respect of 3 foreign clients, 2 Tanzanians and 1 South African, who had lost their monies at the Respondent's premises.
9. The Claimant avers that the Tanzanian guests, John Ezekiel and Clement Richard debt was of Kshs. 137,050, whereby the Respondent withheld all their valuables at the grievant's initiative which valuables were in the Respondent's custody at the time of his termination.
10. In respect to the South African guest, Sha Fazila Bibi debt of Kshs. 108,500, the embassy of the Republic of South Africa intervened and the Respondent withheld the guest's traveling documents under the custody of the Security Officer.
11. The Claimant union avers that at the time of the grievant's employment, the Respondent had put in practice credit facilities to selected clientele including individuals and organizations, an arrangement that the grievant could not reverse and should not be blamed for recovery of such debts.
12. The Claimant union avers that the grievant had no option but to report the matter to the union whose endeavour to resolve the matter with the Respondent failed.
13. The Claimant union avers that its efforts for conciliation at the Ministry of Labour have failed to yield positive outcome as a result of irrelevant issues alleging the debts as personal bills and demanding that the grievant recovers this bills before being paid his terminal dues.
14. It is the Claimant's case that it is irregular for the Respondent to terminate the grievant services and demand that the grievant collects on its behalf doubtful debts when the employment relation has ceased as alleged by the Respondent and the Conciliator's report.
15. The Claimant union avers that the Respondent's reason for terminating the grievant are farfetched and cannot constitute valid reason therefore contrary to Section 43 of the *Employment Act*.



16. It is the Claimant union's case that without following the laid down procedure and without sufficient reason to terminate the grievant, the Respondent's decision is deemed unfair as stipulated at section 45 of the *Employment Act*.

Respondent's Case

17. In opposition to the Claim, the Respondent filed a Statement of Defence and Counterclaim dated 12th January 2021.
18. The Respondent avers that it employed the Grievant as a General Manager for a fixed term contract of one year with effect from 31st July 2017. The contract was renewed for a further 5 months from 1st August 2018 to 31st December 2018.
19. The Respondent avers that the Claimant lacks locus standi to bring the claim on behalf of the Grievant who was not a unionisable employee.
20. The Respondent avers that the Grievant presented himself as an experienced, skilful and accomplished manager in the hospitality industry. His duties included but were not limited to management of budgets, financial plans, controlling expenditures, ensuring sales and profit targets were met and taking overall charge of the Respondent's operations and staff.
21. At the time of his employed, Beatrice Mumbi Kiguongo was the Respondent's Managing Director. She fell ill and was in and out of the hospital and eventually died on 7th September 2018.
22. During the Respondents Managing Director's illness the Grievant was supposed to execute his contractual duties by overall management of the staff and operations.
23. The Respondent avers that subsequent to the Respondent's Managing Director's demise and burial, it was discovered that doubtful debts increased exponentially within 15 months and accumulated debts owed to the Respondent Hotel in excess of more than Kshs. 4 million.
24. It is the Respondent's case that its directors contracted Kimlan Management Limited to audit the systems and the books to establish the source of the doubtful and the accumulated debts.
25. The Respondent avers that its directors held meetings including crisis meetings to establish the cause of the increased doubtful and accumulated debts and the reason for non-recovery. They established that the Grievant committed gross violations of his contract and wilfully neglected to perform his duties and carelessly and improperly performed work which was his duty to perform.
26. The Respondent avers that the Grievant's wilfully neglected to perform his duties by: Allowing guests to leave the Respondent Hotel without paying for accommodation, food and beverage costs; Transferring a guest from the Hotel without paying for accommodation, food and beverage costs; Allowing debts owed to the Respondent Hotel to increase exponentially during his tenure as the General Manager; Generally not following due process and failing to ensure that proper documentation was maintained to facilitate debt collection.
27. It is the Respondent's case that it has reasonable and sufficient grounds to suspect the Grievant of having committed, a criminal offence against or to the substantial detriment of the Respondent since he was paid some money directly by some guests which monies he did not remit to the Respondent.
28. The Respondent avers that in meetings with the Respondent and during the conciliation meetings, the Grievant admitted willful negligence to perform his duties and agreed to pay Kshs. 505,455 which was



