



**Ogwel v Tourism Regulatory Authority (Cause E467 of 2023)
[2025] KEELRC 2795 (KLR) (16 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2795 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E467 OF 2023
CN BAARI, J
OCTOBER 16, 2025**

BETWEEN

SAMSON TABU OGWEL CLAIMANT

AND

TOURISM REGULATORY AUTHORITY RESPONDENT

JUDGMENT

Introduction

1. This claim was lodged vide a Statement of Claim dated 6th June, 2023. The Claimant seeks order for: -
 - i. Salary for 12 months for wrongful/unfair termination at (Kshs.83,638 x 12) = Kshs.1,003,656/-.
 - ii. Salary for the remainder of 8 years being the remainder of the years the Claimant legitimately expected to work for the Respondent at Kshs.8,029,248/-
 - iii. 3 months Termination Notice at Kshs.250,914/-
 - iv. Accrued Leave Days
 - v. Remittance of the Claimant's funds at the Tourism Regulatory Authority staff retirement pension scheme
 - vi. Remittance of the Claimant's funds at the staff Benevolent scheme
 - vii. Costs of this claim
 - viii. Interest at commercial rates



- ix. The Claimant in the alternative, sought an order directing the Respondent to unconditionally reinstate him to his former position without loss of benefits, seniority or salary arrears for the entire period he had been out of employment or seniority.
2. The Respondent filed a Response to the claim dated 25th September, 2023, and later a witness statement dated 9th February, 2024.
3. The case was initially heard by Hon. Justice Rika on 9th July, 2024 with the Claimant testifying in support of his case, and later by this Court on 10th February, 2025, when one Sila Mathuva testified in support of the Respondent's case.
4. Submissions were received from both parties.

The Claimant's Case

5. The Claimant's case is that he was employed as a Procurement Officer I in the Department of Provincial Administration under the Office of the President on 10th September, 2004, vide a letter of appointment dated 10th September, 2004. He states that on 10th January 2017, he was transferred from the Ministry of Interior and Coordination of National Government, Transzoia East Sub-County and deployed to the Respondent, in the capacity of Chief Supply Chain Management Officer under Job Group/Salary Scale TRA4 (Equivalent to "P").
6. The Claimant avers that upon his transfer to the Respondent, he went on to discharge his duties faithfully and diligently with no record of misconduct or incompetence until 13th October, 2022 when the Respondent, in a humiliating manner and without adherence to due process of the law, summarily dismissed him from his duties thereby terminating his employment.
7. The Claimant states that he received a Show Cause Letter dated 7th February 2021 containing three allegations; firstly, an irregular procurement Process, where it was alleged that the Claimant awarded M/s Richardson Enterprises with a tender for supply of furniture and Boardroom Equipment, and M/s Columbus Printing Industries with the award of supply of branded umbrellas and Bucket caps without following the due procedure. Secondly, was falsification of Procurement Records, where it was alleged that the Claimant falsified the prequalified suppliers list approved by the accounting officer, specifically containing a list with suppliers no. 443 to 571 which was unsigned on the original list. Lastly, the Claimant was accused of Mismanagement of Contracts and Procurement process, where in particular, he was accused of forwarding the medical tender document without the input of the user department.
8. The Claimant states that the show cause notice required him to respond to the allegations within 7 days as opposed to maximum 21 days provided under clause 11.5/1 of the Human Resource Manual.
9. The Claimant states that he duly responded to the said Show Cause Letter on 11th February 2022, traversing each and every allegation made thereunder.
10. It is the Claimant's case that the Respondent disregarded his response, and instead, responded with an interdiction letter dated 18th February 2022, informing him that he had been interdicted from duty for a period of three months on half pay, and that disciplinary actions would be instituted against him. He avers that the Respondent further extended his initial Interdiction vide a letter dated 5th May, 2022 for another period of three months pending the institution of disciplinary actions against him before the Human Resource Administration Committee.



