



**Ndunda v Kerio Valley Development Authority (Cause E021 of 2024)
[2025] KEELRC 2708 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2708 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
CAUSE E021 OF 2024
MA ONYANGO, J
OCTOBER 3, 2025**

BETWEEN

BENARD DAMUNGA NDUNDA CLAIMANT

AND

KERIO VALLEY DEVELOPMENT AUTHORITY RESPONDENT

JUDGMENT

1. The Claimant filed the Statement of Claim dated 5th June 2024 seeking the following orders against the Respondent: -
 - a. A declaration that the Respondent engaged in unfair labour practices in breach of Article 41 of *the Constitution* of Kenya, 2010, by failing to pay the due remuneration to the Claimant and seeks for an award of general damages.
 - b. Underpayment of gross salary in breach of the judgment of the court in Nakuru Industrial Cause No 96 of 2013 from the month of October 2013 to the month of May 2024 being a period of 128 months of Kshs 1,915,264
 - c. Underpayment of hardship allowance from December 2014 when the circular Ref No. SRC/ADM/CIR/1/13 VOL III (126) was effected for 48 months as underpayment of Kshs 15,900 per month for 48 months thus Kshs 763,200
 - d. Underpayment of hardship allowance between the month of December 2018 until the month of June 2021 at the rate of Kshs 4,800 for 42 months thus Kshs 201,600
 - e. Underpayment of house allowance from December 2018 until July 2021 at the rate of Kshs 4000 monthly for 42 months thus Kshs 168,000.
 - f. Underpayment under the Revised House Allowance in the Public Service as contained in circular Ref SRC/TS/MDP/3/1/2(2) dated 11th August 2015 at Kshs 12,500 monthly being



overpayment for each of the 42 months between December 2018 until July 2021 thus Kshs 525,000

- g. Under payment under the Revised House Allowance in the Public Service Circular by the Salaries and Remuneration Commission between September 2015 to November 2018 at the rate of Kshs 8,500 for 39 months thus Kshs 331,500
 - h. Underpayment of hardship allowance based on the Review of Allowances in the Public Service Circular Ref. No. SRC/ADM/CIR/113 VOL.III (126) by the Salaries and Remuneration Commission of the 10th December 2014 for grade “P” based on the difference of Kshs 15,000 monthly for 30 months thus Kshs 450,000
 - i. Underpayment of house allowance based on the Revised House Allowance in the Public Service as contained in the circular Ref SRC/TS/MDP/3/1/2(2) dated 11th August 2015 for 8 months Kshs 4000 thus Kshs 32,000
 - j. Underpayment of house allowance based on revised house allowance in the Public Service as contained in the circular Ref SRC/TS/MDP/3/1/2(2) dated 11th August 2015 for grade “P” based on the difference of Kshs 11,000 for 105 months being Kshs 1,155,000
 - k. Unpaid airtime allowance from the month of September 2012 to date being 142 months thus Kshs 496,000
 - l. Diminished contribution to the pension scheme by Kshs 2,348.10 monthly from October 2012 to date being 142 months thus Kshs 333,430.20
 - m. Costs and interests.
2. In his Statement of Claim, the Claimant avers that he was employed by the Respondent as a Surveyor vide a contract of employment dated 31st October 2011 with effect from 7th November 2011 and that he currently serves as its Senior Supervisor KVDA grade C4 equivalent of GOK Job Group P.
 3. It is the Claimant’s case that the Respondent terminated his employment vide a letter dated 1st November 2012 but vide a judgment of the Industrial Court in Nakuru Cause No 96 of 2013, where he sued the Respondent, the court ordered for his reinstatement with full accruing benefits with effect from 1st November 2012.
 4. The Claimant avers that the Respondent in breach of the obligation to pay the gross salary ordered by the court of Kshs 94,599, it paid him less the amount by Kshs 14,963 which underpayment persisted from the month of October 2013 to May 2024.
 5. Further, it is the Claimant’s contention that the Respondent from the month of June 2014 commenced payment of hardship allowance to him at the monthly rate of Kshs 1,200 which amount is in breach of the rate set by the Salaries and Remuneration Commission in its circular Ref. No. SRC/ADM/CIR/1/13 VOL. III(126) of the 10th December 2012 which set the allowance at Kshs 17,100 monthly for Job Group “N” of the Claimant and that the underpayment persisted until the month of November 2018.
 6. The Claimant has therefore claimed the under payment of hardship allowance from December, 2014 when the circular Ref, no. SRC/ADM/CIR/ 1/13 VOL. IV (126) at the rate of Kshs 15,900 totaling to Kshs. 763,200.