- outstanding by virtue of the guests he allowed to leave without paying and also personally guaranteed to pay those debts.
29. It is the Respondent's case that the Grievant failed and or refused to attend meetings to show cause why his employment should not be terminated despite being invited by the Directors on several occasions as he absented himself from the workplace and purported to have gone to collect the outstanding debts.
 30. Subsequently, he was terminated from employment on 8th December 2018, 23 days before the expiry of his contract.
 31. The Respondent avers that at no time did the Grievant raise any of the grievances the Claimant is raising through the Memorandum of Claim.
 32. The Respondent avers that the Grievant was paid all his lawful dues in the sum of Kshs. 35,941.07 after the set off being a refund of expenses in the sum of Kshs. 25,954 and the balance of Kshs. 9,987 after the set off.
 33. The Respondent avers that that a trade dispute was reported before the Labour Ministry in February 2020 and Charles Muniko was appointed as the conciliator on 16th March 2020, and he had a series of meetings with the parties herein.
 34. During the conciliation meetings, the Grievant agreed to pay the sum of Kshs. 505,455 that was owed to the Respondent by guests who were allowed to leave the Respondent hotel without settling the debt by the Grievant and which he guaranteed to pay.
 35. The Respondent avers that the conciliator resolved the dispute by making his findings and recommendations through the report dated 29th July 2020 and copied to the Chief Industrial Relations Officer, Labour Ministry. He recommended that the Grievant should recover the unpaid dues which was in line with what was agreed during the conciliation meeting and prior meetings.
 36. It is the Respondent's case that the Claimant and the Grievant chose and submitted themselves to the conciliation process until it was concluded and therefore are they bound to respect and fulfil the decision/ recommendations expressed by the Conciliator.

Counterclaim

37. The Respondent reiterated its statements in the Statement of Response and prays that the Claimant's claim be dismissed with costs and the claim in counterclaim be allowed and judgment be entered in its favour in:
 - a. The sum of Kshs. 505,455.
 - b. Interest on (a) above the rate of 14 % per year with effect from 1st January 2019 until payment in full.
 - c. Costs of this suit plus interest thereon.
 - d. Any other relief this Honourable Court may deem fit and just to grant.

Evidence in Court

38. The Claimant (CW1) adopted her witness statement dated 26th November 2020 as her evidence in chief and produced her filed list of documents dated even date as her exhibits 1-7 respectively.
39. During cross-examination, CW1 testified that the suit was filed through his union but he is now acting in person through his counsel.



40. CW1 testified that he was not a unionisable employee during the period of his employment.
41. CW1 testified that he was initially employed by the Respondent vide a one-year employment contract dated 1st August 2017; upon its expiry, it was extended for 5 months from 1st August 2018 to 31st December 2018. He was then issued with a termination letter by the Respondent effective 8th December 2018 due to doubtful debts.
42. CW1 testified that he had a meeting with the Respondent on 24th November 2018 prior to his termination wherein the issues relating to the debts were discussed.
43. CW1 testified that Henry Koech was his friend and he was following up on his payments, however, Barasa is one who allowed him to leave and not him.
44. CW1 testified that he was paid by Job Oruko Kshs. 32,000 directly to his MPESA and requested him to leave. To date, he has this amount to the hotel.
45. CW1 testified that as the General Manager, he was in charge of the hotel's operations and all staff were reporting to him.
46. He testified that the guests owing were customers of the hotel before he was employed. Robert Kalima's debt was of 6th June 2017. He was routine client and he left without the Claimant being informed by the front office.
47. CW1 testified that in 11th February 2018, he was paid Kshs. 34,900 to his MPESA and another Kshs. 35,000 was paid in March 2018. Additionally, on 9th May 2018, there was no payment of Kshs. 170,000 when he was still the General Manager.
48. He testified that the conciliation report stated that the Grievant allowed guests to leave the hotel to look for money. The report recommended that the Grievant to recover the unpaid debts then afterwards receive his dues.
49. CW1 testified that the Respondent availed his final dues of Kshs. 727,866.77 as evidence in page 74 of the Respondent's bundle of documents. After Kshs. 505,000 was deducted, he was paid Kshs. 32,000. He seeks damages for unfair termination.
50. The Respondent's witness, Phoebe Wamuyu Ndungu (RW1) stated that she works as the Respondent's General Manager. She adopted her witness statement dated 30th January 2025 as her evidence in chief and the Respondent's bundle of documents dated 12th January 2021 and further list of documents dated 30th January 2025 as her exhibits.
51. During cross-examination, RW1 testified that she was employed by the Respondent in December 2018 after termination of the Claimant's employment, however, she is aware of what was done officially vide the records available.
52. RW1 testified that the Claimant was to assist the Respondent in following up with the clients' debts and he had agreed to refund the Respondent the money owing.
53. RW1 testified that a criminal complaint was filed against the Claimant.
54. She testified that the Respondent agreed what to pay the Claimant through the unions. He was not paid his November 2018 salary.
55. RW1 testified that the Respondent and the union had a meeting with the labour officer. The Conciliator made recommendations through his report.



