



**Cherop v Judicial Service Commission (Cause E037 of 2024)
[2025] KEELRC 2844 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2844 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE E037 OF 2024
AN MWAURE, J
OCTOBER 23, 2025**

BETWEEN

DUNCAN BOWEN CHEROP CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

JUDGMENT

Introduction

1. The Claimant filed a Memorandum of Claim dated 24th May 2024.

Claimant's case

2. The Claimant avers that he was employed by the Respondent as a clerical officer and court interpreter on 18th November 2016, and earned a salary of Kshs.62,285/= monthly.
3. The Claimant avers that he was stationed at Eldama Ravine Law Courts and he carried out his duties with zeal, meticulously and diligently in different capacities and in different departments where he was placed.
4. The Claimant avers that his termination stemmed from allegations of financial misconduct while serving at Eldama Ravine Law Courts. He was accused of irregularly acquiring and using receipt books, resulting in a reported loss of Kshs. 311,300/= to the Judiciary, and of operating a parallel receipt system that allegedly caused a further loss of Kshs.141,320/= in government funds.
5. The Claimant avers that in May 2019, while tallying accounts under the instructions of Accountant Mary Kibet, he discovered discrepancies that persisted despite repeated recalculations. Upon reporting the issue, the accountant accused him of being responsible and escalated the matter to the Head of Station, Hon. Tamar, who sent him home informally for seven days without following proper Human Resource procedures.



6. The Claimant avers that on 17th June 2019, he was compelled to take official leave until 2nd August 2019, during which he had no access to the office when the audit was being done.
7. After returning from his leave, the Claimant avers that the auditors from Nairobi came to Eldama Ravine Law Courts for audit for accounts, and he was again sent home during their five-day audit.
8. Although the accountant was interrogated, the Claimant avers that he was not involved in the process, and on 2nd October 2019, he was interdicted for alleged gross misconduct involving irregular receipt book usage and a revenue loss of Kshs.311,330/=, receiving half salary of Kshs.35,142/=.
9. Despite audit queries being sent to the station and the accountant responding, the Claimant avers that he was denied access to the report.
10. Following his suspension letter dated 7th November 2019, he was asked to show cause for dismissal, to which he responded in writing, requesting audit documents to defend himself requests which went unanswered.
11. The Claimant avers that while on suspension, he received an invitation for a virtual disciplinary hearing scheduled for 27th August 2020, which he diligently attended across various dates until June 2021 despite challenges posed by the COVID-19 pandemic and limited access to necessary documents.
12. The Claimant avers that he was denied permission to access financial records and was required to report monthly to the Senior Principal Magistrate at Eldama Ravine Law Courts.
13. During the hearings, the Claimant avers that he was not allowed to cross-examine his accusers, and the process concluded abruptly without final remarks.
14. On 8th July 2021, the Claimant avers that he received a dismissal letter backdated to 2nd October 2019 and states that, although he appealed the decision, he has not yet received a response to his appeal.
15. The Claimant contends that the audit report, covering 1st February 2017 to 30th June 2019, unfairly implicated him for periods he was not in the accounts office, where he had only worked for six months under supervision.
16. The Claimant avers that no proper investigations were conducted, and despite a meeting on 2nd March 2021 with the Human Resource Manager, he was denied representation and access to critical documents. His requests through A.N. Geke & Company Advocates, including a letter dated 30th July 2021, for audit reports and receipt books used against him, went unanswered.
17. The Claimant maintains the hearing was biased and flawed, with no opportunity to appeal, and asserts that the actual responsible parties were never investigated.
18. The Claimant concludes that the dismissal was malicious, causing him severe emotional distress and loss of livelihood.
19. The Claimant prays that:
 - a. A declaration that his dismissal was unlawful, and discriminative and the same amounts to unfair dismissal.
 - b. An order compelling the Respondent to reinstate the Claimant to employment without loss of benefits and his due salary from October 2016 to the date of Judgment/reinstatement be paid in full.