11. The Claimant avers that at this point, it became clear that the Respondent was determined to terminate his employment and remove him from his position as an employee of the Respondent.
12. The Claimant states that on the 21st September 2022, the Respondent's Human Resource and Administration Committee conducted the Disciplinary Hearing, where it completely ignored the report by the Directorate of Criminal Investigations exonerating him from the alleged misconducts and the falsification of documents, as well as his response and explanation towards the allegations against him.
13. The Claimant further avers that no evidence was presented in support of the above assertions, and no reasons were provided whatsoever as to why the Human Resource and Administration Committee found his response to the Audit queries unsatisfactory.
14. The Claimant states that he was subsequently, vide a letter dated 13th October 2022, summarily terminated by the Respondent who informed him that he had been found guilty of irregular procurement process, falsifications of procurement records and mismanagement of contracts & procurement process.
15. The Claimant avers that the entire manner in which the disciplinary action was conducted and the reasons given for his dismissal were not merited, unfair, unprocedural and contrary to the provisions of both the *Employment Act* and the Human Resource Policy and Procedure Manual on the basis that the Respondent did not issue reasons as to why it was exempt from statutory underpinnings espoused under regulation 145, of the public procurement Regulations, 2020, and that there was no aversion by the Respondent that the bidding process for the supply of furniture and branded umbrellas and hats was not followed and neither did they take into consideration the other players in the process such as who executed the award letters to the supplier amongst others.
16. The Claimant states that the Audit report by the Chief Auditor and Risk Management officer dated 6th October, 2021 holds him and others i.e. the Director of Corporate Services, Management, Management Officer and evaluation committee for some of the issues raised in the audit, yet the Claimant was the only one that was held responsible.
17. It is the Claimant's contention that his employment was unfairly terminated, thus the Respondent denied him the right to fair administrative actions and fair labour practices contrary to the provisions of law.
18. The Claimant prays that Judgment be entered in his favour and against the Respondent as sought in his Statement of Claim.

The Respondent's Case.

19. It is the Respondent's case that the Claimant was initially deployed to the Tourism Regulatory Authority (TRA) when it became operational in 2014, and later, vide a letter dated 10th January 2017, the Claimant was directed to report to the Director General of the Authority.
20. It is averred that upon gaining operational independence from the Ministry of Tourism in 2017, the Respondent undertook its first recruitment exercise, absorbing staff who had previously been deployed and were willing to be employed by the Authority.
21. It is contended that by a letter dated 22nd February 2017, the Claimant applied for the position of Chief Supply Chain Management Officer, TRA Grade 4, which application was accepted through a letter of appointment dated 24th May 2017. The Respondent states that the Claimant accepted the



- appointment on 25th May 2017, and agreed to be bound by the Respondent's regulations applicable to all employees.
22. It states that in 2021, the Respondent's Audit and Risk Management Unit conducted its annual audit on the Authority's procurement and tendering processes for the financial years 2019–2021; particularly focusing on the 2020–2021 financial year. It avers that the audit revealed several irregularities within the procurement process, which were attributed to the Claimant as the Head of Procurement.
23. It is the Respondent's case that the audit report identified various issues, including:-
- i. Irregular procurement processes, such as the award of tenders to companies not prequalified or on the Respondent's supplier list;
 - ii. Approval of payments for conference facilities at Capital Club contrary to procedure;
 - iii. Award of tenders to bidders who submitted quotations after the closing date;
 - iv. Falsification of procurement records, including discrepancies between the original list of prequalified suppliers and the lists presented to auditors; and
 - v. Mismanagement of contracts and the procurement process, including uploading of medical tenders without the approval of the Accounting Officer.
24. The Respondent states that following these findings, the Claimant was requested by email dated 29th September 2021 to respond to the audit queries, and that he provided his response on 5th October 2021. It avers further, that the Audit Unit found his explanation unsatisfactory, describing it as "defensive rather than corrective."
25. It is the Respondent's case that the Audit and Risk Management Board Committee subsequently escalated the matter to the Acting Director General, noting that the Claimant's responses to the audit queries were unsatisfactory, and that management needed to address the issues raised. That consequently, the Acting Director General wrote to the Claimant seeking further explanations, which were provided vide a letter dated 20th January 2022.
26. It is asserted that upon review, the Acting Director General found the responses inadequate and initiated disciplinary proceedings against the Claimant. It states that a Show Cause Letter dated 7th February 2022 was issued, accusing the Claimant of contravening procurement regulations and falsifying records. That the Claimant responded on 11th February 2022.
27. The Respondent avers that upon receipt of the Claimant's response, a Special Human Resource Administration Committee meeting was convened on 17th February 2022 to deliberate on the matter. It states that the Committee recommended that the Claimant be interdicted for three months pending conclusion of disciplinary proceedings.
28. The Respondent states that vide a letter dated 18th February 2022, the Claimant was interdicted, and the interdiction was extended for a further three months through letters dated 9th May 2022 and 18th August 2022.
29. The Respondent further averred that a disciplinary hearing was conducted on 21st September 2022 before the Human Resource and Administration Committee, where the Claimant attended and was accorded a fair opportunity to defend himself against allegations of irregular procurement processes, falsification of procurement records, and mismanagement of procurement procedures.