56. She testified that the Claimant agreed to have the Respondent recover the debts from his final dues, however, there is no written agreement on this.
57. The Respondent's second witness, Christopher Karani (RW2) adopted his witness statement dated 30th January 2025 as his evidence in chief.
58. He testified that the Respondent is owed a debt of Kshs. 505,455 incurred by guests allowed to stay in the hotel without paying with express approval of the Grievant who was notified of the debts.
59. During cross-examination, RW2 testified that he has produced minutes of the meeting wherein the debts were discussed and further emails addressing the same.
60. RW2 testified that the Claimant was to manage the hotel and was responsible for all operations. There were other people hired to assist him with these duties.
61. RW2 testified that the receptionist checks in and out of the hotel. The receptionist cannot check out a client who has a debt, however, the receptionist was not called as a witness.
62. RW2 testified that in this matter, the Claimant allowed the clients to leave.
63. He testified that the money owed was not recovered, however on page 74 of the Respondent's bundle of documents, the Respondent deducted the amount from the Claimant's final dues.
64. RW2 testified that there was no hearing before the termination of the Claimant's employment.

Claimant's Submissions

65. The Claimant submitted on seven issues: whether the Respondent had a valid and fair reason for terminating the Claimant's employment in accordance with Section 43 of the *Employment Act*, 2007; whether the Respondent followed a fair procedure, in terminating his employment as required by Section 41 of the *Employment Act*, 2007, and the principles of natural justice; whether the Respondent's actions, constitute a breach of the Claimant's contract of employment and/or the applicable general terms and conditions of employment and the Respondent's internal policies; whether the Claimant is entitled to payment of the claimed terminal dues; whether the Claimant's termination was unfair and unlawful, entitling him to compensation pursuant to Section 49 of the *Employment Act*, 2007; whether the Respondent has a legal obligation to issue the Claimant with a Certificate of Service upon termination of his employment; and who shall bear the costs of these proceedings.
66. On the first issue, the Claimant submitted that the Respondent failed to discharge the burden placed upon them by Section 43(1) of the *Employment Act* which requires an employer to prove the reason or reasons for the termination. The Respondent's reason, "loss of faith" linked to alleged doubtful debts, is not a valid or fair reason in law.
67. The Claimant submitted that Section 43(2) of the *Employment Act* requires the reason to be one that the employer genuinely believed to exist, but this belief must be based on reasonable grounds and arrived at after due inquiry. The Respondent therefore bears the evidentiary burden to demonstrate the factual basis for their belief. He relied in *Alphonse Maghanga Mwachanya V Operation 680 Limited* [2013] KEHC 3275 (KLR) where it was held that the employer must not only state the reason for termination but must also prove that reason through cogent and verifiable evidence.
68. The Claimant submitted that Section 45(2) of the *Employment Act*, states that a termination is unfair if the employer fails to prove that the reason for the termination is valid and fair. The reason must relate to the employee's conduct, capacity, or be based on the operational requirements of the employer.



Thus, the Respondent's subjective feeling of "loss of faith" without concrete, verifiable evidence of misconduct or poor performance directly attributable to the employee does not meet this threshold of a valid and fair reason.

