



REPUBLIC OF KENYA



**KENYA LAW**  
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**Limo v Nakuru Specialist Hospital (Employment and Labour Relations Cause 115 of 2021) [2025] KEMC 151 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEMC 151 (KLR)

**REPUBLIC OF KENYA  
IN THE NAKURU LAW COURTS  
EMPLOYMENT AND LABOUR RELATIONS CAUSE 115 OF 2021**

**PA NDEGE, SPM**

**JULY 1, 2025**

**BETWEEN**

**MOSES KIPTOO LIMO ..... CLAIMANT**

**AND**

**NAKURU SPECIALIST HOSPITAL ..... RESPONDENT**

**JUDGMENT**

**A. Introduction**

1. The Claimant, Mr. Moses Kiptoo Limo, instituted this claim against Nakuru Specialist Hospital alleging unlawful and unfair termination of employment. The Claimant seeks several reliefs including a declaration of unfair termination, compensation under Section 49 of the *Employment Act*, 2007, payment in lieu of notice, underpayments, unpaid leave, rest days, overtime, and a certificate of service. The Respondent denies the claims and maintains that the termination was fair and justified. The matter proceeded to full hearing where both parties adduced evidence and filed their respective submissions.

**B. Claimant's Case**

2. The Claimant was employed by the Respondent as a night guard under a two-year contract commencing 1st April 2019 and expected to run until 1st April 2021. However, the Claimant states that his employment was unfairly terminated on 1st February 2021 without notice or valid reason. He further claims that he was not paid for the month of April 2020, was underpaid during his employment, denied annual leave, not compensated for working on public holidays and overtime, and was never issued with a certificate of service. The Claimant produced several documents marked CEX 1–7 to support his case, including his employment contract, salary records, NSSF statement, and a schedule detailing underpayments.



### **C. Respondent's Case**

3. The Respondent, through Mr. Kevin W. Mumo (the hospital administrator), admits the contract of employment and alleges that the Claimant was grossly negligent, frequently slept on duty, and was unresponsive to prior verbal warnings. A show cause letter dated 4th December 2020 was allegedly issued, and the Claimant is said to have responded via an apology letter dated 6th December 2020 but failed to appear before the disciplinary committee.
4. It is the Respondent's position that the salary was all-inclusive (Kshs. 13,400), that the Claimant took leave in 2019 and 2020, was granted rest days, and that the contract was properly terminated for cause under Section 44(4) and (c) of the [Employment Act](#).

### **D. Submissions**

5. The Claimant, in his written submissions, emphasized that he was never issued with a valid notice of termination and was not afforded a fair hearing. He cited Sections 41 and 45 of the [Employment Act](#), arguing that the Respondent failed to follow the procedure and did not establish valid reasons for termination.
6. The Respondent, on the other hand, submitted that the Claimant was grossly negligent and that the summary dismissal was justified under Section 44 of the [Employment Act](#). It relied on the case of *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, which outlines the twin test of substantive justification and procedural fairness.

### **E. Issues For Determination**

7. I frame the issues for determination herein as follows: -
  - a. Whether the termination of the Claimant's employment was unfair.
  - b. Whether the Claimant is entitled to compensation under Section 49 of the [Employment Act](#).
  - c. Whether the Claimant is entitled to payment in lieu of notice.
  - d. Whether the Claimant is entitled to underpayments.
  - e. Whether the Claimant is entitled to payment for overtime, public holidays and rest days.
  - f. Whether the Claimant is entitled to payment for unpaid annual leave.
  - g. Whether the Respondent should issue a certificate of service.
  - h. Whether the Claimant is entitled to service pay.

### **F. Court's Determination**

#### **A. Declaration of Unfair Termination**

8. Section 45(2) of the [Employment Act](#), 2007 provides that a termination is unfair if the employer fails to prove that the reason for termination is valid and fair and that the employment was terminated in accordance with fair procedure.
9. Further, Section 41 of the Act requires that before an employee is terminated on grounds of misconduct, poor performance, or physical incapacity, the employer must explain the reasons for



termination in the presence of another employee or union representative and allow the employee to make representations.

10. In this case, the alleged show cause letter and apology letter are contested. The Claimant denies receiving the letter and contests the authenticity of the apology letter. No evidence was presented to prove that a disciplinary hearing occurred. There is thus no proof that the procedural safeguards under Section 41 were satisfied.

**Finding: The termination was substantively and procedurally unfair.**

#### **B. Compensation for Unlawful Termination**

11. Under Section 49(1)(c) of the *Employment Act*, where termination is found to be unfair, the court may order the employer to pay the employee compensation not exceeding twelve months' gross salary. In awarding compensation, the court is guided by Section 49(4), which sets out mitigating and aggravating factors including the employee's length of service, conduct, the circumstances of dismissal, and attempts to mitigate loss.
12. The Claimant had served for nearly 22 months with no prior misconduct on record. Considering the unfair manner of termination, lack of procedural fairness, and the financial hardship likely resulting from the dismissal, I find that an award of 6 months' gross salary is appropriate.