- c. In the alternative, and without prejudice to the other prayers herein, an order compelling the Respondent to settle terminal benefits withheld as a result of the unlawful and unfair dismissal as follows:
 - i. One month's salary notice of Kshs.62,285.00/=
 - ii. 12 months' salary compensation for unfair termination of Kshs.747,420.00/=
 - iii. Unlawful salary deduction of Kshs.1,180,483.50/=
 - iv. Unpaid annual leave allowance Kshs.54,000.00/=

Total..... Kshs.2,044,188.50/=
 - v. Gratuity
- d. The Respondent to issue the Claimant with a letter unequivocally clearing the Claimant of all accusations mentioned in the show cause and termination letter that have impugned his integrity and professionalism.
- e. General damages
- f. Costs of the suit and interest in (c) and (e) above at court rates.
- g. Any other relief that this Honourable Court may deem fit to grant.

Respondent's case

20. In opposition to the Memorandum of Claim, the Respondent filed a Statement of Response dated 26th September 2024.
21. The Respondent avers that following an audit conducted between 15th and 23rd August 2019 at Eldama Ravine Law Courts covering the period from 1st February 2017 to 30th June 2019, the Claimant was found to have engaged in financial malpractices, including irregular acquisition and use of receipt books.
22. The Respondent avers that the Draft Audit Report dated 10th September 2019 and the Final Report dated 22nd October 2019 confirmed misappropriation of revenue totalling Kshs.311,030/= and Kshs.141,320/=.
23. Consequently, the Respondent avers that the Claimant was interdicted on 2nd October 2019. He was informed of the charges via a letter dated 7th November 2019 and responded on 19th November 2019.
24. The Respondent avers that the Disciplinary hearings were held on 27th August 2020, 2nd December 2020, and 2nd March 2021, during which the Sub-Committee found him culpable and recommended dismissal.
25. The Respondent avers that it issued a dismissal letter on 8th July 2021, granting the Claimant a right to appeal, which was exercised through counsel on 10th August 2021. It maintains that the dismissal was lawful and complied with the Constitution, the Employment Act, and the Fair Administrative Action Act.
26. The Respondent avers that the Claim lacks merit and therefore should be dismissed with costs.



Claimant's evidence in court

27. CW1, the Claimant, adopted his witness statement and the list of documents, both dated 24th May 2024, as his evidence-in-chief, with the list of documents marked as exhibits 1 to 17 respectively.
28. CW1 testified that between late 2018 and May 2019, he occasionally assisted with accounting tasks, primarily issuing receipts, though he was not formally assigned to the accounts office. He was later accused of misappropriating funds but maintained that his role was limited to writing receipts, while the actual handling of money was the accountant's responsibility. Upon discovering discrepancies in receipt records, he reported them to the accountant, Mercy Kibet. During an audit, CW1 was excluded from the process and never shown the audit report or queries. He requested access to relevant documents but did not receive them.
29. Multiple disciplinary hearings were scheduled but delayed due to technical issues. The hearing eventually took place on 2nd March 2021, where CW1 lacked supporting documents and was denied the opportunity to cross-examine key witnesses, including the internal auditor. He received a dismissal letter and appealed within ten days but has not received a response.
30. In cross-examination, CW1 denied using parallel receipts and stated he relied on bank slips. He acknowledged receiving notices to show cause but denied responsibility for banking funds or possessing receipt books. He confirmed his presence at Eldama Ravine during the relevant period and noted that he was advised to bring a witness to the disciplinary hearing, though the witness did not attend.
31. In re-examination, CW1 clarified that he was not the only one issuing receipts from the parallel books some were issued by accountants. He noted that receipts Nos. 71 and 74 were missing and that the handwriting on them was never verified.
32. CW2, Jophter Echor Jakait, a former accountant for the Respondent, testified that he had faced the same disciplinary committee as the Claimant and was later cleared by the court. With 12 years of experience, he explained the procedures around receipt book management, procurement, and banking, noting inconsistencies and unauthorized possession of receipt books. He highlighted that one such book circulated between stations from 2012 to 2017.
33. During cross-examination, CW2 admitted he did not represent the Claimant, had no audit experience, and did not investigate the audit process or speak to relevant personnel. He confirmed that receipts were linked to Kshs.141,320 were not banked, and the records originated from Koibatek.
34. In re-examination, CW2 stated that the same auditors visited both Butere and Eldama Ravine Law Courts and that his testimony reflected standard practices across Judiciary stations.