7. The Claimant further avers that in the month of December 2018 the Respondent paid him a hardship allowance at Kshs. 12,300 monthly instead of Kshs. 17,100 until the month of June 2021 totaling to an underpayment of Kshs 201,600.
8. As regard the claim for underpayment of house allowance, it is the Claimant's case that at the time of commencement of his employment, his house allowance was Kshs. 17,000 monthly of which the Respondent duly paid until November 2018. That thereafter, the Respondent in breach of the obligation to consult on change of employment terms as provided for in section 10 (5) of the *Employment Act*, 2007 commenced to pay him a house allowance of Kshs. 13,000 from December 2018 until July 2021 which he now claims the difference of Kshs 168,000.
9. Further, it is the Claimant's case that the Respondent also breached the terms of the Revised House Allowance in the Public Service as contained in circular Ref. SRC/TS/MDP/3/ 1/2 (2) dated the 11th August, 2015 which enhanced the allowance to Kshs. 25,500 for Job Grade N which he claims from September 2015 to July 2021 December 2018 Kshs 856,500.
10. The Claimant has also asserted that the Respondent in the month of December 2018 pursuant to section 20 of the *Employment Act*, 2007 issued to him a pay statement which communicated his new Job Group as C4 which was backed up by a list compiled by the Respondent of all its staff Job Groups and staff numbers.
11. According to the Claimant, as per the guidelines of Salaries and Remuneration Commission, Job Group evaluation C4 was the equivalent of the Government of Kenya Job Group P relating to a Senior Surveyor and that as such, the Respondent has occasioned the following breaches of contract: -
 - a. The hardship allowance based on the Review of Allowances in the Public Service circular Ref. No. SRC/ADM/CIR/ 1/13 VOL. III (126) by the Salaries and Remuneration Commission of the 10th December, 2014 for grade P ought to have been Kshs. 27,300 but the Respondent paid Kshs. 12,300 until the month of June, 2021 when it stopped payment. He therefore claims for Kshs. 450,000.
 - b. The house allowance based on the Review of Allowances in the Public Service circular Ref. No. SRC/ADM/CIR/1/13 VOL. III (126) by the Salaries and Remuneration Commission of the 10th December, 2014 for grade P ought to have been Kshs. 21,000 but the Respondent paid Kshs. 17,000. The Claimant avers that the circular was applicable until the Revised House Allowance in the Public Service as contained in circular Ref. SRC/ /TS/MDP/3/1/2(2) dated the 11th August 2015 came into effect and thus on account of under payment he claims for 8 months totaling Kshs. 32,000.
 - c. The Claimant avers that the Revised House Allowance in the Public Service as contained in circular Ref SRC/TS/MDP/3/1/2 (2) dated the 11th August, 2015 for grade P set the house allowance at Kshs.28,000 but the Respondent paid Kshs 17000 thus he claims the difference of Kshs. 11,000 for 105 months being Kshs. 1,155,000.
12. The Claimant has also sought for air time allowance at the rate Kshs. 4,000 monthly and which he claims was taxable at the rate of Kshs. 360 monthly. He avers that he was paid from the date of employment to the month of September, 2012 and that as such, his claim is for 142 months to date being Kshs. 496,000.
13. In addition, the Claimant has stated that clause 12 of the contract of employment dated the 31st October 2011 provides that the employer maintains a contributory pension scheme to which both the parties are to contribute on an equal basis at the rate of 7.5% of the monthly basic salary but that the