69. It is the Claimant's submissions that the Respondent has failed to provide a clear breakdown or any supporting evidence to substantiate the Kshs. 4,000,000.00 figure or to directly link it to the Claimant's actions or inactions in a manner that would constitute a valid reason for dismissal. Without such proof, the alleged basis for the "loss of faith" is rendered questionable, unsubstantiated, and unreliable. The burden was squarely on the Respondent to provide concrete evidence to support their claims regarding the magnitude of these debts and the Claimant's culpability concerning them, as required by Section 43 of the *Employment Act*. Vague, generalized, and unsubstantiated allegations cannot and do not form the basis of a valid and fair termination in law.
70. The Claimant submitted that the debts in question were a result of the hotel's pre-existing credit policy and the actions of other staff members operating under that policy, not solely his doing. While previous internal findings may have noted his admission to certain actions for "public relations" purposes, these isolated instances, if proven, do not equate to personally guaranteeing debts or engaging in gross misconduct warranting termination. The ultimate responsibility for establishing, implementing, and enforcing effective financial controls and debt recovery procedures lay with the hotel management structure.
71. The Claimant further submitted that while an employee in a managerial role bears responsibility for supervision; accountability for the failure of systems or the actions of subordinates requires proof of direct culpability, gross negligence, or a deliberate failure to act on the part of the manager. The Respondent has failed to link the Claimant directly and solely to the claimed debt in a manner that would constitute a valid and fair reason for termination.
72. The Claimant submitted that the Respondent's argument that his performance regarding finances and debt management was unsatisfactory to the point of warranting termination is contradictory as the Claimant's contract was renewed a few months prior based on performance. Therefore, the Respondent has failed to provide any credible evidence of such a sudden and severe deterioration in performance or conduct to justify the termination following a performance-based contract renewal.
73. On procedural fairness, the Claimant submitted that Section 41(1) and (2) of the *Employment Act*, sets out a mandatory requirement for any termination on grounds of misconduct, poor performance, or incapacity. The employer is obligated to inform the employee, in a language they understand, of the reasons for which the employer is considering termination. This must be done in the presence of a witness, preferably a union representative or a fellow employee chosen by the employee. Subsequently, the employee must be given a fair opportunity to make representations to the employer or their representative regarding the allegations. This entire process must be completed before the decision to terminate is made.
74. The Claimant submitted that the Court of Appeal in *Geoffrey Gikonyo Mathu v Intex Construction Company Ltd* [2017] KECA 688 (KLR) highlighted the critical importance of a fair hearing as a cornerstone of fair labour practice and a constitutional right as follows: "But even if the reasons advanced by the respondent had been valid, the dismissal herein would stand impugned for want of a hearing in line with Section 41 (2) of the *Employment Act* set out hereinabove. We note that the appellant was merely asked to provide a written account of the events of the material date to his supervisor Munene, who in turn served him with a letter informing him of the decision to dismiss him summarily. Would the foregoing action amount to a hearing? We think not as the said approach ought



- to be in addition to and not in substitution to a hearing as envisaged in Section 41 of the [Employment Act](#).”
75. The Claimant submitted that the termination letter dated 1st December 2018 was not preceded by an invitation to a disciplinary hearing or a notice to show cause detailing the specific allegations. There is no evidence on record suggesting that the Respondent convened a meeting with the Claimant prior to issuing this termination letter, informed him of the specific details and particulars of the alleged "loss of faith" and mismanagement of doubtful debts, or afforded him the opportunity to present his case and make representations in the presence of a witness of his choice, as is mandatorily required by Section 41 of the [Employment Act](#). This constitutes a clear, severe, and fatal procedural lapse.
76. It is the Claimant's submissions that a generic statement of "loss of faith" vaguely linked to a large, unsubstantiated debt figure, without detailing the specific instances, dates, transactions, or the precise nature of the alleged failures or misconduct leading to that conclusion, falls far short of providing adequate particulars as required by law and established jurisprudence. He relied in *Anthony Mkala Chitavi v Malindi Water & Sewerage Company Ltd* [2013] KEELRC 920 (KLR), where the court held that a show cause notice or disciplinary invitation must contain precise and sufficient allegations to enable the employee to respond effectively. Without proper and detailed particulars, the opportunity to be heard, even if offered, is rendered nugatory.
77. The Claimant submitted that he was condemned unheard in disregard of the fundamental principle of natural justice and in violation of Article 41 of [the Constitution](#), which guarantees the right to fair labour practices, including the right to a fair hearing. The importance of the right to be heard before any adverse action is taken is not merely a procedural technicality but a constitutional imperative that applies with full force to employment terminations.
78. It is the Claimant's submissions that procedural improprieties alone, being a fundamental breach of Section 41 of the [Employment Act](#) and the principles of natural justice, are sufficient to render the termination unfair and unlawful, irrespective of the validity of the reason for termination.
79. On breach of contract and employment terms, the Claimant submitted that the employer's failure to adhere to Sections 41, 43, and 45 of the [Employment Act](#), as demonstrated amounts to a repudiation of the fundamental terms of the employment relationship.
80. The Claimant submitted that the contract stipulated one month's notice. However, the Respondent provided only seven (7) days' notice in the termination letter dated 1st December 2018. The Respondent's failure to provide the agreed one month's notice period or pay in lieu is a clear and undisputed breach of contract, entitling the Claimant to one month's salary in lieu of notice as claimed. Section 35 of the [Employment Act](#), provides for minimum notice periods, but contractual terms for longer notice periods agreed upon by the parties are enforceable.
81. The Claimant submitted that unlawful withholding of the Claimant's salary for November 2018 on the baseless ground of recovering disputed debts is a fundamental breach of the contractual obligation to pay wages for work done and a direct violation of the [Employment Act](#). Section 17 of the [Employment Act](#) mandates the prompt payment of wages and Section 19 strictly governs permissible deductions from wages. By withholding an entire month's salary for alleged debt recovery especially when the debt is disputed, the Respondent denies personal responsibility, and there is no court order or written agreement authorizing such a deduction, is a clear breach of contract and statutory provisions.
82. The Claimant further submitted that Respondent's witness failed to issue him a Certificate of Service upon termination in direct breach of the mandatory requirement under Section 51 of the [Employment Act](#). This section places a statutory duty on every employer to issue a Certificate of Service to an