30. That following the disciplinary proceedings, the Committee found the Claimant culpable, and his employment terminated vide a letter dated 13th October 2022. It states that the termination letter informed the Claimant of his right of appeal against the decision.
31. The Respondent finally contends that the termination of the Claimant's employment was lawful, procedural, and justified based on the findings of the audit report, and the outcome of the disciplinary process.

The Claimant's Submissions

32. The Claimant submitted that Section 43(1 & 2) of the *Employment Act* places the burden of proof on the employer to adduce objective and credible evidence to justify the termination decision, and the failure to meet this threshold renders the termination unfair.
33. The Claimant submitted further, that the grounds and reasons for termination as contained in the termination letter dated 13th October, 2022 failed the validity and fairness test.
34. On the irregular procurement process in the award to M/s Richardson Enterprises and M/s Columbus Ltd, it is the Claimant's contention that the audit query did not attribute any individual liability to the Claimant, but to other individuals such as the Director of Corporate Services, Management, the Chief Supply chain Management office and the Evaluation Committee. The Claimant submits that the central audit query pertained to unregistered suppliers and that the Claimant adduced evidence to the Respondent that indeed the suppliers were in fact registered, and that the evidence tendered was partially accepted by the Respondent and the rest arbitrarily disregarded.
35. On discriminatory enforcement of accountability, the Claimant contends that the audit query attributed procurement decisions and approval to various officers, however, only the Claimant was singled out for disciplinary action. It is on this notion, the Claimant contends that the disciplinary action against it was tainted with malice, unfairness and discrimination against the principles of equality and non-discrimination enshrined under Article 27 of *the Constitution*.
36. It is the Claimant's submission that the alleged irregular procurement was not proven nor attributable solely to the Claimant, therefore, the Respondent's actions were biased and lacked procedural fairness and justification.
37. On the allegation of falsification of procurement records, the Claimant submitted that the said allegation was not raised as an adverse finding by the auditor. That the concern initially raised by the auditor was on the non-availability of original records, and not on falsification.
38. It is the Claimant's submission that falsification was only raised later on in the Notice to Show Cause letter dated 7th February, 2022 where upon the Claimant responded by clarifying that there was no signature verification in the system to assist the Claimant in verifying the Accounting Officer's signature, and this was a management's failure and not the Claimant's individual's failure.
39. He submits that upon a forensic examination of the accountant's signature, it was revealed that the signature was forged, but that the examiner exonerated him from any involvement as no evidence was adduced to connect him to the falsification or a deliberate intent to mislead.
40. On mismanagement of contracts and the procurement process relating to medical tender No. TRA/05/2021, the Claimant referring to the Audit report submits that the issue raised in the report is of a general concern relating to the lapse in planning which the auditor stated occurred owing to external disruptions and systemic challenges collectively attributable to the Respondent's department,



and not individually to the Claimant. He further submits that this finding is further corroborated by the Respondent's Director General Mr. Kennedy Lwenyi in a letter dated 2nd February, 2022.