- Respondent failed to pay the correct basic salary leading to a lesser contribution to the pension scheme by Kshs. 2,348.10 per month from October 2012 to date totaling to Kshs. 333,430.20.
14. Lastly, the Claimant has sought for a declaration that the Respondent engaged in unfair labour practices in breach of Article 41 of *the Constitution* of Kenya 2010 by failing to pay the due remuneration to the Claimant. He seeks for an award of general damages.
 15. The Respondent filed its Response dated 30th September 2024 and denied the averments made by the Claimant in his Statement of Claim. The Respondent denied that Grade C4 is the equivalent of Job Group P. It is also averred that the Claimant was employed in a technical department that had a head of department and hence he was reporting through the normal departmental channels to the Managing Director and not directly to the Managing Director as alleged.
 16. The Respondent asserted that the Claimant joined the service in the job group which he applied for and that the grading system in the Respondent's parastatal is not similar to that of any other government department of civil service.
 17. The Respondent avers that the court in Nakuru Industrial Cause No 96/2013 Benard Damunga Ndunda v Kerio Valley Authority awarded the Claimant gross pay of Kshs. 1,040,589.00 at Kshs. 94,599 as an alternative prayer and that the Respondent appealed against the said judgment and while negotiating to settle the appeal out of court it was agreed that the Claimant accept payment of Kshs. 875,996.00 and reinstatement in order to have the appeal against him withdrawn.
 18. The Respondent maintained that the payment of salaries and allowances made to the Claimant were doneth May 2014, pursuant to an approved scheme of service and that the depreciation of the house allowance paid to the Claimant was occasioned by his redeployment from Eldoret to Wei Wei in West Pokot on 12
 19. In response to the claim for airtime allowance, the Respondent has contended that the Claimant's appointment letter does not provide for airtime allowance.
 20. Further, with regard to the claim for pension, it is averred that the Claimant's pension was deducted based on the prevailing basic salary.

The evidence

21. The Claimant testified on 22nd January 2025 as CW1. He adopted his witness statement recorded on 5th June 2024 and relied on the bundle of documents he filed in support of his case.
22. In his testimony, the Claimant stated that he previously sued the Respondent vide Nakuru Industrial Cause No. 96 of 2013 which case was resolved but he was never paid as awarded by the court. He stated that his hardship allowance was underpaid and that his airtime allowance was removed without explanation. He also stated that his pension contribution was reduced because it is not pegged on the current salary.
23. On being cross examined, the Claimant stated that he was never paid his house allowance arrears and his hardship allowance arrears after being transferred to Wei Wei in West Pokot county. He stated that he was initially paid a house allowance of Kshs. 11,000 against the SRC circular that provided the house allowance was Kshs 15,400. He stated that he was transferred to Wei Wei in May 2014 where he was paid a house allowance of Kshs 17,000 which amount was reviewed to Kshs 13,000 in December 2018. He also stated that he was transferred to Eldoret in July 2021. It was his testimony that his appointment letter did not provide for airtime allowance but that it was paid to him when he joined the Respondent.



