



**Juma v Telkom Kenya Limited & 2 others (Cause 916 of 2018)
[2025] KEELRC 2902 (KLR) (24 October 2025) (Judgment)**

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**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 916 OF 2018
NJ ABUODHA, J
OCTOBER 24, 2025**

BETWEEN

OSCAR JUMA CLAIMANT

AND

TELKOM KENYA LIMITED 1ST RESPONDENT

SIMON LEE 2ND RESPONDENT

LINDA ROTICH 3RD RESPONDENT

JUDGMENT

1. The Claimant through a Memorandum of Claim dated 9th February, 2024 pleaded inter alia as: -

- i. At all material times, the 2nd Respondent was the Head of Operations and Maintenance of the 1st Respondent, while the 3rd Respondent was a Human Resource Manager of the 1st Respondent.
- ii. The Claimant has had since 1986 served, in employment with the 1st Respondent, in various capacities with distinction, leading to steady promotions until he was informed that his employment was terminated by a letter dated 23rd of March 2018 which was delivered to him on the 4th of April 2018.
- iii. The Claimant claims that the termination of his employment through the aforesaid letter was manifestly in breach of the law-and *The Constitution* and statutory laws applicable to terms of employment. The Claimant further claims his termination was malicious and discriminatory and was characterized by acts of intimidation, harassment coercion, blackmail and outright discrimination, which the 2nd and 3rd Respondents robustly and maliciously prosecuted.



- iv. The termination of the Claimant was in breach of Section 41 and 45 of the *Employment Act*, as the procedure leading up to the termination was not fair and was punctuated with acts of malice and intimidation perpetrated by the 2nd and 3rd Respondents.

Particulars of malice

- a. The Claimant was never informed that he was facing any charges that contemplated that he would be dismissed from employment.
- b. On the 22nd of March 2018 at 6:00pm, the Claimant received a lengthy email from the 2nd Respondent leveling allegations on his performance. The email directed the Claimant to attend a meeting to discuss the extensive allegations against him at 9am on the 23rd of March 2018.
- c. The Claimant was not given reasonable time to respond to the allegations that were leveled against him.
- d. The aforesaid email did not any rate constitute a charge consequent upon which a termination of employment would follow as it did not express that termination or other disciplinary action was in the offing in connection with the alleged failures in performance.
- e. The Claimant was further terminated in flagrant breach of Paragraph 11 of the Human Resource Policy Manual of the 1st Respondent which requires that termination of employment by the Respondent, for non-performance, must be preceded by implementation of clearly structured performance improvement plan underpinned by clearly set out parameters for improvement and actions.
- f. The Claimant was never put on any performance improvement plan, in terms contemplated by the Human Resources Policy of the 1st Respondent.
- g. The aforesaid audio records disclose the conspiracy that was orchestrated by the 2nd and 3rd Respondents to harass, coerce and intimidate the Claimant. The 3rd Respondent blatantly told Claimant that a decision had been made to terminate him and he had to resign or he would be terminated.
- h. There has been was a pattern of intimidation and harassment by the 2nd Respondent against the Claimant which included hurling abusive words and orchestrating a most hostile work environment from the time he joined the company around October 2017.
- V. The termination of the Claimant from employment was in breach of Sections 43 and 45 of the *Employment Act* as no valid and fair reasons for terminating the employment of the Claimant were given.

Particulars of lack of justification for termination of employment

- a. The reasons given for the termination of the Claimant were not valid. The reasons given were broadly that the Claimant had failed and/or had become incapable to give proactive leadership to the teams he managed.
- b. The employment record and career progression of the Claimant discloses that he rose from a technician in 1986 and developed in roles that consistently required him to manage teams, work out strategies for the teams to deliver solutions for which he



excelled thereby earning promotions consistently. This is a feat that would not have been impossible for a person who struggles with prioritizing actions and seeing them through as claimed in the termination letter that was issued.

- c. Quite apart from the distinguished services record that the Claimant had for over 20 years, the reasons for his termination set out in the termination letter and those that were set out in the email that 2nd Respondent addressed to him on 22nd of March 2018 were fully addressed not justified.
- d. An incident that occurred on the 8th of November 2017 which resulted in network outage was prominent in the allegations leveled on the 22nd of March 2018, yet the outcome of a root cause analysis which the 2nd Respondent was part of found no failure attributed to the Claimant. An audio record of the proceedings of the meeting of the 23rd of March 2018 that culminated in the termination of the Claimant suffice show confirm that all issues that were raised the Claimant were addressed.
- vi. The Claimant states that the 1st Respondent is a progeny of a restructuring process following the winding up of the Kenya Posts and Telecommunication Corporation in 1999.
- vii. The Claimant further maintains that a continuous restructuring process has been perpetuated by the 1st Respondent for over twenty years since its creation and every effort has been made by the 1st Respondent to cut costs by retrenching workers or finding means to terminate their services without incurring retrenchment costs or just underpaying the employees' terminal benefits. This fact has also been confirmed by cases that have come before courts like in *Telkom Kenya Limited versus John Ochanda [2013] eKLR*.
- viii. The Claimant contends that his termination of employment for allegedly being a non-performer was a camouflage for his being retrenched and not being paid terminal retrenchment benefits like other employees.
- ix. The Claimant assert that the 1st Respondent discriminated on him contrary to Article 27 of *the Constitution* and Section 5(3) (b) of the *Employment Act* 2007.
- x. The Claimant maintains that he was a victim of unfair labour practice contrary to Article 41(1) of *the Constitution*.

Particulars of violation of article 27, 41(1) of *the constitution* and section 5(3) (b) of the *employment act* 2007

- a. Victimizing the Claimant by alleging that he was a non-performer merely for purposes of denying him payment of retrenchment benefits.
- b. Failing to offer the Claimant an opportunity to be declared redundant as offered to other fellow employees.
- c. Failing to subject the Claimant to performance improvement plan if truly he was non performer.
- d. Discriminating the Claimant in the mode of terminating his contract.
- e. Engaging in unfair labour practice by failing to treat the Claimant on equal footing like all other employees.