Respondent's evidence in court

35. RW1, Issac Kamau, the Respondent's Assistant Director of Human Resource Management and Development, adopted his witness statement dated 26th September 2024 as his evidence-in-chief. He also relied on the list of documents dated the same date, which were marked as exhibits 1 to 13.
36. RW1 stated that the Claimant was informed of charges of gross misconduct through letters dated 2nd October 2019, 7th November 2019, and 23rd October 2020, stemming from an audit at Eldama Ravine Law Courts. RW1 stated that the Claimant was supplied with extracts from the audit report and responded via letters dated 19th November 2019 and 29th October 2020, without raising concerns about missing or insufficient information.



37. RW1 stated that he was invited to three disciplinary hearings on 10th August 2020, 2nd November 2020, and 15th February 2021. Following these hearings, RW1 stated that the Respondent sub-committee recommended his dismissal and recovery of lost funds totalling Kshs.452,650.00. The Respondent adopted this recommendation, and the Claimant was terminated. The process was conducted with procedural fairness.
38. In cross-examination, RW1 stated that the Claimant was employed as a Clerical Officer, primarily assisting in the registry and other assigned duties. Although he was reportedly deployed to the accounts office, no formal documentation supports this. At the time, RW1 stated that Mary Kibet was the Accountant in Charge, and the Claimant assisted her and another accountant. The Accountant in Charge was responsible for all accounting documents.
39. In response to the Claimant's letter dated 19th July 2021 requesting documents, RW1 stated that the Respondent had already provided extracts of the audit report via a letter dated 23rd July 2020 and was unaware that the Claimant had not seen the full report.
40. RW1 stated that the Claimant had been interdicted prior to the disciplinary process and was invited to three hearings: on 27th August 2020, 18th November 2020, later rescheduled to 2nd December 2020, and 2nd March 2021. Except for the technical issues on 18th November, all hearings proceeded. RW1 stated that the Respondent issued a rescheduling notice on 20th November 2020.
41. RW1 stated that the minutes of those meetings indicated the Claimant admitted involvement in the fraud, and the audit also showed he had custody of certain accounting documents but failed to provide proof of their handover. Though given a chance to appeal his dismissal, RW1 stated that the process did not proceed as he filed the current suit and no criminal investigation was initiated by the Respondent.
42. In re-examination, RW1 stated that the Claimant worked in the Accounts office, as confirmed by meeting minutes dated 8th April 2021, which noted he issued receipts during the day. RW1 stated that the Claimant was dismissed on 8th July 2021 after disciplinary proceedings had concluded. RW1 stated that the Respondent had earlier interdicted him via a letter dated 2nd October 2019, citing findings from both draft and final audit reports implicating him in fraud.
43. Although no criminal charges were pursued, RW1 stated that the Claimant was given multiple opportunities to respond, including rescheduled hearings on 18th November 2020, 2nd December 2020, and 2nd March 2021. RW1 stated that the Claimant was asked to submit documentary evidence and, during the final hearing, admitted sole responsibility for the fraud in a message to the Head of Station.
44. RW2, Mr. George Muhoho, the Respondent Internal Auditor, adopting his witness statement dated 11th April 2025 and relying on the Respondent's documents dated 26th September 2024 as his evidence in chief. He stated that the Claimant's case arose from an audit done at Eldama Ravine Law Courts, where handwriting analysis linked the Claimant to disputed receipts from a parallel receipt book not issued by the Treasury. RW2 stated that the book was found in the Claimant's possession, prompting further inquiry. RW2 stated that he attended disciplinary hearings in August 2020 and March 2021, during which the Claimant admitted involvement in the fraud and pledged to repay the lost funds.
45. In cross-examination, RW2 stated that he authored the audit report and confirmed the Claimant was given relevant extracts to respond, as per standard practice. Though the Claimant was absent during the audit, RW1 stated that the Claimant was later charged based on findings and staff interviews.



46. In re-examination, RW1 reiterated that the Claimant failed to account for Kshs.141,320.00 and had acknowledged sole responsibility for the fraud in a message to the Head of Station. RW2 stated that the Claimant's role in the Accounts Office was directly tied to the charges.
47. Parties were directed to file their respective written submissions.