24. The Respondent called Elizabeth Kebenei, its Deputy Director, Human Resource who testified as RW1. RW1 adopted her witness statement dated 8th November 2024 as part of her evidence in chief and relied on the documents filed by the Respondent in support of its defence.
25. According to RW1, the Claimant was employed in the technical department which had a head of department, hence he was reporting through the normal department channels to the managing director and not directly to the managing director. She averred that in the Nakuru Industrial Cause No. 96 of 2013, the Claimant was awarded Kshs 1,040,589 at Kshs 94,5999 where the Respondent appealed against the said decision and that while negotiating to settle the Appeal out of court, it was agreed by consent that the claimant be paid Ksh 875,996 and reinstated in order to have the appeal against him withdrawn.
26. RW1 maintained that the Claimant has always been paid house allowance, leave allowance and all other allowances as provided by the SRC circulars subject to their implementation which was based on the availability of funds.
27. In her evidence, RW1 stated that the Claimant was paid Kshs 17,000 as house allowance when in Wei Wei which was an overpayment as the SRC circular provided for a house allowance of Kshs. 15,400. In respect to airtime allowance as claimed by the Claimant, the Respondent's witness stated that airtime allowance was not paid to all staff as it was also payable subject to approval from the head of department according to the nature of work.
28. During cross examination, RW1 stated that in December 2014, the Claimant was paid Kshs 1,200 as hardship allowance and after implementation of the Salaries and Remuneration Commission circular, he was paid Kshs 12,300. It was her testimony that the Claimant's house allowance while in Wei Wei was Kshs 17,000 which amount was reviewed downwards without any communication made to the Claimant.
29. With regard to the claim for hardship allowance, RW1 conceded that in the year 2014, the Claimant was not paid what was provided for in the prevailing Salaries and Remuneration Commission circular.
30. On re-examination, RW1 stated that the implementation of Salaries and Remuneration Commission circulars on allowances was not done immediately but subject to availability of funds and was done in phases.

The Submissions

31. At the close of the Respondent's case, parties were directed to file written submissions. Both parties filed their respective submissions. The Claimant's submissions are dated 1st April 2025 while the Respondent's submissions are dated 26th May 2025.
32. In his submissions, the Claimant submitted that being an employee of the Respondent, a State Corporation, he was entitled to other terms and benefits as may be set by the Salaries and Remuneration Commission for Public Officers.
33. According to the Claimant, in the month of June 2014, the Respondent commenced paying him hardship allowance at the monthly rate of Kshs. 1,200 which amount was in breach of the rate set by the Salaries and Remuneration Commission in its circular Ref. no. SRC/ADM/CIR/1/13 VOL. III (126) of the 10th December, 2014 which set the allowance at Kshs, 17,000 monthly for Job Group N, of the Claimant then, which underpayment persisted into the month of November 2018



34. That further, in the month of December 2018, the Respondent paid hardship allowance at Kshs. 12,300 monthly instead of Kshs. 17,100 until the month of June, 2021 totaling to an underpayment of Kshs. 201,600.
35. It is the Claimant's submission that the Respondent issued him a pay statement which communicated his new Job Group as C4 and that pursuant to the Salaries and Remuneration Commission Guidelines the said Job Group evaluation C4 was the equivalent of the Job Group P relating to a Senior Surveyor for his position, and the hardship allowance as per the Review of Allowances in the Public Service circular Ref. No. SRC/ADM/ CIR/ 1/ 13 VOL. III (126) of 10th December 2014 for grade P was Kshs. 27,300 yet he was paid Kshs 12,300 way until June 2021.
36. On the claim for house allowance, the Claimant submitted that at the time of commencement of employment his house allowance based on the contract of employment dated the 31st October, 2011 was Kshs. 17,000 monthly of which the Respondent duly paid until November 2018 when it reduced the said house allowance to Kshs. 13,000.
37. With regard to the claim for airtime allowance, the Claimant submits that he was entitled to air time allowance at the rate of Kshs. 4,000 monthly he seeks to be awarded.
38. On the prayer for the diminished pension contribution, the Claimant has submitted that vide Clause 12 of his contract of employment dated the 31st October 2011, the Respondent maintained a contributory pension scheme to which both the parties were to contribute on an equal basis at the rate of 7.5% of the monthly basic salary but the Respondent's action of failing to pay the correct basic salary led to a lesser contribution to the pension scheme by Kshs. 2,348.10 from October 2012 to date totaling to Kshs 333,430.20 which he claims.
39. The Claimant further urged the court to declare that the Respondent engaged in unfair labour practices in breach of Article 41 of *the Constitution* of Kenya by failing to pay him the due remuneration and sought to be awarded general damages. In support of this position, the case of Gicheha v Nairobi Water and Sewerage Co. Ltd (Petition E083 of 2022) [2024] KEELRC 1984 (KLR) (30 July 2024) (Judgment) was cited.
40. On its part, the Respondent identified the issues for submissions to be: -
 - a. Whether the claimant was underpaid less by Kshs. 14,963.00
 - b. Whether the Claimant was paid less hardship allowance
 - c. Whether the Claimant was underpaid house allowance
 - d. Whether the Claimant is entitled to reimbursement of pension
 - e. Whether the Claimant is entitled to airtime allowance:
41. On the first issue, the Respondent has submitted that salary from the judgment in Nakuru cause was not an issue and that the gross salary paid to the claimant in October, 2012 right before dismissal was Kshs. 85,636.00 and upon reinstatement, the same was retained at Kshs. 87,376.00.
42. The Respondent maintained that the Nakuru court awarded the Claimant Kshs. 94, 599.00 only with respect to the period he had been dismissed but did not order the respondent to pay the claimant this amount after reinstatement.
43. It is the Respondent assertion and submission that upon reinstatement, the Claimant was paid as per respondent's internal grading system, commencing at Group N (KVDA Grade KV12) as set out in the