41. It is the Claimant's submission that he is a civil servant employed in the civil service for a period of 18 years, and that the Respondent, a state corporation, had no jurisdiction to proceed with the disciplinary action against him or effect the dismissal without referring the matter to the Public Service Commission in accordance with Section 65 of the PSC Act, 2017.
42. It is the Claimant's submission that reinstatement is the most viable relief in the circumstances as provided under Section 49 (3)(a) and (4) of the *Employment Act*, for the reasons that it served the Respondent for a great length of time being 18 years of service, and also owing to his commitment, institutional knowledge and capacity for continued service. The Claimant cited the case of Kenya Airways Limited Vs Aviation & Allied workers Union Kenya & 3 others [2014] eKLR to buttress this position.
43. Further relying on the case of Nelson Muturi vs Attorney general & another [2017] eKLR, the Claimant submits that reinstatement is practicable in this case, as there is no breakdown in trust between the parties, and that the Respondent has not demonstrated an irreparable breakdown in the employment relationship or any practical impediment to reinstatement.
44. It is the Claimant's submission that there is no alternative remedy to achieve substantive justice in the circumstances, as mere compensation cannot restore the Claimant to its former position, and being 54 years of age, he is unable to secure any alternative employment.

The Respondent's Submissions

45. It is the Respondent's submission that the Claimant's termination was fair and lawful as it satisfied both the substantive and procedural requirements of a fair termination under the *Employment Act*, 2007. It submits further, that the termination was based on valid reasons related to the Claimant's conduct and performance, and that due process was followed prior to the termination.
46. The Respondent submits that from the pleadings and evidence adduced, the sequence of events and procedures leading to the Claimant's termination were clearly demonstrated, and that the termination was carried out in a fair and just manner.
47. Relying on Section 45(2) of the *Employment Act*, the Respondent submitted that termination is deemed unfair only if the employer fails to prove that there was a valid and fair reason and that a fair procedure was followed. It was further submitted that the fairness test requires both substantive justification and procedural fairness as established in *Walter Ogal Anuro v Teachers Service Commission* (2013) eKLR.
48. The Respondent sought to rely in the case of *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR and *National Bank of Kenya v Anthony Njue John* [2019] eKLR, where the courts reiterated that a termination is unfair if the employer fails to prove that the reason was valid and fair, and that the procedure adopted met the standards of justice and equity.
49. On whether there were substantive reasons for terminating the Claimant's employment, the Respondent submitted that there existed valid and justifiable reasons for terminating the Claimant's employment.
50. It submits that the audit conducted by the Respondent implicated the Claimant as the officer responsible for ensuring compliance with the *Public Procurement and Asset Disposal Act*, 2015.