- employee upon termination, provided the employee has completed at least four consecutive weeks of service.
83. It is the Claimant's submission that the Respondent's multiple breaches, including the substantively and procedurally unlawful termination, the failure to provide adequate notice, the arbitrary and unlawful withholding of salary, and the failure to issue a Certificate of Service, collectively demonstrate a fundamental repudiation of the employment contract by the Respondent and entitle the Claimant to seek appropriate remedies from this court for the losses and damages suffered as a result of the Respondent's unlawful actions.
 84. On terminal dues, the Claimant submitted that the Respondent unlawfully withheld his November and December 2018 and the Respondent's attempt to condition payment on the Claimant's recovery of disputed debts is without legal basis and contrary to the mandatory provisions of Section 17 of the *Employment Act*. Terminal dues, including earned wages for work already performed, are a right that accrues upon termination, irrespective of the reason for termination, unless there are lawful deductions permitted by Section 19 of the *Employment Act*.
 85. It is the Claimant's submission that his claim for 34 accrued leave days in the sum of Kshs 233,466.67 and 14 accrued off days in the sum of Kshs 96,133.33 represent entitlements that accumulated during the Claimant's period of service in accordance with the terms of his employment and the law. Section 28 of the *Employment Act* provides for annual leave, and Section 28(4) mandates payment in lieu of accrued but untaken leave days upon termination of employment. This is a standard statutory requirement that the employer is obligated to fulfill. While compensation for accrued off days may depend on the specific terms of employment or established practice, the Claimant is unequivocally entitled to payment for accrued leave days as a matter of statutory right.
 86. The Claimant submitted that Section 35(1) of the *Employment Act* provides for termination of a contract of service by either party giving notice or by payment to the other party of the remuneration which would have been earned during the notice period. The Respondent having failed to provide the stipulated one month's notice as per the contract, thus, the Claimant is entitled to this payment in lieu thereof.
 87. It is the Claimant's submissions that the amounts are calculated based on the Claimant's last earned gross salary of Kshs 206,000.00 which is not disputed by the Respondent. The Respondent has no lawful justification for withholding these earned and accrued amounts. The failure to pay these terminal dues promptly upon termination constitutes a further breach of the employment contract and the law.
 88. The Claimant submitted that the Respondent neither called the signatories to the school accounts as witnesses nor were they held accountable with regards to the allegations that the Claimant allegedly withdrew funds from the school account, if indeed that allegation had merit. The school accounts had three signatories and funds could neither be transferred nor withdrawn without the signatories.
 89. It is the Claimant's submission that he is entitled to compensation for the unfair termination of his employment, and that maximum compensation equivalent to twelve months' gross salary is warranted in this case, amounting to Kshs. 2,472,000.00. This entitlement arises from the Respondent's failure to comply with the mandatory requirements of the *Employment Act* rendering the termination both substantively and procedurally unfair.
 90. The Claimant submitted that discretion to award compensation under Section 49 of the *Employment Act* should be exercised judiciously, taking into account the totality of the circumstances of the case to ensure a just and equitable outcome. He relied on the case of Charles Ondiek Okemwa v Eldoret



Mattress Limited & Daniel Ngugi T/A Kamtinga Services Ltd [2016] KEELRC 1783 (KLR) where the held: “Pursuant to section 49(1)(c) of the *Employment Act*, 2007, compensation is one of the primary remedies. The remedy though is discretionary and section 49(4) of the Act has outlined the factors to consider.”