letter of appointment dated 31st October, 2011. This was also confirmed by the Respondents witness who stated that the respondents had appealed against the Decision of the Honourable court but while negotiating out of Court it was agreed by consent that the claimant be paid 875,996.00 which was equivalent to Kshs. 875,996.00 per month for the 11 months and reinstated him.

44. The Respondent thus submitted that the Claimant's assumption of a static gross salary across the 128 months period is not supported by either contract or law and is speculative.
45. The court was urged to reject the Claimant's claim of Kshs.1,915,264 arguing that it is based on the misinterpretation of the judgement of the court which was compromised by consent of parties.
46. On the second issue regarding the Claimant's claim for the alleged underpaid hardship allowance, the Respondent submitted that its witness, RW1 testified that the implementation of the circular on review of allowances was based on availability of funds and that the Respondents could not pay the allowance as stipulated by the circular since they did not have funds which had to be released from the Treasury.
47. Further, the Respondent submitted that the Claimant was transferred to Wei Wei, 3rd June 2014 and was transferred back to Eldoret in July 2021.
48. It is the Respondent's submission that the claimant was transferred to Eldoret in 1st July 2021 and hence the breach for underpayment ended in the same date. According to the Respondent, the Memorandum of claimst April 2025, a period of 3 years and 8 months from the time of cessation of the breach of the alleged underpayment of hardship allowance. The Respondent submitted that the Claimant has not sought the leave of court to bring this claim out of time neither has he tendered any explanation as to why he did not approach this honourable court timely.
49. It is the Respondent's submission that the court does not have jurisdiction to extend time nor deal with this issue that has been brought out of time.
50. The Respondent has also submitted that payment of other allowances was to commence in the financial year 2015/2016 commenced in July, 2015 as there was no breach between December 2014 and June 2015 since the commencement date had not been implemented yet.
51. With regard to hardship allowance post July 2015, the Respondent submitted that there was no budgetary allocation from treasury and hence implementation of the circular was impossible.
52. On the third issue as to whether the Claimant was underpaid house allowance, the Respondent submitted that its witness, RW1 testified that house allowance depends on the job group and the station and that after the Claimant was transferred to Wei Wei with effect from 1st June 2014 while in job group L, and that his pay slips from the month of 1st June, 2014 up to November, 2018 shows that he was paid a house allowance of Kshs. 17,000. According to the Respondent, the circular, indicates that prior to 1st July 2015 house allowance at Wei Wei was supposed to be Kshs. 11,000 and that the payment of Kshs. 17,000 was erroneous. The Respondent this submitted that the Claimant was overpaid Kshs. 6,000,00 per month for 12 months from 1st June 2014 when he was transferred to Wei Wei to July 2015 amounting to Kshs. 240,000
53. With regard to the issue whether the Claimant is entitled to reimbursement of pension, the Respondent submitted that claimant in his claim averred that he is entitled to a contribution of 71/2 percent of gross salary to pension from his employer and that contribution ought to have been based on the Kshs. 94,559 awarded by the court. According to the Respondent, the court while reinstating the Claimant did not dictate the salary that will be paid to the Claimant upon reinstatement but merely dictated the salary to be paid to the Claimant for 11 months. As such, it is submitted that the pension



of the Claimant cannot be based on the said Kshs. 94, 599 for the period stated but only for the 11 months.