2. As a result, the claimant prayed for orders that:



- a. A declaration that the Claimant's termination of service was a violation of Article 27 and 41(1) of the Constitution.
 - b. A declaration that the Claimant's termination of service was in violation of Section 5(3)(b) of the Employment Act 2007.
 - c. A declaration that the Claimant's termination of service was in violation of Sections 46(a) 41(1) and 45(1) and (2) of the Employment Act and therefore unfair.
 - d. A declaration that terminating the Claimant's service for alleged unsatisfactory performance without putting him in a performance improvement plan as required by the Human Resources Policy Manual of the 1st Respondent was in breach of the Claimant's employment.
 - e. An order that the Claimant be compensated as follows: -
 - i. Damages for unlawful termination against the 1st Respondent in the sum of equivalent to her 12 months gross salary being Kshs. 4,043/124.
 - ii. Service for 31 years worked in the sum of Kshs.10,444/737 against the 1st Respondent.
 - iii. Damages against the Respondents/ jointly and severally for perpetrating acts of harassment and intimidation against the Claimant to force him to resign in the sum of Kshs,8,000,000.
 - iv. An order that the Claimant be paid retrenchment compensation of Kshs.11,922,898.3 as more particularized at paragraph 14 above.
 - v. General damages for discrimination to be assessed at Kshs.10 Million.
3. The Respondent in response filed its Response to the Amended Memorandum of Claim dated 12th April, 2024 and averred inter alia: -
- a. The 1st Respondent admits having employed the Claimant in the year 1986 as set out in paragraph 6 of the claim and that his career with the 1st Respondent progressed over the years until 23rd March, 2018 when his contract of employment was terminated. As at March 2018, the Claimant held the position of a Manager in the Operations and Maintenance (O&M) Department within the 1st Respondent's technology division.
 - b. The Respondents deny the allegations set out in paragraph 7 and 8 of the Memorandum of Claim and in particular, the averments that the termination of the Claimant's employment was unfair, malicious, discriminatory and or that it was characterized by acts of intimidation, harassment, coercion, blackmail and outright discrimination. The Respondents shall put the Claimant to strict proof of the said allegations.
 - c. In response to the allegations in paragraph 8 of the Memorandum of claim, the Respondent avers that the Claimant's employment was terminated following various concerns raised regarding the performance of his duties which demonstrated lack of due diligence and various negligent actions and inactions in the performance of his duties warranting termination of his contract on grounds of gross misconduct. The Respondents therefore deny that the termination was in breach of the provision of the Employment Act as alleged.
 - d. The Respondents aver that contrary to the claims made by the Claimant, the sequence of events leading to the termination of the Claimant's employment is as follows:-



- i. On the 22 March, 2018, the 2nd Respondent invited the Claimant for a meeting which was to be held on 23rd March, 2018 to discuss various performance gaps and lapses which had been evident in the Claimant's performance over time and which the Claimant had failed to address.
- ii. The email invitation recapped in detail the specific issues that had been noted touching on the Claimant's performance, the concerns and queries raised as well as the various measures that had been put in place over the years to improve the Claimant's performance which the claimant had failed to adhere to.
- iii. Among the issues that formed the basis of the meeting and which the 1st Respondent enumerated as constituting negligent actions in the discharge of the Claimant's duties include:-
 - a. Failing to take charge or control of his team as the Manager including sub-contractors;
 - b. Failure to proactively manage situations requiring urgent measures such as frequent data network failures that impacted on the company performance;
 - c. Failure to create strategies to address current and long-term issues within the Claimant's control as the O& M Manager; and,
 - d. Inability to prioritize key actions and to see them through successfully.
- iv. The Claimant attended the meeting on 23rd March 2018 where the above issues amongst others were discussed. The Claimant failed to satisfactorily address the various concerns raised regarding his performance;
- v. The Respondent's top management after due consideration concluded that the Claimant was negligent in the discharge of his duties warranting termination of his employment contract. The Claimant was informed that his contract would be terminated on this basis.
- e. Consequently, and in line with the discussions held on 23rd March 2018, the Respondent issued the Claimant with a letter terminating his employment contract with effect from
- f. The Respondents aver that the termination of the Claimant's employment contract was done in accordance with the provisions of his contract of employment which contemplated that either party could terminate the contract by giving two (2) months' notice or payment in lieu of notice. Consequently, the Claimant was paid his terminal dues as follows: -
 - i. Salary in lieu of notice for two months
 - ii. Accrued leave pay as at 23rd March, 2018.
- g. The Respondents deny the alleged particulars of violation of the provisions of Employment Act as alleged in paragraph 9 of the Amended Memorandum of Claim. In response, the Respondents aver that under Section 44 of the Employment Act the 1st Respondent was legally entitled to summarily dismiss the Claimant from employment after the meeting with the Claimant where, as was in this case, the Claimant abdicated on his duties as the O& M Manager by willfully neglecting his duties and or failing to properly and carefully supervise his team including subcontractors resulting into losses by the Respondent.



- h. The Respondent denies the averments at paragraphs 10,11 and 12 of the Amended Claim and shall put the Claimant to strict proof of the said allegations. In further response, the Respondent avers that while restructuring is a lawful administrative procedure available to employers depending on the business needs of the organization, in the instant case the termination of the Claimant's employment was not a result of such restructuring. The Claimant's employment was terminated for gross misconduct specifically negligence in the discharge of his duties.
 - i. The Respondent denies the averments at paragraphs 13 and 14 of the Amended Claim to the effect that the Claimant was a victim of discrimination and unfair labour practices as particularized at paragraph 14 of the Claim. The Respondent avers that these claims have not been substantiated to the required standard or at all.
 - j. Regarding the assertion that the Claimant was deprived of the chance to be declared redundant as set out in paragraph 14 of the Claim, the Respondent avers that the redundancy procedure initiated by the Respondent in 2018, occurred in October of that year, over seven (7) months after the termination of the Claimant's contract. This process was completed in December 2018 long after the Claimant had left the Respondent's employment as evidenced in the Claimant's documents produced at pages 238 to 240. It is therefore incorrect and misleading for the Claimant to insist that he was entitled to a redundancy package.
4. The Respondent in the upshot prayed as against the Claimant that the Claimant's suit be dismissed with costs to the Respondent.