Claimant's submissions

48. The Claimant submitted that the Respondent's failure to produce certified records of the disciplinary hearings casts doubt on the fairness of the process that led to the Claimant's dismissal. Under Sections 41 and 43 of the *Employment Act*, once procedural impropriety is alleged, the burden shifts to the employer to prove the termination was lawful and justified. In *Wanyama Murabwa John V Independent Electoral and Boundaries Commission* [2021] KEELRC 234 (KLR), the court emphasized that employers must present documentary evidence, such as investigation reports and disciplinary records, to support their actions. The Claimant argues that the Respondent's refusal to disclose such records suggests an attempt to undermine due process. Moreover, the "range of reasonable responses" test, as adopted in *CFC Stanbic Bank Limited V Danson Mwashako Mwakuwona* [2015] KECA 919 (KLR), requires that a dismissal fall within the spectrum of what a reasonable employer might do. In this case, the Respondent's conduct appears to fall outside that band, rendering the dismissal unfair.
49. The Claimant submitted that it is the duty of the employer to ensure that dismissal of an employee was justifiable and procedurally and argues that the employer was the keeper of records. In *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] KEELRC 323 (KLR), the court held that the employer bears the burden of proving that a termination was lawful and procedurally fair under Sections 41, 43, and 45 of the *Employment Act*. Despite being aware that the Claimant challenged the fairness of the disciplinary process, the Respondent failed to produce the minutes of the disciplinary proceedings, key evidence that would demonstrate compliance with procedural requirements. Without these records, the Respondent cannot substantiate claims that the Claimant was given a fair hearing, allowed representation, or provided with relevant documents. Consequently, the court finds that the Respondent did not prove that the termination process was procedurally fair.
50. The Claimant submitted that only a reliable account of the disciplinary hearing lies in the official minutes, which are solely held by the Respondent. Despite referencing this record repeatedly, the Respondent has refused to produce it, relying instead on unverified summaries. This undermines the Claimant's right to a fair hearing, including access to documents, legal representation, and the ability to challenge evidence rights affirmed by the Supreme Court in *Shollei V Judicial Service Commission* [2022] KESC 5 (KLR). The Respondent's conduct suggests a predetermined outcome and an attempt to bypass due process. Without authentic records, the Respondent's version remains unsubstantiated under the *Evidence Act*.
51. The Claimant also relied on the case of *Peter Kamwi V Standard Group Limited* [2016] KEELRC 1239 (KLR), the court stated the *Employment Act*, 2007, significantly reshaped employment law in Kenya by introducing statutory obligations for procedural and substantive fairness in termination. Section 41 mandates that employers must notify and hear employees before dismissal, reflecting principles of natural justice. Even where procedural steps are followed, sections 45 and 46 require employers to justify the validity and fairness of the termination itself. Thus, the key issue before the Court is whether the Respondent met these legal standards in summarily dismissing the Claimant.
52. In *Ali Said Abdallah V Republic* [2020] KEHC 7245 (KLR), the court held that under Article 50(5) (b) of *the Constitution*, an accused person has the right to obtain a copy of the proceedings within a



reasonable time, upon payment of a prescribed fee. This right is essential to ensuring fairness under Article 50(1), which guarantees equal opportunity in the pursuit of justice. The authenticity and reliability of the case record are central to the adjudication process, as the ability to review or appeal a decision hinges entirely on access to a complete and accurate record.

53. The Claimant submitted that the disciplinary proceedings were fundamentally flawed, relying on audit figures from a period when he was not involved in the accounts department. Moreover, the Respondent who initiated the charges lacked access to the final audit report, raising concerns about the credibility of the accusations. In *Kenfreight (EA) Ltd V Benson K. Nguti* [2016] eKLR, the Claimant emphasized that termination is deemed unfair if it is based on invalid reasons or if the process itself lacks fairness.
54. For the reliefs sought, the Claimant submitted that he is entitled to them and urged this Honourable Court to allow the claim as prayed.

