

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT
AT NAKURU

ELRC CAUSE NO. E025 OF 2025
(Before Hon. Lady Justice Anna Ngibuini Mwaure)

CALEB LANGAT.....

CLAIMANT

VERSUS

RAYMOND KANGORI KIMATHI.....

.....RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Statement of Claim dated 24th April 2025.

Claimant's case

2. The Claimant avers that he was employed by the Respondent as a Security Guard from 20th December 2023, earning Kshs. 10,500/= monthly.
3. The Claimant avers that he served faithfully until his unlawful termination on 27th February 2025, without notice or payment in lieu thereof, in violation of section 35(1)(c) of the Employment Act, 2007.

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|--|-------------------------------------|
| e. Service pays | Kshs. 6,057.69/= |
| f. Compensation for public holidays | Kshs. 4,900.00/= |
| g. Compensation for off days worked | Kshs. 35,700.00/= |
| h. Underpayment (Legal Notice No. 186/2024) | Kshs. 121,321.90/= |
| Subtotal | Kshs. 279,299.78/= |
| i. Legal fees incurred | <u>Kshs.</u> <u>83,789.934/=</u> |
| TOTAL CLAIM | <u>Kshs.</u> |
| <u>363,089.714/=</u> | |
- j. Costs of the suit
- k. Interest at court rates until payment in full
- l. A declaration that the termination of the Claimant's employment was unfair and unlawful;
- m. Any other relief this Honourable Court may deem fit and just to grant

8. The Respondent did not file any response to the claim, and the matter proceeded as formal proof.

Claimant's evidence in court

9. CW1, the Claimant, adopted his written statement together with the bundle of documents, both dated 24th April 2025.

10. CW1 reiterated the contents in the Memorandum of Claim and prays that this Honourable Court should allow the claim as prayed with costs.

11. The court directed that the Claimant file his respective written submissions.

Claimant's submissions

12. The Claimant submitted that he was employed as a Security Guard from 20th December 2023, earning Kshs.10,500/= monthly salary and was summarily dismissed on 27th February 2025, without any notice, hearing, or proper justification. The Claimant also submitted that the termination violated key provisions of the Employment Act, 2007, sections 35(1)(c), 41, 43, and 45(2), which mandate notice or pay in lieu, a fair hearing, valid reasons for dismissal, and procedural fairness. The Respondent's failure to comply with these legal safeguards rendered the termination both procedurally and substantively unfair.

13. The Claimant submitted that his termination is both unlawful and unfair, having been effected without a valid reason or adherence to fair procedure, contrary

to the Employment Act, 2007. In ***Walter Ogal Anuro V Teachers Service Commission***

[2013] KEELRC 386 (KLR), the court emphasized that fairness in termination requires both a valid reason and fair procedure, while in ***Kenfreight (E.A) Limited V Benson K. Nguti***

[2016] KECA 409 (KLR), the Court of Appeal held that failure to comply with ***section 41 of the Employment Act***, bars an employer from claiming lawful termination.

14. The Claimant submitted that he provided oral and documentary evidence demonstrating that the Respondent failed to pay salary arrears for eight months, leave and pro-rata leave, compensation for public holidays and off days worked, service pay, notice pay, and wages in line with Legal Notice No. 186 of 2024, resulting in statutory underpayment. These breaches contravened key provisions of the Employment Act, including section 28(1) on annual leave entitlement, Sections 35(5) and (6) on service pay for employees not under NSSF, Section 10(7) placing the burden of record-keeping on the employer, and Regulation 4 of the Regulation of Wages (General)

Order mandating compliance with minimum wage standards.

15. The Claimant submitted that the Respondent failed to enter appearance or file a defence, leaving the Claimant's case unchallenged. Nonetheless, as affirmed in ***Gichinga Kibutha V Caroline Nduku [2018] eKLR***, a claimant must still prove their case on a balance of probabilities. The Claimant has met this threshold, demonstrating that the termination and non-payment were unjustified and unlawful.
16. The Claimant urges this Honourable Court to allow the claim as prayed and award the costs of the suit in his favour.

Analysis and determination

17. The court has considered the pleadings on record, and the issues of determination are as follows:
- a) Whether the claimant was unfairly and unlawfully terminated;
 - b) If (a) above is in the affirmative, whether the claimant is entitled to the reliefs sought; and
 - c) Who should bear the costs of the suit?

18. To establish a claim of unfair termination, both substantive justification and procedural fairness must be demonstrated, in accordance with **sections 43 and 41 of the Employment Act**. In **Walter Ogal Anuro V Teachers Service Commission (supra) and Mary Chemweno Kiptui V Kenya Pipeline Company Limited [2014] KEELRC 905 (KLR)**, the court stated that for fair termination to be established, substantive justification and procedural fairness must be followed. In **Naima Khamis V Oxford University Press (E.A) Ltd [2017] KECA 480 (KLR)**, the Court of Appeal held that **section 45(2) (c) of the Employment Act** requires a termination to be done according to a fair procedure.

19. **Sections 107, 108 and 109 of the Evidence Act** provide that who alleges must prove. In this instant case, the Claimant worked for the Respondent as a Security guard from 20th December 2023 in Naivasha within Nakuru County. The Respondent unfairly terminated the Claimant on 27th February 2025, violating **Section 35(1)(c) of the Employment Act** without any prior notice. Looking at the documents presented before this Honourable Court, the Claimant approached the Labour offices in Naivasha to resolve

the matter, and the Respondent failed to appear despite several demands served upon him.

20. The court for abundant precaution noted that the Claimant served the summons through one Duncan Cheruiyot also an advocate who avers that he served the summons on the Respondent on 7th May 2025 via WhatsApp and availed the screenshot of the same. There was no response filed and so the case proceeded as an undefended cause.

The case was also reported to the labour officer but again there was no response from the Respondent

21. The Court finds the Respondent having been served with the summons as per the affidavit of service on the court record he failed to participate in the proceedings and hence the claim was uncontroverted and judgment is hereby entered in favour of the Claimant.

22. The Claimant is found to be deserving of the following Reliefs:-

- (1) The payment of one month in *lieu* of notice
Kshs.10,500/=

- (2) Salary arrears of eight months is merely claimed but no evidence and so is declined and so also is compensation for public holidays.
- (3) Also compensation for off days worked is not proved and so is declined.
- (4) Leave days is allowed in the absence of evidence by the employer of having granted leave so Kshs.10,500/=
- (5) Pro-rata leave not specified for what period and so is disallowed.
- (6) Service pay is granted as there is no records of remittance of the same to NSSF- Kshs.6,057/=
- (7) Underpayment is granted as per the wages order Kshs.121,321.90.
- (8) There is no basis to grant legal fees and so is disallowed.
- (9) Costs are awarded and interest at court rates from date of judgment till full payment.

Total award is Kshs.148,378.90

Orders accordingly.

**Dated, Signed and Delivered virtually at Nakuru
this 26th Day of September, 2025.**

ANNA NGIBUINI MWAURE

JUDGE

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 15th March 2020 and subsequent directions of 21st 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 has 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.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE
JUDGE

ORIGINAL