51. It is the Respondent's submission that the Claimant's responses to the audit queries were unsatisfactory, defensive, and failed to correct the anomalies.
52. It submits further, that as a public officer entrusted with public funds, the Claimant was bound by the principles of integrity under the Public Ethics Act and the [Public Finance Management Act](#), and that his conduct in approving irregular procurement processes amounted to gross negligence and a breach of statutory obligations.
53. The Respondent relied on *Barmao v G4S Kenya Limited (Cause E184 of 2021) [2024] KEELRC 1141 (KLR)*, where the court upheld dismissal on grounds of neglect of duty, and submitted that by approving irregular procurement activities, the Claimant had wilfully neglected his duties within the meaning of Section 44(4)(c) of the [Employment Act](#).
54. Further reliance was placed on *Galgalo Jarso Jillo v Agricultural Finance Corporation (2021) eKLR*, where the court held that it suffices for an employer to have a genuine belief that the reason for termination existed at the time of dismissal. The Respondent argued that it genuinely believed the Claimant was culpable of procurement irregularities warranting termination.
55. It was submitted that the Claimant's actions violated the Respondent's values and integrity standards, and eroded the trust necessary for the employment relationship.
56. The Respondent submitted that the Claimant's position was sensitive, dealing directly with procurement and financial management, and therefore required the highest standard of honesty and diligence. Citing *British Leyland UK Ltd v Swift (1981) I.R.L.R 91*, the Respondent urged that the test of reasonableness was satisfied, since a reasonable employer in similar circumstances would have reached the same decision.
57. On whether due procedure was followed in terminating the Claimant's employment, the Respondent submitted that it strictly followed due process in accordance with Section 41 of the [Employment Act](#) and its Human Resource Policy Manual. The Respondent relied on *Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd [2013] eKLR* and *Godfrey Meso Komba v Inter Beauty Products Ltd [2021] eKLR*, reiterating that procedural fairness requires that an employee be informed of the charges, allowed to respond, and that their representation be considered before termination.
58. On whether the Respondent had the authority to subject the Claimant to disciplinary proceedings, the Respondent submitted that it was properly vested with the authority to subject the Claimant to its internal disciplinary procedures, as he was an employee of the Authority and bound by its Human Resource Policy Manual. It is submitted that this issue had been conclusively determined in *ELRC Judicial Review No. E032 of 2022; Samson Tabu Ogwel v Tourism Regulatory Authority*, where the court upheld the Respondent's authority to discipline its officers.
59. Finally, the Respondent urges the Court to find the Claimant's termination substantively justified and procedurally fair, and that it acted within its statutory and policy mandate.

Analysis and Determination _____

60. I have considered the pleadings, the witnesses' oral testimonies and the submissions by both parties. The issues that arise for determination are:
 - i. Whether the Claimant was unfairly terminated
 - ii. Whether the Claimant is entitled to the remedies sought
 - iii. Who bears the costs of the suit?



Whether the Claimant was unfairly terminated

61. The Claimant was summarily dismissed from the service of the Respondent vide a letter dated 13th October, 2022, premised on an alleged irregular procurement process involving supply of office furniture, which tenders are said to have been awarded to suppliers who were not registered on the Respondent's approved list of suppliers. The Claimant was also accused of falsification of procurement records where he is alleged to have forged the accounting officer's signature, as well as mismanagement of contracts and procurement process by failing to consult user departments and to seek the approval of the accounting officer as required under the Procurement and Asset Disposal Act.
62. To determine whether or not the Claimant's dismissal was wrongful and unlawful, the Court's role is to interrogate the Respondent/employers adherence or lack thereof to the twin tenets of fair process and substantive justification for the dismissal.
63. On procedural fairness, a dismissal is considered procedurally fair where the employer affords an employee an opportunity to state his case, and have a representative of his choice present during a disciplinary hearing. Section 41 of the *Employment Act*, demands that an employer before terminating the services of an employee on the grounds of misconduct, poor performance or physical incapacity, explains to the employee, in a language the employee understands, the reasons for which termination is being considered.
64. In *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd* [2013] eKLR, fair procedure was explained in the following words:-

“The ingredients of procedural fairness as I understand it within the Kenyan situation is that the employer should inform the employee as to what charges the employer is contemplating using to dismiss the employee....Secondly, it would follow naturally that if an employee has a right to be informed of the charges he has a right to a proper opportunity to prepare and to be heard and to present a defence/state his case in person, writing or through a representative or shop floor union representative if possible. Thirdly if it is a case of summary dismissal, there is an obligation on the employer to hear and consider any representations by the employee before making the decision to dismiss or give other sanction.”
65. It is not in dispute that the Claimant was issued with a show cause letter, allowed opportunity to respond to the show cause notice and which he evidently did, invited to attend a disciplinary hearing with advice that he could appear accompanied by a representative and upon dismissal, he was informed of his right of appeal. In *Silvester Malei Kyengo v Kenya Meat Commission* (2019) eKLR, the court held:-

“In this case the Claimant was first served with a show cause letter stating the charges against him, interdicted pending investigation, accorded an oral hearing in the company of another employee of his choice and finally served with a termination letter confirming that his defence was considered but his services terminated for reasons cited in the letter. Such procedure in my view passes the test of procedural fairness and I so hold.”
66. There is no doubt that the Respondent ticked every box on procedural requirement in accordance with Section 41 of the *Employment Act*, 2007 which then renders the dismissal procedurally fair.
67. In the circumstances, I find the Claimant's dismissal procedurally fair.