54. Further, the Respondent submitted that the claimant did not adduce any evidence to show that his pension is less what he ought to be contributing to his scheme.
55. Lastly, on the issue whether the Claimant is entitled to airtime allowance, the Respondent submitted that the Claimant on cross examination confirmed that his contract of employment did not allocate him airtime allowance.
56. In the end, the Respondent submitted that the Claimant has failed to proof his allegations on a balance of probability as required in law. The court was thus urged to dismiss the Claimant's entire claim with costs to the Respondent.

Determination

57. I have considered the pleadings, evidence adduced and the submissions of the parties and I find that the issues that arise for determination are: -
 - i. Whether the Claimant was underpaid his gross salary following his reinstatement.
 - ii. Whether the Claimant was underpaid hardship allowance.
 - iii. Whether the Claimant was underpaid house allowance.
 - iv. Whether the Claimant is entitled to reimbursement of pension contributions.
 - v. Whether the Claimant is entitled to airtime allowance.
 - vi. Whether the Claimant is entitled to damages for unfair labour practices.
58. On the first issue, the Claimant argues that the Industrial court in Nakuru Cause No. 96 of 2013, in its judgment awarded him a gross salary of Kshs. 94,599, which ought to have been his pay from reinstatement in October 2013. He alleges underpayment of Kshs. 14,963 per month for 128 months.
59. On the other hand, the Respondent contends that the figure of Kshs. 94,599 was only tabulated for purposes of compensation for the 11 months he was out of service and was not intended to alter his pay scale upon reinstatement. They further aver that the judgment was compromised by consent in which the Claimant accepted a lumpsum of Kshs. 875,996 and reinstatement.
60. I have perused the judgment in Nakuru Cause No. 96 of 2013. The court at page 12 and 13 held in part: -

“The court has considered the prayer for reinstatement. The claimant is a public officer and the respondent is a public Statutory body. The parties are subject to Article 236 of *the Constitution* which provides that a public officer shall not be subjected to disciplinary action or removed from office except accordance with the due process of fairness. The respondent being a public body, the court finds that the alleged lack of cordial relationship between the parties is unfounded as the same was never shown to exist. In view of the constitutional provision, the unfairness in the summary dismissal and in absence of any good reason that would make reinstatement difficult to implement, the court finds that the claimant is entitled to reinstatement with effect from 1st November 2012, the effective date of the offensive dismissal and full gross pay of Kshs.1,040,589.00 at Kshs.94,599.00 per month for 11 months ending 30.09.2013 as the court finds reasonable that the claimant reports back for assignment of duties on 1.10.2013.



The claimant has in alternative prayed for payment in view of the unfair termination. The court finds that under that prayer the claimant is entitled to the Kshs.1,040,589.00 because he was unfairly kept out of employment. Further, in lieu of the reinstatement the court finds that the claimant is entitled to a further Kshs.1,135,188.00 being 12 months gross salaries for the unfair termination. In awarding the maximum 12 months-gross pay, the Court has considered that the respondent breached both procedural and substantive fairness and disregarded the clear Constitutional provision that entitled the claimant to due process throughout the disciplinary process.”