Evidence

5. At the oral hearing the claimant testified among others that he was employed by the respondent from 1986 to 2018 when his service was terminated. He filed a witness statement in the matter which he relied on as his evidence in chief. He further stated that he was relying on the documents filed with the claim. According to the claimant he sued the respondent for wrongful dismissal and unfair termination of his service. It was his evidence that he was terminated over issues of performance and according to him the allegations were false. He was not issued with any termination letter but received a lengthy email from Mr. Lee where he was asked to go the next day to discuss his performance. The discussion was to take place at 9:00 a.m and that the purpose of the meeting was to discuss his performance against what was expected. It was the claimant's evidence that he responded by addressing the issues with specifics and that he summarized them in his witness statement. He further stated that he audio recorded the proceedings of the meeting which he caused to be transcribed and that the transcription was before the Court. He further stated that the recording was without the knowledge or consent of those present. At the meeting he was accused of failure to handover his duties but stated that he did not fail because he was indisposed at the time and that he communicated with his superior about it the previous night. He presented the medical certificates the next day and no action was taken against him.
6. It was the claimant's further evidence that the second meeting was tense and was asked if he had read the email to which he responded in the affirmative and stated that he had responded to the same and further that he was told he could be terminated. It was his evidence that he was also told that there was to be reorganization of the respondent and that he would be part of it. He stated that he was asked either to resign or get terminated and was required to decide on spot which he felt was unfair because people who left around the same time were compensated and that he felt treated differently.
7. In cross-examination he stated that he was a senior engineer and at the time of termination had worked for the respondent for thirty years. He was holding the position of Senior Manager-Operations and



Maintenances and had a team he was working with. It was further Mr. Juma's evidence that he was issued with a Notice to Show Cause in 2017 and he responded to the same and in his response admitted that in hindsight, the situation could have been avoided. He stated that they were working with what was provided by the respondent and that he sought training for his team. The claimant further stated that there was complaint by Mr. Lee over data outage in the Country and that there was analysis of the root cause of the outage. He further stated that supervision of the network was under his docket and that the outage was caused by expiry of the license. The claimant further stated that when he returned from leave he was assigned a new role and that he never raised any complaints about his supervisor and the way roles were being shifted. He stated that when he returned from leave, the work environment was hostile but he never filed any complaint against Mr. Lee.

8. Regarding termination, it was the claimant's evidence that he sent an earlier email stating that he saw no reason for resigning and suggested a mutual separation but this was not acceptable. He further stated that there were redundancies since 2016 and that there were some in 2018 which took place after he had left and further that the retrenchment had nothing to do with his position and that reorganization was usual and were business decisions. It was further his evidence that none of the persons he claimed were favoured were called by him as his witnesses.
9. In re-examination the claimant stated that he never admitted any negligence. The claimant's second witness was one Arthur William Akang who stated that he was a transcriber for Iwag Africa and that they deal with transcription for medical and legal issues. He stated that he filed a witness statement on 12th July, 2024 which he relied on as his evidence in chief. In cross-examination he stated that he did the actual transcription but the report was signed by one Gavin Amolo. He clarified that transcription was not done by one person and further that he was familiar with privacy and Data Protection issues and further that there was no consent from the persons recorded. In re-examination he stated that one person does the transcription and another verifies the quality and that Gavin did the first transcription and he authenticated it.
10. The respondent on its part called as witness one Esther Mutisya who stated that she was Head of Talent at the respondent and that she recorded a statement on 5th July, 2024 which she relied on as her evidence in chief and that she further relied on the documents filed by the claimant in response to the claim. It was her evidence that the claimant was in charge of passive network maintenance and that Manager NMC/NOC was a wider job. In in there was active and passive network maintenance. Day to day work would be different but job grade remained the same. She stated that the claimant was terminated on account of performance and negligence. There was data outage during the claimant's time at work and that was due to negligence. The claimant was to ensure things were working properly. It was her evidence that NOC was a 24 hour manned station as systems always fail at some point and that there would be alerts and the person in charge was the claimant.
11. Ms Mutisya further stated that the license had expired at 1:54 hours and the claimant did not bear responsibility. The resolution came three hours later and that was deemed by the respondent as negligence on the part of the claimant. On the issue of redundancy, she stated that there was no redundancy by the time the claimant left but there was to be redundancy during the transition from Orange to Telkom. This however did not take place. The respondent kept the Union informed. Another redundancy started in 2018. It was further her evidence that there were technological changes and the respondent was no longer in charge of external sites. They were outsourced but the claimant's position was never affected since the network was not sold. The sites remained owned by Telkom.
12. Concerning claim for discrimination, it was her evidence that the respondent had a system of reporting discrimination and she found nothing from the claimant on the issue of discrimination.



13. In cross-examination she stated that she was an HR practitioner and that she was registered with IHRM but not a trained engineer. She joined the respondent in 2021 and had never met the claimant and that she neither met or knew Mr. Lee. She however admitted knowing Linda Rotich who she said had left the respondent but met her in the circles of HR practitioners. It was further her evidence that she had all the records and that the outage issue was caused by expiry of the license which was outside the claimant's docket. If the system was not running, there would be an alarm in the NOC but she stated that she had not stated the same in her statement. Regarding assignment of the claimant to passive data maintenance, it was her evidence that it did not require a letter and that Regional Technical Manager assigned responsibilities to the claimant but she had nothing to show the claimant had been assigned those roles. The assignment was done a day before the claimant returned from leave.
14. It was Ms. Mutisya's further evidence that the actions taken by the claimant were not sufficient as he had power to do more. Concerning termination, she stated that the claimant was terminated on 28th March, 2018 and that the meeting was held on 23rd March, 2018 and further that the claimant was invited for disciplinary hearing on 22nd March, 2018 at 5:35 p.m. and the meeting was scheduled for the next day at 9:00 a.m. The claimant was terminated on the grounds set out in the termination letter. Ms. Mutisya further stated that the meeting was not a disciplinary hearing but a performance conversation and that the respondent does not issue show cause letters for performance conversations. Asked about performance improvement system she admitted that the respondent had one and that the claimant was never put through one. She confirmed that the claimant was paid his terminal dues upon termination of his service but she did not produce any evidence of such payment.
15. In reexamination she stated that the claimant's role was maintenance of passive network and that in claimant's statement at paragraph 9(b) he acknowledged being assigned new roles and that the issues with the claimant were a journey and they started in 2017. She stated that she had not seen any response from the claimant on these issues raised by Lee. Regarding separation agreement, she stated that this was usual and any party to an employment contract could initiate one.