91. The Claimant submitted that his termination was characterized by severe procedural unfairness and was based on a reason (“loss of faith” linked to disputed debts) that the Respondent has failed to prove is valid and fair. The Respondent’s conduct in unlawfully withholding earned wages and insisting on debt recovery by the Claimant as a condition for payment of dues further exacerbates the unfairness and demonstrates a high degree of culpability and bad faith on the part of the Respondent. This conduct warrants a higher award of compensation.
92. The Claimant further submitted that he held a senior managerial position as General Manager hence he has face significant challenges in securing comparable employment, particularly with due to the unsubstantiated allegations and the Respondent’s failure to issue a Certificate of Service, a crucial document for prospective employers. The termination has resulted in substantial lost earnings and has caused the Claimant considerable financial hardship and emotional distress since December 2018. The lack of opportunities for comparable employment is a factor recognized under Section 49(4)(f) and is a relevant consideration in determining the appropriate level of compensation.
93. It is the Claimant’s submission that considering the totality of the circumstances, including the severe procedural and substantive unfairness of the termination, the Respondent’s high-handed and unlawful conduct in withholding terminal dues, the Claimant’s length of service, his senior position, his reasonable expectation of continued employment following a recent contract renewal, the significant loss of earnings, and the likely impact on his future employment prospects, maximum compensation of twelve months’ gross salary, is just, equitable, and necessary to provide meaningful redress to the Claimant for the wrong suffered and to deter the Respondent and other employers from engaging in similar unlawful and unfair labour practices.
94. On certificate of service, the Claimant submitted that the Respondent is legally obligated to issue him with a Certificate of Service pursuant to the express and mandatory provisions of Section 51 of the *Employment Act*. This is a non-negotiable statutory requirement that applies to all terminations of employment, provided the employee has completed at least four consecutive weeks of service.
95. The Claimant submitted that only limited exception contemplated by the Act relates to employees summarily dismissed for gross misconduct; however, even in such instances, Section 51(2) read with Section 44(4)(d) of the *Employment Act* still requires the employer to issue a certificate upon request, which may include a statement that the termination was for gross misconduct. In the present case, the Claimant’s termination was not a lawful summary dismissal effected in accordance with Section 44 of the Act. However, even if the Respondent were to wrongly allege it was due to misconduct, they are still legally bound to issue a Certificate of Service to the Claimant upon termination.
96. On costs, the Claimant submitted that costs are awarded at the discretion of the Court, as provided for under Section 12(4) of the *Employment and Labour Relations Court Act*. However, the well-established principle guiding the exercise of this discretion is that costs follow the event, meaning the successful party in a suit is entitled to recover their costs from the unsuccessful party.
97. It is the Claimant’s submissions that awarding costs to him, will serve the purpose of indemnifying him for the necessary and reasonable expenses incurred in prosecuting this claim to vindicate his rights. Furthermore, it will serve as a deterrent against similar unlawful and unfair labour practices by the Respondent and other employers, reinforcing the importance of adhering to the provisions of the



Employment Act and respecting employees' rights. The Claimant thus urges this Honourable Court to apply this principle and award him the costs of this suit.