61. From the above, it is clear that the Court did not direct that the salary of Kshs. 94,599 be adopted as the permanent gross salary of the Claimant upon reinstatement.
62. There is evidence on record that the said judgment was compromised vide a consent entered between the parties on terms that the Claimant would be reinstated and be paid a sum of Kshs. 875,996. I therefore find that the claim of underpayment of Kshs. 1,915,264 is not proved and is hereby dismissed.
63. With regard to the second issue on whether the Claimant was underpaid hardship allowance, it is not in dispute that that the Claimant was transferred to Wei Wei in West Pokot, a gazetted hardship area, in May 2014.
64. The Salaries and Remuneration Commission Circular of 10th December 2014 set the hardship allowance at Kshs. 17,100 for Job Group N. The Respondent’s witness stated that the Claimant was paid Kshs. 1,200 and later Kshs. 12,300.
65. The Respondent in its defence maintained that the Salaries and Remuneration Commission circulars was phased, subject to budgetary allocation. RW1, admitted on cross-examination that the Claimant was not paid as per the circular in 2014.
66. I have not found any evidence by the Respondent to show the efforts that were made to pay the Claimant’s hardship arrears he is entitled to. The defence of lack of funds is not tenable and it is my finding that the Claimant was underpaid hardship allowance for the period he served at Wei Wei up to July 2021.
67. On the third issue as to whether the Claimant was underpaid a house allowance, from his appointment letter dated 31st October 2011, the Claimant was entitled to Kshs. 17,000. In his testimony, the Claimant stated that he was paid the said Kshs 17,000 until November 2018 when the same was reduced to Kshs 13,000. On its part, the Respondent through its witness, RW1, maintained that the Claimant’s house allowance was reviewed downwards due his redeployment to Wei wei, where the applicable SRC house allowance rates was Kshs. 11,000 which was later reviewed to Kshs. 15,400.
68. On this basis, the Claimant cannot sustain a claim for underpayment between 2014 and 2018. However, from December 2018 to July 2021, the reduction to Kshs. 13,000 was unlawful as no consultation or contractual variation was demonstrated. At minimum, he was entitled to the applicable SRC circular rate.
69. I therefore find merit in the claim for underpayment of Kshs. 2,400 per month for the said 32 months, amounting to Kshs. 76,800.
70. On whether the Claimant is entitled to reimbursement of pension contributions, the Claimant alleges that underpayment of his gross salary led to diminished pension contributions of Kshs. 333,430. The Respondent has disputed this allegation and averred that pension was calculated on the correct



basic pay. The Claimant did not produce pension statements to demonstrate that indeed there was diminished pension contributions. This claim is not proved and is therefore dismissed.

71. On the claim for airtime allowance, the Claimant asserts entitlement to Kshs. 4,000 per month as airtime allowance, which was allegedly paid at the commencement of his employment but later withdrawn. The Respondent disputes that airtime allowance was a contractual benefit, stating it was only payable ad hoc upon departmental request.
72. I have perused the Claimant's appointment letter and noted that it makes no provision for airtime allowance. Payment made at the beginning does not, without more, create a contractual right. I find no contractual or statutory basis for this claim. The Claim thus fails and is dismissed.
73. Lastly, on the claim for general damages for unfair labour practices, the Claimant has sought damages under Article 41 of *the Constitution*. While the Court has found underpayment of hardship allowance and unlawful variation of house allowance, these are adequately compensated through the monetary awards. The additional prayer for general damages is declined.
74. Consequently, judgment is issued in the following terms: -
 - i. The claim for underpayment of gross salary is dismissed.
 - ii. The claim for hardship allowance succeeds partially. The Respondent shall pay the Claimant underpaid hardship allowance for the period April 2019 to July 2021 at the applicable SRC rates.
 - iii. The claim for underpayment of house allowance succeeds partially. The Respondent shall pay the Claimant Kshs. 76,800 being underpayment between December 2018 and July 2021.
 - iv. The claims for diminished pension contribution, airtime allowance, and general damages are dismissed.
 - v. There shall be orders as to costs.

DATED, DELIVERED AND SIGNED THIS 3RD DAY OF OCTOBER, 2025.

M. ONYANGO

JUDGE