Claimants' Submissions

16. The Claimant's Advocates Obura & Mbeche Advocates filed written submissions dated 12th March, 2025 and reply to Respondent's submissions dated 28th May, 2025. Mr. Obura for the claimant submitted among others that RW1 admitted that other than Respondent's replying Memorandum of Claim dated 30th August, 2021, her witness statement, the respondent produced no other document in their defence. The witness further stated that she was merely relying on the claimant's documents apart from that she also said that she was relying on the practices being followed by the respondent since her employment in 2022. According to counsel, RW1 admitted that restructuring process leading to redundancies had been going on at the respondent since 2013. Further, Ms. Mutisya (RW1) admitted that the disciplinary hearing of 11th June, 2017 whose minutes were produced at page 29A of the claimant's bundle of documents did not lead to any disciplinary sanctions against the claimant. The witness further informed the court that where an employee is accused of poor performance the respondent did not issue such employee with a show cause letter.
17. It was Mr. Obura's further submission that the witness admitted that there was restructuring going on at the respondent since 2013 (prior to the claimant's termination) which was why an organogram was raised and which was produced by the claimant at page 243 of his bundle of documents. While Ms Mutisya contended that the organogram was not implemented, she did not produce any evidence showing anyone continued to perform the claimant's role after termination of his service. Concerning network outage, Counsel submitted that RW1 admitted that this was due to expiry of the operator's



license which had nothing to do with the claimant. While arguing the claimant could have done more, Ms. Mutisya did not elaborate what more the claimant could have done to save the situation.

18. Regarding reasons for termination of the claimant's service, Counsel submitted that his client was terminated for reasons among others that he failed to take charge or control of his team as the manager, failure to proactively manage situations requiring urgent measure such as frequent data network failures and failure to create strategies to address current and long term issues within his control as the O&M Manager. These reasons for termination according to counsel, were never pleaded in the statement of response and in any event, RW1 admitted she extracted them from the claimant's bundle of documents. Mr. Obura submitted that if the elaborate testimony of RW1 on the alleged failures and negligence of the claimant were what formed the basis for termination, then they ought to have been pleaded. Counsel therefore submitted that failure to plead them made the reasons for terminating the claimant's service fatally defective. In support of the submission, counsel relied on the case of *IEBC & Another vs. Stephen Mutinda Mule & 3 Others* [2014] eKLR where relying on decision of the Supreme Court of Malawi in the case of *Malawi Railways Ltd vs. Nyasulu* [1998] MWSC 3 the Court stated:

“... As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made...”

19. Mr. Obura further submitted that even assuming the respondents had pleaded the particulars giving rise to the termination of the claimant's service, those averments would still not stand because they were as a result of failure by the respondent to renew Network Operator's license which was nothing to do with the claimant. Regarding the second accusation that in January, 2018 the claimant resumed duty and was assigned a different role with reduced responsibility, Counsel submitted that RW1 did not provide any further evidence on this issue yet the claimant in his witness statement stated that he went on leave in December, 2017 and when he returned in January, 2018 the respondent informed him that his designation would change but this was not done in writing. Further, the 2nd respondent on 4th January, 2018 sent an email to team members without including the claimant, stating what his role would be going forward. This according to Counsel could have been discussed with his client. In this case the claimant was in a situation where his role going forward was discussed and directed in a forum that excluded him.
20. Mr. Obura therefore submitted that the reassignment of duties was malicious and merely calculated to harass and frustrate him into tendering his resignation. Concerning the accusation that the claimant failed to coordinate his team to provide information required by the legal team in charge of project Mnara, Counsel submitted that the claimant in his witness statement enumerated how he engaged in the project on the strong recommendation of a consultant, a fact which the claimant's boss Mr. Barorot and the 2nd respondent did not appreciate. Mr. Obura further submitted that the evidence by RW1 was mere hearsay and wondered why the 2nd and 3rd Respondents who were parties to these proceedings never filed any witness statement denying what had been stated by the claimant or appeared in court to give evidence to the contrary.
21. Concerning procedural fairness prior to termination, counsel submitted that on 22nd March, 2018 at 17:35 hours, the respondent with utmost malice sent an email listing various disjointed accusations, some which the claimant had responded to. The email purported to invite the claimant for a discussion over his performance and what was expected of him. According to the email, the meeting was scheduled for 23rd March, 2018 at 9:00 hours. Mr. Obura complained that his client was expected to spend his time during the night of 22nd preparing to defend his performance at a meeting which the respondents



later dubbed disciplinary hearing. Counsel submitted that the extraordinarily short period given to the claimant to attend the hearing was unreasonable and procedurally unfair. It violated the claimant's rights and fundamental freedoms under article 47(1) of *the Constitution*. Counsel further submitted that the "kangaroo" court proceedings the claimant was subjected to on 23rd March, 2018 did not conform to the requirements of section 41(1) of the *Employment Act* in that the email calling for the meeting did not inform the claimant that the respondent's were contemplating terminating his service on grounds of misconduct or poor performance. Counsel further submitted that his client was subjected to a disciplinary hearing on account of poor performance yet the 1st respondent's Human Resource Manual requires that before being subjected to any disciplinary hearing on account of poor performance an employee should first be put on a performance improvement plan. In support of the foregoing submissions, counsel cited the cases of Jane Samba Mukala v. Ol Tukai Lodge Ltd [2021]KEELRC 794(KLR), National Bank of Kenya v. Samuel Nguru Mutonye [2019] eKLR and Postal Corporation of Kenya vs. Andrew K. Tanui [2019]eKLR.

22. Mr. Obura further submitted that the meeting held on 23rd March, 2018 could not have constituted a fair procedure because the email inviting his client to the meeting gave him exceptionally short time to attend and further it did not advise him that termination of his service was in the offing. Further, he was not given an opportunity to be accompanied by a colleague of his choice. Counsel therefore submitted that the treatment accorded his client from time the respondent commenced abortive disciplinary proceedings against him in 2017 and the proceedings in March, 2018 were tainted with malice and spite. In this respect, counsel relied on the case of Kweya v. Wikama & 2 Others [2024] KEHC 91391(KLR) where quoting Black's Law Dictionary, malice was defined as:

“...the intent, without justification or excuse to commit a wrongful act; the reckless disregard of the law or of a person's legal right, ill will wickedness of heart...”