Respondent's Submissions

98. The Respondent submitted on six issues: whether the Conciliator's report was binding; whether the Respondent had a valid reason to terminate the Grievant's employment; whether the Respondent adhered to procedural fairness in the termination exercise; whether the Grievant is entitled to further payment over and above the recommendations of the Conciliator; whether the Respondent is entitled to the prayers in the counterclaim; and what are the orders as to costs.
99. On the first issue, the Respondent submitted that Section 5 of the Employment & Labour Relations Court, Cap 8E laws of Kenya provides: "(b)where the labour dispute has been a subject of conciliation, the statement of claim shall be accompanied by- (i)a report by the conciliator on the conciliation process supported by the minutes of the conciliation meeting; and (ii)a certificate of conciliation issued by the conciliator under section 69(a) of the Labour Relations Act."
100. The Respondent submitted that this dispute was initially submitted to the Conciliator and a certificate of the conciliator is lacking in the Claimant's documents. The provisions of section 5 above are couched in mandatory terms. He relied in Robert Njeru Ndatho v Inspector General of Police & 2 others [2018] KEELRC 2280 (KLR) where the court held: "Therefore, once parties have been referred to conciliation by the minister and they go through the conciliation process they must wait for the outcome of conciliation process before taking the next step. The matter as it were is not in the control of the parties but the conciliator who must issue a conciliation certificate which will state whether the dispute has been resolved or not before the parties can decide to move to court or not."
101. The Respondent submitted that the statement of claim as filed is defective and should be dismissed. However, without prejudice, the Claimant has concealed information that the matter was fully resolved through its offices and final report issued which parties were urged to comply with and, the Respondent fully complied. The Grievant submitted himself to the jurisdiction of the union which was well within his rights.
102. It is the Respondent's submission that having submitted to the operational procedures of the union, the Grievant was bound by the outcome of the conciliator's report issued on 29th July 2020.
103. The Respondent submitted that the Grievant's attempt to disregard the report was declined by the Claimant in its letter dated 3rd August 2020, which letter was drawn by the Chief Industrial Relations Officer directing the parties to act according to the Conciliator's report.
104. The Respondent submitted that noting that the Claimant unequivocally directed parties to act upon the recommendations of the Conciliator, the same conclusively settled the claim. Also, in the absence of the Conciliator's certificate, which is a mandatory requirement, makes the claim defective and an abuse of court process
105. On the second issue, the Respondent submitted that the termination on the ground of accumulating doubtful debts and advancing credit to persons whose credibility was unknown related to the Grievant's conduct hence a valid reason for the termination of employment.
106. The Respondent submitted that the Grievant unequivocally admitted to the doubtful debt in the meeting held on 24th November 2018 and undertook to follow up with recovery which has never been actualized. Additionally, during the conciliation meeting pursuant to the report dated 29th July 2018, the Grievant admitted to have illegally collected money directly from some customers and also allowed some other customers to leave the hotel without clearing their bills. The Grievant then undertook to



- follow up and recover and as noted in his email of 3rd December 2018. Consequently, the Respondent had a valid reason for termination of the Grievant's employment.
107. On the third issue, the Respondent submitted that vide an email dated 21st November 2018, it notified the Grievant of the doubtful debts and further referred to other internal meetings where the Grievant was summoned and asked to explain about the doubtful debts. The same subject matter was subsequently discussed in the meeting held on 24th November 2018. Upon issuance of the e-mail, the Grievant had sufficient time to collect information requested for presentation at the meeting. Additionally, the termination letter referenced the conduct of doubtful debts.
108. It is the Respondent's submissions that the form of the notice to show cause suffices as sufficient and procedurally fair. It relied in *David Wanjau Muhoro Vs Ol Pejeta Ranching Limited (2014) eKLR* which was cited with approval in *Musa & another v Makini Schools Limited [2025] KEELRC 17 (KLR)* and held: "The principle of fair hearing requires the employee has sufficient opportunity to prepare. This entails: 'i.The right to sufficient time to prepare. Time however, was not the totality of sufficiency of opportunity. ii.The right to fully understand the charges. General charges such as dishonesty, fraud and fraudulent activities were vague and offered the employee no opportunity to respond intelligibly, or at all. iii.The right to documentation. The employee needed to be given the documents the employee requests for."
109. On the fourth issue, the Respondent submitted that pursuant to the conciliator's report, the Respondent computed payments as follows: November salary -2018; 7 days December -2018 salary; 34 leave days not taken; 14 off days not taken; and Notice pay. The Respondent calculated the same in the sum of Kshs. 727,866.67 less the statutory deductions and the money owed to the Respondent and the Grievant was paid the sum of Kshs. 35,941.07.
110. It is the Respondent's submission that the Grievant confirmed receipt of the payment at the hearing. Having made the payment based on the conciliator's report which was lawful, and the Grievant accepting the payment thereto, parties complied with the Conciliator's directions. Consequently, the Grievant should be estopped from seeking further unjustified payments.
111. On compensation, the Respondent submitted that the Grievant's contract was lawfully terminated, and he is not entitled to any damages. However, even assuming for a moment that his termination was unlawful (which it was not), it is trite law that damages for breach of a fixed term, contract through premature termination, is the salary for the un-expired period of the contract. The unexpired period of the Claimant's contract was 23 days. However, the Respondent was generous and paid him one month's salary in lieu of notice, which is acknowledged.
112. The Respondent submitted that the Claimant's contract was for a fixed term and would have automatically terminated on 31st December 2018. Consequently, he is not entitled to any anticipatory payments under section 49(1)(c) of the *Employment Act*.
113. On the counterclaim, the Respondent submitted that it sought an order for payment of the sum of Kshs. 505,455, being accumulated debt because of the Grievant's negligence. The Grievant committed gross violations of his contract and became wilfully and habitually neglectful in the performance of his duties thus resulting to the loss of the total sum of Kshs. 505,455
114. It is the Respondent's submission that upon the Grievant's termination, through the trade union, the dispute was referred to a Conciliator who gave his finding dated 29th July 2020. In the said report, the Conciliator found that the Respondent had a valid reason and directed the Grievant to first recover the debts and get paid his dues. Subsequently, the Respondent complied with the recommendations



and paid the Grievant the netted sum of Kshs. 35,941.07. Therefore, the Respondent was entitled to set-off the total sum of Kshs. 505,455/- from the Grievant's terminal dues.