**Award: Kshs. 16,143.07 x 6 = Kshs. 96,858.42**

#### **C. Payment in Lieu of Notice**

13. Section 35(1)(c) of the *Employment Act* provides for termination of a contract by either party upon giving twenty-eight days' notice. Where notice is not given, Section 36 mandates that the party terminating must pay the other one month's salary in lieu of notice. Guided by the Regulation of remuneration for employees as late-night guards falls under Regulation of wages (General) Order issued under *Labour Institutions Act* 2007, the minimum standard pay for a night guard in Nakuru for a night is 16,143.07-17,000 depending on the applicable year. There is no evidence that notice was given or that a payment in lieu was made therefore the legal monthly salary is ought to be awarded to the claimant.

**Award: Kshs. 16,143.07**

#### **D. Underpayment**

14. Regulation of remuneration for employees such as night guards falls under the Regulation of Wages (General) Order, issued under the *Labour Institutions Act*, 2007. As per the relevant Wage Orders for the periods covered by the contract, the minimum gross monthly wage for a night watchman in Nakuru County ranged between Kshs. 16,143.07 to Kshs. 17,000 depending on the applicable year.
15. The Claimant's salary began at Kshs. 15,000 but later reduced to as low as Kshs. 9,000. The Respondent did not produce salary schedules or payment slips to counter the Claimant's evidence therefore the claimant's statement is followed. The Wage Orders are binding legal instruments and cannot be overridden by private agreements.



**Award: Underpayment arrears = Kshs. 155,267.54 (as per schedule CEX7)**

### **E. Overtime, Off Days, Public Holidays**

16. Section 27(1) of the [Employment Act](#) requires employers to regulate working hours and provide rest periods. Section 28(2) entitles an employee to a rest day each week. Section 5 of the Regulation of Wages (General) Order provides that any work exceeding the normal hours (8 hours per day, 48 hours per week) shall be compensated as overtime.

17. The Claimant worked 12 hours daily (exceeding by 4 hours), without compensation. He also worked on public holidays and was denied proper off days. The Respondent failed to rebut these claims.

Award Breakdown: - Overtime: 4 hrs./day x 26 days/month x 22 months = 2,288 hours. At a rate of approx. Kshs. 22/hour (based on monthly salary/208 hrs.), this amounts to approx. Kshs. 50,336.  
- Public Holidays: Estimated 20 holidays x daily rate (Kshs. 538) x 20 = Kshs. 10,760 - Rest Days: Estimated 4 missed rest days per month over 22 months = 88 days x Kshs. 538 = Kshs. 47,344

**Total Award: Kshs. 108,440**

### **F. Unpaid Leave**

18. Section 28(1)(a) of the [Employment Act](#) provides that an employee is entitled to not less than twenty-one working days of leave annually. The burden of proving that leave was granted rests with the employer. The leave forms provided by the respondent are not eligible as some are not signed and some blank therefore not eligible to be presented in court. No leave forms or records were produced to counter the claims thus claimant entitled to compensation for the leave days not taken

**Award: 42 days (for two years) x Kshs. 538 = Kshs. 22,596**

### **G. Certificate of Service**

19. Section 51 of the [Employment Act](#), 2007 mandates an employer to issue a certificate of service upon termination. This is a statutory requirement and not subject to the employee's performance.

Order: The Respondent shall issue a certificate of service to the Claimant within 14 days of this judgment.

### **H. Service Pay**

20. Section 35(5) and (6) of the [Employment Act](#) state that service pay is not payable where an employee is a member of a pension scheme, provident fund, or the National Social Security Fund (NSSF). CEX2 confirms NSSF contributions were made.

**Finding: Not entitled to service pay.**

### **I. Final Orders And Disposition**

21. Having found in favour of the Claimant, judgment is entered against the Respondent as follows:

1. Declaration: The termination of the Claimant was unfair.
2. Compensation for unfair termination: Kshs. 96,858.42
3. One-month salary in lieu of notice: Kshs. 16,143. 07



4. Underpayment arrears: Kshs. 155,267.54
5. Unpaid overtime, holidays, and rest days: Kshs. 108,440
6. Unpaid leave: Kshs. 22,596
7. Certificate of Service: To be issued within 14 days
8. Costs of the suit: Awarded to the Claimant
9. Interest on the above amounts at court rates from date of judgment until payment in full.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 01ST DAY OF JULY 2025.**

**HON. A.P. NDEGE**

**SENIOR PRINCIPAL MAGISTRATE**

In the presence of;

Claimant's Counsel: Maragia

Respondent's Counsel: n/a

Claimant: n/a