23. Concerning the notice to show cause, counsel relied on the case of Nicholas Muasya Kyula v. Farmchem Ltd [2012]eKLR where the court stated that the show cause letter must spell out the intended ground for termination and the particulars must be clear enough for the employee to be able to effectively defend himself or herself. The notice must give the employee reasonable time within which to respond.
24. Regarding the question whether the claimant's service was terminated to deny him restructuring or redundancy benefits, counsel submitted that the termination of his client's contract was premeditated by malice and was intended to deny him the benefits payable to other employees on account of the ongoing restructuring of the respondent. The termination was therefore in essence discriminatory under article 27 of *the constitution* and violated article 41 and 47. The respondent did not plead denying these allegations.
25. Regarding the question whether the claimant was entitled to the reliefs sought, Mr. Obura submitted that from the evidence and foregoing submissions the claimant was entitled to all the reliefs sought in the amended statement of claim and further that the claimant ought to be compensated as per the particulars of "terminal benefits" listed at paragraph 14 of the amended statement of claim
26. Concerning the discrete audio recording of the meeting between the claimant and the respondent's officers, counsel submitted that the respondent just blanketly denied the claimant's plea at paragraph 8 of his statement of claim but made no specific statement with respect to recording. Counsel further submitted that the recording did not amount an infringement of the 2nd and 3rd respondent's privacy within the context of article 31(d) of *the constitution*. According to counsel, privacy stated therein was as concerns an individual's condition of life characterised by seclusion from public and publicity. The



audio recording made by the claimant had nothing to do with the 2nd and 3rd respondent's personal or private activities but recorded during their contribution in official capacity as agents acting on behalf of the 1st respondent in the alleged disciplinary hearing. In this regard counsel sought reliance in the South African case of *Herold Bernstein & Others vs. L.Von Weilligh Bester & Others* Case no. CCT 23/95 which defined privacy thus:

“... the right to privacy consists essentially in the right to live one's life with minimum of interference. It concerns private family and home life, physical and moral integrity, honour, reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection from disclosure of information given or received by the individual confidentially...”

27. In the above regard counsel submitted that when it came to activities of directors, auditors, accountants and other officers of a company, such officers cannot be considered to be in the realm of privacy if they are acting on behalf of the corporate entity. Mr. Obura therefore submitted that the impugned audio recording was not obtained in an intrusive manner and did not concern the 2nd and 3rd respondent's private, family or home life but concerned a corporate entity they represented at the time. The recording therefore did not violate article 50(4) of *the constitution* hence admissible as evidence in this case provided the background and procedure for the production of such evidence was met.
28. Regarding damages for discrimination counsel submitted that article 27(4) of *the constitution* was not exhaustive on what constituted discrimination and ought to be read together with section 5(4) of the *Employment Act*. Counsel further submitted that by compelling the claimant to resign while at the same time taking him through a kangaroo disciplinary process and against the background of conducting retrenchment due to reorganization, the 1st respondent discriminated against his client and ought to be compensated.

Respondent's Submissions

29. The Respondent's Advocates Iseme, Kamau & Maema Advocates filed written submissions dated 15th May, 2025 and submitted among others that they were adopting the factual background as set out in the respondent's pleadings and witness statement and further stated that following investigations, it was established that frequent incidents of network outages were as a result of engineers sleeping while at work an issue which had been brought to the claimant's attention but remained unresolved. According to Counsel, these incidents took place consistently for a period of six months which demonstrated that the claimant had lost control of his team and this amounted to negligence. Further, on 7th June, 2017 the claimant negligently failed and or abandoned his duties without notice only to purport to have been sick after a complaint was raised of network fault at Panari which was in the claimant's docket.
30. Therefore on the issue whether the claimant was terminated for valid reasons, counsel submitted that section 43(3) of the *Employment Act* empowers employers to summarily dismiss an employee from service where such employee by conduct fundamentally breached his obligations arising out of the contract of service. Counsel therefore submitted that from the background set in the pleadings and witness statement, the claimant consistently failed to discharge his managerial duties with expected diligence. Counsel contended that the claimant's explanation that the network outage was due to the expiry of the license did not absolve him from responsibility for incidents of frequent network outage. It was Ms Weru's submission that the report produced by the claimant at page 32 of his bundle of documents confirmed that the outage exceeded eight hours causing significant service disruption to customers and resulting to substantial revenue loss. The complaint over network outage was raised by customers at around 2:00 a.m but there was neither a response or acknowledgement from the Network



Operations Centre (NOC) for over two hours. The issue remained unresolved until around 1:30 p.m. This clearly demonstrated that the claimant and his team failed to make a prompt or effective action to address the disruption.