115. On costs, the Respondent submitted that the dispute between the parties was resolved by the Conciliator upon referral by the trade union. However, the Grievant, through his trade union, was unhappy with the report and opted to file the suit herein despite having been fully compensated. Consequently, the Respondent has been inconvenienced by defending this suit and the Grievant should be ordered to pay the costs of the suit.
116. I have examined all the evidence and submissions of the parties herein. The issues for this courts determination are as follows:
1. Whether the grievant's termination was fair and just
 2. Whether counter claim is proved
 3. Whether the grievant is entitled to remedies sought

Issue No 1

117. The grievant has averred that he was terminated for no reason and without following due process. The grievant was terminated vide a letter of 1/12/2018 from the respond which indicated as follows:

Mr. Michael Barasa

Hotel Rio

1st December 2018

Dear Mr. Barasa,

Termination Of Contract Of Employment

This is to inform you that your employment contract will terminate with effect from 8 December 2018 due to loss of faith.

The Directors are deeply concerned and displeased by the rate at which doubtful debts have increased in the last 15 months under your watch including advances of credit to individuals of unknown credibility. This includes over 4million in accumulated debts which that has been incurred and which the hotel is seeking full recovery of.

We would also remind you that notwithstanding the termination of your Contract, various obligations including agreements that you may have signed during your employment in Hotel Rio continue. These obligations include and are not limited to; any debts that you may have personally guaranteed and obligations relating to intellectual Property of the Hotel.

If you have any questions regarding information in this letter please do contact me directly.

Jean W. Kimani

For Hotel Rio

118. The reasons for the termination were based on bad debts that were said to have been incurred under the grievant's watch as general manager. At the time of termination the grievant was serving on a contract which was to expire on 31/12/2018. Before the temination there is no indication that the grievant was subjected to any disciplinary hearing as envisaged under section 41 of the *Employment Act* 2007 which states as follows:



1. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

It is only such a hearing that would have established the existence of valid reasons for the termination.

119. Section 45(2) of the [Employment Act](#) 2007 also state as follows:

- (2) A termination of employment by an employer is 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 employees 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

120. Since the grievant was not given a chance to be heard, I find this termination unfair and unjustified.

Issue No 2

121. The respondents filed a counter claim against the grievant demanding payment of Kshs 505,455/- debt incurred by the grievant. The respondent aver that the kshs 505,455/- is about debts incurred by guests of the hotel while the grievant was general manager. When cross examined, the RW2 indicated that the grievant worked with others and the receptionist was one checking guests in and out and guests could not leave without paying . The witness averred that the receptionist was not a witness and therefore it could not be ascertained that the guests were allowed to leave on authorization of the grievant.

122. The RW2 also indicated that in the final dues for the grievant, the owed money was not recovered but was provided for in the computation. The witness indicated that other debts of kshs 4.9 million were recovered. As indicted above, the debts being levied against the grievant arise from unpaid debts by hotel clients. The respondents aver that the grievant allowed the hotel guests to leave without paying. The respondents failed to call any evidence to testify on this including their own receptionist who checks guests in and out. No evidence was given that the grievant was directly connected to the incurred debt.

123. In view of this finding, I find that the respondents did not establish their counter claim as envisaged and the same is dismissed accordingly.

Issue No 3 Remedies

124. Having found the termination of the grievant unfair and unjustified I find for the grievant and award him as follows:-

1. Unpaid November salary kshs 206,000/-
2. 7 days worked in December 2018 = kshs 48,066.67/-
3. Unpaid leave days not taken = kshs 233,466.67/-
4. 14 off days not taken = kshs 96,133.33/-



5. One month pay in lieu of notice kshs 206,000/-
6. 3 months' salary as compensation for the unfair termination = 206,000x3= kshs 618,000/-
Total = kshs 1,407,667/-
Less statutory deductions

125. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 22ND DAY OF SEPTEMBER 2025.

HELLEN WASILWA

JUDGE