Respondent's submissions

55. The Respondent submitted that it met the requirements of substantive and procedural fairness under Section 45(2) of the *Employment Act*. It further submitted that, under Section 47(5) of the *Employment Act*, the initial burden lies with the employee to prove unfair termination. In *Josephine M. Ndungu & Others V Plan International Inc* [2019] KEELRC 663 (KLR), the court held that once the employee establishes a prima facie case showing the termination did not meet the legal threshold under Section 45(2), the burden shifts to the employer. The employer must then justify the termination under Sections 43(1), 45(2), and 47(5), and demonstrate that a fair procedure was followed.
56. In the Court of Appeal case of *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others* [2019] KECA 300 (KLR) it held that it is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required. The standard of proof is on a balance of probability, not beyond a reasonable doubt, and all the employer is required to prove are the reasons that it “genuinely believed to exist,” causing it to terminate the employee’s services. That is a partly subjective test.”
57. The Respondent submitted that the Claimant’s dismissal, communicated through a letter dated 8th July 2021, was lawful and based on gross misconduct. It argued that the process adhered to the principles of administrative justice under Article 47 of *the Constitution*, complied with section 41 of the *Employment Act*, and followed the guidelines outlined in the Third Schedule of the *Judicial Service Act* therefore rendering the termination fair and justified.
58. The Respondent cited *Nicholas Macharia Maina V Judicial Service Commission & 3 others* [2025] KEELRC 686 (KLR), where the court stated that the Chief Registrar is duly empowered to issue a suspension notice to the Claimant on the Respondent’s behalf.
59. Since the Claimant was lawfully and fairly terminated, the Respondent submitted that the Claimant is not entitled to the reliefs sought and therefore urges this Honourable Court to dismiss the claim with costs.

Analysis and determination

60. The court has considered the pleadings together with the rival submissions by both counsels; the issues for determination are as follows:
 - i. Whether the Respondent properly terminated the Claimant under section 45(2) of the *Employment Act*;



- ii. If (i) above is in the negative, whether the Claimant is entitled to the reliefs sought
 - iii. Who should bear the costs
61. Article 47 of *the Constitution* guarantees every person the right to fair administrative action that is lawful, reasonable, and procedurally fair. It ensures that when a public authority makes a decision that affects someone's rights or freedoms, the person must be given written reasons for that decision.
62. Section 45(2) of the *Employment Act* provides as follows:
- “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.”
63. Sections 41 and 43 of the *Employment Act* provide for procedural fairness and substantive justification in fair termination. In *Beatrice Nyambune Mosiria V Judicial Service Commission* [2019] eKLR, the court held that: -
- “In employment matters, the employer has to prove both valid reason and fair procedure.”
- Also, in *Pamela Nelima Lutta V Mumias Sugar Co. Ltd* [2017] KEELRC 577 (KLR) it was held that: -
- “What constitutes fair termination is a matter that is now well settled by the wealth of Jurisprudence of this court and the Court of Appeal. There are two elements that must be satisfied by the employer, fair procedure and valid reason.”
64. In this case, the Claimant faced allegations of financial misconduct, including irregular handling of receipt books that resulted in a loss of Kshs.311,330 in Judiciary revenue and Kshs.141,320 in government funds through the use of a parallel receipt system. While the reasons for dismissal appeared valid, however there are some glaring discrepancies.
65. The Respondent in his pleadings allege the Claimant was found with receipt books that were fake. They say the handwriting in the receipts resembled that of the Claimant. The court was not presented the handwriting experts evidence, and yet this was a serious allegation. A staff member to keep parallel receipt books is a serious offence and it would have been necessary to confirm with the evidence of an expert that it was the Claimant who doctored those receipt books.
66. It is the Claimant's defence that one, he is not the only one who filled those receipt books. He says their accountant in charge used to call them to assist in the writing receipts. Claimant was not an accountant but one Mary Kibet was the accountant. The Claimant was a clerk and a court interpreter.
- Even though the Claimant may well have been culpable yet the evidence does not exclude other staff members from having been involved in doctoring the same parallel receipt books.
- The office seems to have been unsecured and free for all. And this was an eye opener for the Respondent to secure the account's office in order to protect the funds of the Government.



67. Infact, the Claimant testifies that even though he would issue the receipts but the banking was done by his supervisor the accountant. That is the reason that the structures in the Respondents system were free for all and was open for abuse by all the staff who would be short of integrity.

No wonder the internal auditor recommended several measures in their report dated 22nd October 2019 to secure the Respondent's funds.

68. The auditors indicated ten receipt books were issued to DA Nakuru in February 2012 through note number 3731167 but were not posted to Nakuru and one was used at Eldama Ravine – Receipt serial Number 2611551-261-600 and were different from those recorded in District Treasury CRB.

These were receipts issued in 2012 and used in 2017-2019. There is some discrepancy here which could have been exploited by any of the staff who had access to the accountant's office.