31. Counsel further submitted that when the claimant was reassigned to a less demanding role in January, 2018 for passive network maintenance, he continued to underperform. In February, 2018 he was tasked with investigating power outages in 13 sites and required to submit weekly reports but failed to do so resulting in continued outages and decline in network performance. The claimant did not provide feedback, updates or recommendations as required by management to address persistent power outages. Counsel further submitted that the claimant mishandled coordination with his team during the Project Mnara by providing incorrect instructions. Instead of inspecting specific sites, the claimant directed the team to review all the 520 sites which delayed the process and failing to meet the reporting timeliness.
32. From the foregoing, Ms Weru submitted that the reasons for dismissing the claimant from employment were fair and reasonable. Counsel in this regard relied on the case of *British Leyland UK Ltd vs. Swift* [1981] IRLR 91 and the case of *Samuel Kalomit Murkomen vs. Telkom Kenya* [2017] eKLR where the court stated that in determining whether a termination was fair, the court ought not to substitute its decision for that of an employer.
33. Regarding whether the termination was a pretext to avoid redundancy, counsel submitted that this was factually and legally misleading. There was no evidence linking the claimant's termination to any restructuring initiative undertaken by the respondent. The claimant's termination was based on clear grounds of gross misconduct specifically repeated acts of negligence in performance of his duties the grounds of which were investigated, documented and communicated to the claimant. Further, from the documents presented by the claimant, there was no evidence to show that there was any restructuring going on affecting the Network Operations Department or Operations and Maintenance team where the claimant was. Counsel further submitted that the claimant acknowledged that redundancy commenced almost six months after he had left the respondent.
34. Ms Weru further submitted that under section 43 read together with section 47(5) of the *Employment Act*, the employer had a duty to show that the decision to terminate the service of an employee was valid and that respondent had fully discharged this legal burden by setting out with clarity and specificity the factual grounds for termination of the claimant's service.
35. Regarding the audio recording of the meeting between the claimant and the respondent by the claimant, Ms Weru submitted that this was done without the consent of the participants hence amounted to illegally obtained evidence hence inadmissible. Counsel in this regard relied on article 50(4) of *the Constitution* which provides that evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of such evidence would render the trial unfair or would otherwise be detrimental to the administration of justice. Further article 31(d) of *the Constitution* provided that every person had a right to privacy, which included the right not to have the privacy of their communication infringed. In this regard counsel relied on the case of *Mbugua vs. Echo Network Africa* [2024] KEERC 343 (KLR) and submitted that since the audio recording was taken without consent of the respondent's officers, it was inadmissible.
36. Regarding claim for damages for unlawful and unfair termination, counsel reiterated that since the respondent had adequately demonstrated that it had a valid reason to terminate the service of the claimant, he was not entitled to any compensation. Concerning claim for retrenchment compensation, Ms Weru submitted that the claimant was never retrenched nor declared redundant. His termination was based purely on grounds of misconduct and persistent negligence. Further, the respondent



presented tangible evidence to show that there was no retrenchment or redundancy taking place at the time the claimant was terminated. Concerning claim for transport allowance, it was the respondent's contention that there was no contractual or statutory basis for the claim and that throughout the claimant's employment and as evidenced by his own payslips, he consistently received a mileage allowance of Kshs. 35,000/- therefore there was no justification for the higher amount claimed. Further, the claimant was fully paid his terminal dues as was detailed in the termination letter.

37. Regarding claim for damages for discrimination, counsel submitted that for such a claim to be sustained, it must be shown that notwithstanding the employees were on the same terms, they were treated differently on grounds of health, race, tribe or social origin as set out under article 27(4) of *the Constitution*. In this regard counsel relied on the case of *Ol Pajeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR and *Guto Ondieki v. Kisii University* [2020] eKLR. The claimant therefore failed to establish a case for discrimination.

Determination

38. The court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. The court has also considered authorities relied on by counsel and has become of the opinion that in order to resolve the dispute herein, the following issues need to be answered. That is:
- a. Whether the termination of the claimant's service met the statutory requirements under section 41, 43 and 47(5) of the *Employment Act* and related to this, whether the respondent was justified in terminating the claimant's service on account of poor performance.
 - b. Secondly whether in terminating the claimant's service the respondent discriminated against the claimant and related to this is whether the termination of the claimant's service was intended to circumvent him from benefiting from the restructuring of the respondent and the ensuing payment of redundancy benefits.
 - c. Thirdly whether audio recording by the claimant of the meeting between him and the respondent's officers without the knowledge and consent of the latter amounted to infringement of their right to privacy and whether the transcription of the recording is admissible in evidence in these proceedings.
 - d. Is the claimant if successful, entitled to be awarded the claims itemized in his amended statement of claim.
39. Concerning the first issue, the claimant pleaded and testified that his service was terminated through a letter dated 23rd March, 2018 under circumstances he considered were in breach *the constitution* and statute and was malicious and discriminatory. According to him the termination was characterized by acts of intimidation, harassment, coercion, blackmail and outright discrimination. The claimant contended that he was never informed of any charges against him and that he received a lengthy email from the respondent on 22nd March, 2018 at around 6:00 p.m. levelling allegations of non-performance. The email directed the claimant to attend a meeting the following day at 9:00 a.m. to discuss the extensive allegations against him. The claimant contended that he was not given ample time and this email did not constitute a charge against him that would result in termination of his service.
40. The claimant further pleaded and testified that the termination of his service on account of non-performance was in breach of paragraph 11 of the respondent's Human Resource Manual which required that before termination of employment on account of non-performance, such employee



ought to be taken through a performance improvement plan (PIP). The claimant stated that he was never subjected to PIP.

41. In response to the claimant's allegations the respondent's in their pleadings and witness statement stated that the claimant's employment was validly terminated on grounds of poor performance. According to the respondent, there were major failures in the respondent's data network resulting in an outage lasting for about eight hours and after investigations it was found out that this was due to incidents of engineers sleeping while at work. An issue which had been brought to the claimant's attention but remained unresolved.
42. As a result of the foregoing the, the respondent stated that the claimant was invited for a meeting with the respondent's senior management team to discuss issues relating to his performance. According to the respondent, the claimant did not give a reasonable explanation for his conduct as a result the respondent summarily terminated the claimant's service.
43. Section 41 of the *Employment Act* requires that before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity, the employer shall explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation. The employer is further obligated by this section to hear and consider any representations which the employee may make over the grounds for which the employer is considering terminating their service.
44. In an ordinary and formal employment and at senior level as the claimant before the Court, the process of discipline is usually preceded by a Notice to Show Cause outlining the allegations against the employee and request for such employee's response within a period of time which ought to be reasonable. Further, unless unreasonable or where the employee has adequately interacted with the issues over which he is accused, the Show Cause letter ought to be accompanied with either the evidence or a reduction thereof of the accusations against the employee over which he is required to respond.
45. It was common ground that the only correspondence the claimant received and which culminated in the termination of his service was the email dated 22nd March, 2018 found at page 20 of the claimant's bundle of documents. The email from Simon Lee (the 2nd Respondent) opens with the following words:

“... I am setting up a meeting for us to formally discuss performance gaps that have happened in the recent past and in particular the below...”

The email then proceeds to provide comprehensively the details of the alleged performance gaps and concludes as follows:

“...Based on the above, I'm now extending an invitation to you to discuss your performance against what is expected of you. The meeting will take place on 23rd March, 2018 at the 9th Floor Boardroom, Head Office from 9:00 hours”.