68. On the question of substantive justification, the law demands that the employer proves that the reasons for dismissal/termination are fair, valid and justified. In *Charles Musungu Odana v Kenya Ports Authority* [2019] eKLR, the Court opined: -

“It is now clear that the burden placed on an employer by Section 43 of the *Employment Act* is to establish a valid reason that would cause a reasonable employer to terminate employment.”

69. Reasons for termination/dismissal have generally been agreed to be matters the employer at the time of termination/dismissal, genuinely believed to exist, and which caused the employer to terminate employment. (See *Charles Musungu Odana v Kenya Ports Authority* [2019] eKLR).

70. Three distinct charges were levelled against the Claimant; namely, irregular procurement, falsification of records and mismanagement of the Respondent’s procurement processes. He responded to each of the charges levelled against him under the show cause letter. His response in respect of the award of tenders, was that the firms had provided their profiles and were also vetted and registered by the National Treasury under AGPO, which is a category for disadvantaged groups. It is his position that once registered by the National Treasury, all they needed to do is submit their certificates of registration to any procuring entity, and are then automatically included in the register of suppliers.

71. It is the Claimant’s contention that once the firms in issue submitted their registration certificates, they were automatically included in the Respondent’s list of registered suppliers.

72. On the accusation of falsification of procurement records, the Claimant’s response was that the Respondent did not have a specimen signature repository, which made it difficult for his department to verify and/or validate signatures used in the procurement process. On mismanagement of the procurement process, the Claimant’s response was that there was no evidence provided to show that his department did not consult the user department, and nor was their input sought on the matter. He maintains that he consulted the department both through their official emails, telephone numbers and in-person consultation.

73. He further argued that the required consent by the Accounting Officer was granted through approval of the procurement plan, and him uploading/publishing tenders was in a bid to comply with the law, which was part of his duty.

74. A glance at the audit report in issue, is clear that the report is complete with tables spelling out the risk, recommendation and the responsible officers. I note that some of the recommendations are that disciplinary action be taken against the Claimant herein, for reasons spelt out above.

75. The Court further notes that the Claimant’s responses to the show cause letter on each of the charges, remains uncontroverted. Other than the Respondent’s assertion that the Claimant’s responses to the audit queries were unsatisfactory, defensive, and failed to correct the anomalies, the specific response to each charge were not rebutted. The Respondent’s disciplinary committee from the minutes, seem to agree with the Claimant’s explanation on how the firms awarded tenders came to be. His explanation on registration of entities by National Treasury was also not challenged. Further, the Claimant’s assertion that he consulted user departments through email, telephone and in-person talks, equally remained uncontroverted. The persons referred (HR officer) were employees of the Respondent, yet the Respondent did not deem it necessary for them to provide any evidence challenging the Claimant’s position.



76. It is also not lost on this Court that the Directorate of Criminal Investigations exonerated the Claimant from the allegations of falsification of documents, but which the Respondent did not take into account in arriving at its decision.
77. Further, it is evident from the audit report that the procurement process had many players, who seemingly were not held to account for their respective roles in the audit queries. The Accounting Officer and the Evaluation Committees who were adversely mentioned in the audit report should in my view have been asked to also respond to the queries on their roles in the process, for the simple reason that the procurement process was not a one man show.
78. In the case of *British American Tobacco (K) Ltd v Kenyan Union of Commercial Food and Allied Workers (Kucfaw)* [2019] eKLR the Court quoted with approval the decision in *Anthony Mulaki V Addax Kenya Limited*, Cause No. 822 of 2012 where it held:-
- “In examining validity of reasons, the court was correctly directed by the Respondent to the case of *BRITISH HOME STORES LTD v BURCHELL (1980) LC.R. 303 E.A.T.* where it was held that for the court to uphold the decision by the employer as being fair, it must be shown that: -
- a. The employer must believe at the time of termination, that the employee is guilty of the allegations against him/her
 - b. The employer had reasonable grounds upon which to sustain that belief; and
 - c. The employer carried out as much investigation as reasonable in the circumstances the employer need only be satisfied on the balance of probability.”
79. In my considered view, given the charges against the Claimant, and his response thereto, I find the decision to summarily dismiss him harsh and did not fall within the band of reasonable responses which a reasonable employer might have adopted, and which renders the dismissal unlawful and wrongful, and so I hold.