69. So they further state some six receipts were issued to Lilian Tallam out of which 16 receipts were issued to collect revenue between October 2017 to April 2019 and caused loss of revenue of Kshs.311,030/= . The handwriting the auditor notes on those receipt books resembled that of the Claimant.

It is just unfortunate the Respondent did not get a confirmation of a handwriting expert to who exactly authorised those receipt books but merely claimed the handwriting resembled that of the Claimant.

70. The accountant in charge of the station did not even give her side of evidence as to how a clerk had come into contact with those receipt books. It is not testified if the Claimant who was a clerk could have known that those receipt books were fake. Even if the Claimant was part of this syndicate there are too many glaring gaps that persuade the court to give him benefit of doubt.

71. Furthermore, the court was not informed if Claimant was the only one who used to issue the receipts to the members of public. Claimant says one Gabriel Macharia had receipt book. The said Macharia is not mentioned in the investigations.

Mary Kibet the accountant has also not been called to give her version of the investigations of this grievous case.

72. The Claimant says the money would be received by the accountant. The court is not told categorically who used to do the banking and whether it was only the accused. Infact the Claimant says he is the one who discovered the shortage of funds and he informed the accountant. The accountant then turned the blame on him.

73. So as to whether the Respondent presented a valid reason to justify summary dismissal of the Claimant as espoused in Section 45 and 47(5) of the *Employment Act* the court finds the said reasons are questionable. Section 45(1)(2) of the *Employment Act* provides:

“No employer shall terminate the employment of an employee unfairly.

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
- b. that the employment was terminated in accordance with fair procedure.”



Section 47(5) of the *Employment Act* also states:

“For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.”

74. As earlier stated in the case of Peter Kamwi -Vs- Standard Group Limited (Supra) which states: -

“Even where procedural steps are followed Sections 45 and 46 of *Employment Act* require employers to justify validity and fairness of the termination itself.”

75. As for procedural fairness, the Claimant was invited for disciplinary meetings severally between 18th November 2020, and then 2nd December 2020, and then 2nd March 2021. In the middle of all that he was sent a Notice to show cause dated 23rd October 2020. There seems to have been a Committee of Human Resource Management meeting on 8th April 2021 and finally 24th June 2021 where recommendation was made to dismiss the Claimant from his employment. He was given the Dismissal letter dated 8th July 2021 and dismissal was backdated to 2nd October 2019. He was also asked to refund Kshs.452,650/= and was informed he could be prosecuted for criminal offence.

76. The whole process seems to be quite flawed and unprocedural. It is not clear why it kept shifting from one date to another.

Finally, it is not clear how it proceeded and if Claimant had a chance to prepare his defence and invite a representative of his choice as provided in Section 41 of the *Employment Act*. The provision of an employer following substantial fairness and procedural fairness are mandatory according to our employment laws. They are not suggestions but are mandatory provisions. The Claimant failed to adhere to those twin provisions as established in diverse precedents among them Walter Ogal Anuro - Vs- Teachers Service Commission Case 955 OF 2011 where it was held:

“For termination to pass the fairness test, it ought to be shown that there was not only substantive justifications for the termination but also procedural fairness.”

77. The court has very critically and deeply considered the pleadings of the rival parties as well as their submission and holds that even if the Claimant may have had some fishy dealings with those impugned receipt books yet the Respondent fell very short of showing exactly how they got into his possession and if he was the only one who could have written them. This makes the reasons given not convincing and also the procedure followed is flawed.

78. The Respondent has not proved therefore lawful and procedural dismissal of the Claimant. Judgment is therefore entered in favour of the Claimant.

79. He is awarded the following:

1. One-month salary in lieu of notice - Kshs.62,285/=
2. 5 months compensation for unlawful dismissal – Kshs.62,285/= x 5 having worked for the Respondent for less than 5 years - Kshs.311,425/=
3. Unpaid salary is not proved and is disallowed.



4. Unpaid leave allowance and gratuity are not proved and so are not allowed.
 5. Total awarded is - Kshs.373,710/= plus interest at court rates of 14% per annum from date of this judgment till full payment.
 6. The nature of this case persuades me to order each party will met their respective costs.
- Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 23RD DAY OF OCTOBER, 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.