The Court takes note of the fact that the email did not call upon the claimant to make any response to the accusations against him and further that the email invited him for a discussion over his performance and what was expected of him. Apart from the discrete recording of the proceedings of the meeting which the court will return to later on in the judgment, the respondent did not file in court the minutes of the discussion of 23rd March. It is further noteworthy that the respondent never filed any documents in reaction to the claimant's documents but instead relied on claimant's documents during the trial. Implying the respondent did not dispute the same.



46. The Court notes that prior to the meeting of 23rd March, 2018 which culminated in the termination of the claimant's service, the claimant had previously undergone disciplinary proceedings on 6th November, 2017. This was preceded by a Show Cause Letter dated 20th June, 2017 to which the claimant responded to by a letter dated 23rd June, 2017 and subsequently an invitation to a disciplinary hearing on 6th November, 2017. This disciplinary process did not culminate in the claimant's dismissal and outcome and recommendation thereof unknown but the claimant continued working.
47. The claimant was not taken through a similar process prior to the meeting of 23rd March, 2018 which culminated to the termination of his service. Respondent's witness (RW1) however stated that it was not a requirement to issue a Show Cause Letter prior to a performance review meeting. The termination letter dated 23rd March, 2018 (page 12 CBD), makes reference to review of the Claimant's performance and discussions with his supervisor. It is noteworthy that the termination of the claimant's service happened the same day as the meeting to discuss his performance yet the letter of invitation to the said meeting simply informed him of a meeting to discuss his performance and never warned him that the termination of his service was contemplated.
48. From the foregoing it is reasonable to conclude that the 1st respondent did not accord the claimant the procedural fairness prior to terminating his service as contemplated under section 41 of the Employment Act.
49. It would be important to mention at this point that the philosophy behind the enactment of the Employment Act in its current form was to provide some measure of protection to employees who under the previous Act could be dismissed at will by an employer without any reason and without being heard. All that was required by the employer under the repealed Act was to issue an employee with notice as provided in the contract of employment or in absence thereof, as deducible from the interval at which salary or wages were paid. In the case of Pius Machafu Isindu vs Lavington Security Guards Limited [2017] eKLR the Court of Appeal had this to say:
- “There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the Evidence Act and the Civil Procedure Act/Rules...”
50. The overarching principle behind the elaborate provisions found in section 41, 43, 45, 46 and 47 of the Employment Act is the recognition of the age old maxim of natural justice that “no person should be condemned unheard”. Further that the hearing should not be a sham. The Supreme Court of India, in the case of Indru Ramchand Bharvani & others v Union of India & others, 1988 SCR Supl (1) 544 stated as follows:
- “...a fair hearing has two justiciable elements: (i) an opportunity of hearing must be given; and (ii) that opportunity must be reasonable...”



51. In the Kenyan in the case of Onyango Oloo vs. Attorney General [1986-1989] EA 456 the Court of Appeal had this to say:

“The principle of natural justice applies where ordinary people would reasonably expect those making decisions which will affect others to act fairly and they cannot act fairly and be seen to have acted fairly without giving an opportunity to be heard...”

52. It was not contested that the email dated 23rd November, 2018 from the 2nd respondent to the claimant, invited him for a meeting to discuss his performance and what was expected of him and as stated earlier, the invitation notice apart from being too short, did not intimate to the claimant that the outcome of the discussion could result in the termination of his service yet on the same day presumably after the discussion, he was handed a termination letter. The conduct of the 1st respondent was therefore patently in breach of clear provisions of section 41 of the Act hence unfair within the meaning of section 45 of the Act.

53. Regarding the reasons for termination, the letter of termination dated 23rd March, 2018 clearly stated that the termination was on account of unsatisfactory performance. The claimant made reference to paragraph 11 of the respondent’s Human Resource and Policy Manual which required that before an employee was terminated on account of poor performance, he ought to have been placed on PIP. This document was not made available to the Court or rather the Court’s attention was not drawn to it from the large number of documents filed by the claimant and which was relied on by the respondent. However this court and courts superior to it have had a chance to pronounce themselves on the issue of termination of service on account of poor performance. In the case of Jane Samba Mukala v Ol Tukai Lodge Limited (2010) LLR 255 (ICK) (September, 2013) the court observed as follows;

“... Where poor performance is shown to be reason for termination, the employer is placed at a high level of proof as outlined in section 8 of the *Employment Act*, 2007. The employer must show that in arriving at the decision of noting the poor performance of an employee, they had put in place an employment policy or practice on how to measure good performance as against poor performance...It is imperative on the part of the employer to show what measures were in place to enable them assess the performance of each employee and further, what measures they have taken to address poor performance once the policy or evaluation system has been put in place. It will not suffice to just say that one has been terminated for poor performance as the effort leading to this decision must be established...beyond having such an evaluation measure, and before termination on the ground of poor performance, an employee must be called and explanation on their poor performance shared where they would in essence be allowed to defend themselves or given an opportunity to address their weaknesses...In the event a decision is made to terminate an employee on the reasons for poor performance, the employee must be called again and in the presence of an employee of their choice, the reasons for termination shared with the employee...”

54. The above observations by the court vis-à-vis the actions by the respondent clearly distinguishes them from the necessary actions that require to be taken before an employee is terminated on account of poor performance and one can readily see that they failed to do so. No evidence was placed before the court of any appraisal of the claimant’s performance and the ultimate decision that he was a poor performer. It is not lost to the Court that the claimant stated and this was confirmed by the respondent, that the network outage for which he appears to have been blamed for was occasioned by the expiry of the Network Providers License. Although the respondent while acknowledging that the License had expired, claimed the claimant could have done more yet not providing any evidence of what the