Whether the Claimant is entitled to the remedies sought

80. Under his claim, the first prayer that the Claimant sought is 12 months’ salary as compensation for the unfair termination. The finding that the Claimant was wrongfully dismissed entitles him to an award of compensation (See *Benjamin Langwen v National Environment Management Authority (2016) eKLR*).
81. In awarding compensation, this court is guided by Section 49(4) of the Employment. The Supreme Court observed in *Kenfreight (E.A) Limited v Benson K. Nguti* [2018] eKLR that the *Employment Act* provides for a number of remedies for unlawful or wrongful termination under Section 49, and it is up to the judge to exercise his or her discretion to determine whether to allow any or all of the remedies provided.
82. In *Moi Teaching and Referral Hospital v James Kipkonga Kendagor* [2019] eKLR, the Court of Appeal held that a judge who awards the statutory maximum of 12 months’ salary without justification has exceeded his/her powers.
83. In my considered view, though the court finds the Respondent’s decision to summarily dismiss the Claimant too harsh, the Claimant no doubt contributed to his own dismissal going by the audit queries arising from a department that he manned. In the circumstances, I find and hold that the Claimant



has not proved a case for maximum compensation, and I deem eight (8) months' salary sufficient compensation for the wrongful and unlawful dismissal, and which is hereby awarded.

84. On the claim for salary for the remainder of 8 years being the remainder of the years the Claimant legitimately expected to work for the Respondent, nothing justifies such a relief considering that serving to retirement is not guaranteed.
85. It is evident that the Claimant was neither issued with termination notice nor paid in lieu. Having found the summary dismissal unlawful, I find the prayer for 3 months Termination Notice justified and is awarded as prayed.
86. The Claimant did not tender evidence on the number of days of leave that he had accrued as at dismissal, but for reason that the Respondent did not object owing the Claimant on account of leave not taken, I allow the relief as prayed.
87. On the claim for remittance of the Claimant's funds at the Tourism Regulatory Authority staff retirement pension scheme, this is a matter that falls within the jurisdiction of the Retirement Benefit Authority and not this Court. This position was clearly explained by the Supreme Court in the case of Albert Chaurembo Mumba & 7 Others vs Maurice M. Munyao & 148 Others [2016] eKLR.
88. This Court is thus devoid of jurisdiction to venture into matters of pension, and especially contributory pension such as the one sought by the Claimant. The claim for pension thus fails.
89. On remittance of the Claimant's funds at the staff Benevolent scheme, a benevolent fund is not a savings account and nor is it Sacco. The purpose of the contribution is to help employees in the event of death of the employee or their relatives, and one cannot thus access such contribution except in those unfortunate events. The claim thus equally fails.
90. Having awarded compensation for the wrongful dismissal, to consider the Claimant's alternative prayer for reinstatement, would be to unjustly enrich the Claimant. The prayer for reinstatement therefore fails.
91. In the final analysis, I grant the following reliefs: -
 - a. A declaration that the Claimant was wrongfully and unlawfully dismissed.
 - b. An order for payment of 8 months' salary as compensation for the wrongful dismissal at Kshs.669,104/-
 - c. An order for payment of 3 months' salary in lieu of notice at Kshs.250,914/-
 - d. The Respondent shall bear the costs of the suit and interests on orders (b) and (c) above, from the date of this judgment until payment in full.
92. Judgment accordingly.

DATED, SIGNED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Wamae h/b for Ms. Githongori for the Claimant

Ms. Odongo present for the Respondent



Ms. Esther S - C/A