- claimant could have done over and above to mitigate the circumstances occasioned by the expiry of the Network Provider's License.
55. From the foregoing, the court finds and holds that the respondent failed to discharge the legal burden of proof cast upon it by section 43 as read together with section 47(5) of the Act with the conclusion that the respondent had no valid reasons for terminating the claimant's service and in doing so, failed to follow a fair procedure. The termination is therefore found to be unfair within the meaning of section 45 of the Act.
56. On the issue whether the respondent's act of terminating the claimant's service was discriminatory and intended to circumvent him from benefiting from the restructuring of the respondent and the ensuing payment of redundancy benefits, the Court's short answer would be "no". The claimant himself admitted that there was no restructuring or redundancy taking place at the time of his termination hence he could not benefit, if at all there was any such benefit, from the restructuring and declaration of redundancy by the respondent. The claimant did not provide any other satisfactory evidence to demonstrate that there was restructuring and declaration of redundancy at the time his service was terminated by the respondent. The claimant was terminated purely on account of poor performance which the court has since found to have been unjustified. This plea and prayers related to it are therefore rejected.
57. Regarding the question whether the audio recording by the claimant of the meeting between him and the respondent's officers without the knowledge and consent of the latter amounted to infringement of their right to privacy and whether the transcription of the recording is admissible in evidence in these proceedings, the court observes that article 31 of *the Constitution* provides that every person has the right to privacy which included the right not have the privacy of their communication infringed. Regarding the admissibility of such evidence, article 50(4) of *the Constitution* provides that evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or would be detrimental to the administration of justice.
58. The Data Protection Act which came into operation on 25th November, 2019 defines personal data to mean any information relating to an identified or identifiable natural person and "personal data breach" to mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed; while processing is defined to mean any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means, such as
- (a) collection, recording, organization, structuring;
 - (b) storage, adaptation or alteration;
 - (c) retrieval, consultation or use;
 - (d) disclosure by transmission, dissemination, or otherwise making available; or
 - (e) alignment or combination, restriction, erasure or destruction of personal data.
59. Whereas the Act is only six years old, hence quite new, it is not surprising that there is a dearth of caselaw on the issue of admissibility of discretely recorded private conversation. However article 50(4) of *the Constitution* referred to earlier, provides that evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights shall be excluded if the admission of that evidence would render the trial unfair or would be detrimental to the administration of justice. Implicit in the constitutional provision (article 50(4)) is that in certain circumstances data which might infringe on



any right or fundamental right in the Bill of Rights would be admissible if it does not render the trial unfair or would be detrimental to the administration of justice. It is therefore a reasonable deduction that the admissibility or otherwise of such evidence ought to be determined by the court trying the matter in the context of the provisions of article 50. There is therefore no blanket prohibition of evidence obtained in a manner that violates any right or fundamental freedom in the Bill of Rights and the test is if admission of such evidence would render the trial unfair or would be detrimental to the administration of justice then it ought to be rejected.

60. Further, a reasonable interpretation of the definition of Personal data as contained in the Data Protection Act would yield the meaning that personal data is any information that can be used to identify a living person, directly or indirectly. Which includes obvious details like a person's name, address, and phone number, ethnic origin location data, and biometric data like fingerprints or DNA. The foregoing does not seem to include discrete recording of video or audio conversation or activity by persons acting in their personal or official capacity provided such recording and use thereof is not intended solely to embarrass, blackmail or put the person recorded into public ridicule or disrepute. There is therefore nothing wrong in openly or discretely recording a lawful meeting of persons performing their official duties as was done by the claimant herein. The foregoing aligns with the South African decision relied on by Mr. Obura for the claimant. This is the case of *Herold Bernstein & Others vs. L.Von Weilligh Bester & Others* Case no. CCT 23/95 where it was stated thus:

“... the right to privacy consists essentially in the right to live one's life with minimum of interference. It concerns private family and home life, physical and moral integrity, honour, reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorised publication of private photographs, protection from disclosure of information given or received by the individual confidentially...”

61. However after reaching the finding that the respondent had no justification for terminating the claimant's service and that the termination was carried out through an unfair procedure, the court will not dwell much on the recording. This therefore leads me to last question framed which is whether the claimant is entitled to the remedies sought in his amended claim. In the amended claim, the claimant prays for among others:

- a. A declaration that the termination of his service was in violation of article 27 and 41(1) of *the Constitution*;
- b. A declaration that his termination was a violation of section 5(3) of the *Employment Act*
- c. A declaration that his termination was in violation of section 41(1) and 45(1) and (2) of the *Employment Act* and therefore unfair.
- d. A declaration that his termination that the termination of his service for alleged unsatisfactory performance without putting him on a performance improvement plan as required by the Human Resource Policy Manual of the 1st respondent was in breach of the claimant's employment contract.
- e. An order for compensation as follows :
 - i. Damages for unlawful termination against the 1st respondent equivalent to 12 months' gross salary being Kshs. 4,043,124
 - ii. An order that the claimant be paid retrenchment compensation of Kshs. 11,922,898.3
 - iii. General damages for discrimination to be assessed at Kshs. 10,000,000/-



iv. Interest on the above sums and costs of the suit.

62. The Court has already considered prayers (a), (b), (c) and (d) pronounced thereon hence will not consider them once again. Regarding compensation for unlawful termination, the court, for reasons stated earlier in the judgment, having found that the 1st respondent had no reasonable justification for terminating the claimant's service and that in carrying out the termination, it did not follow due process as prescribed under section 41 as read together with section 45 and 47(5) of the [Employment Act](#); the Court further notes that the claimant's employment may have terminated by either party invoking the termination clause or through other natural vagaries such as illness or death. Further, considering that the 1st respondent was undergoing restructuring and was declaring redundancies, an award of 10 months' salary would be reasonable in the circumstances. Claims for compensation for discrimination and retrenchment payment have already been addressed and the court finds them unmerited and are hereby dismisses them.
63. In conclusion the court enters judgment for the claimant against the 1st respondent as follows:
- a. 10 month's salary as compensation for unfair termination Kshs.3,369,270/- and interest thereon at Court rates from the date of judgment until payment in full.
 - b. The above payment (a), will be in addition to the terminal benefits contained in the termination letter dated 23rd March, 2018 if not paid already
 - c. Costs of the suit.
 - d. Item (a) shall be subject to taxes and statutory deductions.
 - e. The 1st Respondent will issue the claimant with a certificate of service if not issued already.
64. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF OCTOBER, 2025

DELIVERED VIRTUALLY THIS 24TH DAY OF OCTOBER, 2025

ABUODHA NELSON JORUM

PRESIDING JUDGE-APPEALS DIVISION

