



**Mwangi v Diamond Trust Bank (K) Limited (Cause 16 of 2019)
[2025] KEELRC 2876 (KLR) (21 October 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2876 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 16 OF 2019
SC RUTTO, J
OCTOBER 21, 2025**

BETWEEN

GEORGE KAMAKIA MWANGI CLAIMANT

AND

DIAMOND TRUST BANK (K) LIMITED RESPONDENT

JUDGMENT

1. It is not in dispute that the Claimant was initially engaged by the Respondent on a one-year fixed-term contract effective 3rd March 2014. Thereafter, he was confirmed to permanent and pensionable employment with effect from 1st March 2015. The Claimant contends that his remuneration did not incorporate the terms and conditions of service prescribed under the Collective Bargaining Agreement (CBA), particularly in relation to basic salary, house allowance, annual leave entitlement, annual leave allowance, and disturbance/transport allowance.
2. The record bears that the Claimant was transferred from the Respondent's Crossroads branch to the Lamu branch effective 18th September 2017. The Claimant contends that he was first notified of this transfer by the Respondent's Assistant Human Resources Manager, Ms. Yvonne Murichu, on 11th September 2017.
3. The Claimant avers that on 15th September 2017, the Respondent's Head of Human Resources verbally directed him to report to the Lamu branch by 21st September 2017, warning that failure to do so would result in the withholding of his September salary.
4. The Claimant states that he reported to Lamu on 22nd September 2017, having experienced financial difficulties after being informed by the Respondent that he was not entitled to disturbance allowance. He avers that on the same day, he received an email from Ms. Yvonne Murichu questioning his failure to report as earlier instructed. He responded on 28th September 2017, explaining the challenges he had



- faced in travelling to Lamu. The Claimant contends that the Respondent's response to his email failed to address his concerns.
5. The Claimant further avers that he received his formal transfer letter on 26th September 2017 while already stationed in Lamu, together with a warning letter dated 19th September 2017.
 6. The Claimant states that on 28th September 2017, he applied for his annual leave, which was approved to run until 19th October 2017.
 7. According to the Claimant, he fell ill on 19th October 2017 and he informed the Lamu branch manager, who advised him to either provide a sick-off letter or apply for a one-day leave. He states that since 20th October 2017 was a public holiday, he resumed duty on Saturday, 21st October 2017.
 8. The Claimant further states that on 23rd October 2017, he requested one day off duty, which was approved by the branch manager, as he had left his sick-off letter in Nairobi. Although the letter was later scanned, he claims he could not access the bank email system as he had been deactivated from the system.
 9. Upon reporting to work on 24th October 2017, the Claimant alleges that he was denied entry into the bank and verbally instructed to report to the Respondent's head office on 27th October 2017. He requested for written communication to that effect, but none was provided.
 10. The Claimant avers that he was subsequently contacted by Ms. Murichu and Mr. Erick Makhoha, who reiterated the directive to report to the head office on 27th October 2017. Upon reporting, he was issued with a suspension and a show cause letter citing indiscipline and failure to report to work on 19th October 2017.
 11. The Claimant states that he responded to the show cause letter on 30th October 2017, but the Respondent declined to receive his response, prompting him to serve it through a process server.
 12. The Claimant contends that he was invited to disciplinary hearings scheduled for 8th and 17th November 2017, both of which did not take place. He later received a termination letter dated 21st November 2017.
 13. The Claimant maintains that his termination lacked substantive justification or valid reason and that the procedure adopted by the Respondent was irregular.
 14. It is against this background that the Claimant seeks the following reliefs against the Respondent:
 1. Declaration that the termination of service of the Claimant was substantively and procedurally wrongful/unfair/unlawful.
 2. The Claimant be reinstated and/or re-engaged to his former position or equivalent without loss of any benefits and/or break in years of service as the Claimant is young, energetic and the employer has several branches to post him.
 3. The Claimant be paid twelve (12) months gross salary compensation for suffering wrongful/unfair termination totaling to Ksh. 1,114,788/- (i.e Ksh.92,899 CBA rate x 12 months)
 4. The Claimant be paid all the underpayments canvassed and as herein:
 - a. Basic salary and house allowance underpayments equivalent to Ksh.1,287,100/=.
 - b. Compensation for 24 working annual leave days unpaid equal to Ksh.70,628/=



- c. Compensation for annual leave allowance unpaid being 4 years x Ksh. 9,100 equal to Kes.36,400=
 - d. Compensation for transport during transfer to Lamu equal to Ksh.100,000/=.
 - e. Two (2) months basic salary as disturbance allowance equivalent to Ksh.164,798/=
 - f. The total claim for underpayment under iv (a) to iv (e) is Ksh. 1,658,926/=.
5. The Claimant be paid interest at court rates of 14% per annum on (f).
 6. The costs of the suit/proceedings be borne by the Respondent.
 7. The Claimant be paid any such further and/or other relief as the honourable court may deem fit and expedient to grant.
 8. The Respondent to adjust the Claimant's terms and conditions of service as provided for in the Collective Bargaining Agreement.
15. In response to the Claim, the Respondent avers that the Claimant held a non-unionisable position and was therefore not covered by the relevant CBA. The Respondent maintains that the Claimant's remuneration and benefits, including basic salary, house allowance, leave allowance, and leave days, were governed by the terms of his Letter of Appointment, which he duly accepted, as well as the Bank's Human Resources Policy and Procedures Manual.
 16. The Respondent further asserts that the Claimant's transfer to the Lamu branch was carried out in accordance with the Bank's internal policies and procedures, and in compliance with its insurer's requirements, which mandate periodic staff transfers to mitigate the risk of fraud.
 17. According to the Respondent, the Claimant was issued with a transfer letter on 12th September 2017 notifying him of his posting to the Lamu branch effective 18th September 2017. However, he reported on 22nd September 2017 instead of the stipulated date. Consequently, the Human Resources Department wrote to the Claimant seeking an explanation for his delayed reporting.
 18. The Respondent contends that the Claimant absented himself from duty without prior notification or a valid explanation. It is the Respondent's case that the Claimant resumed work on Monday, 23rd October 2017, and not on Saturday, 21st October 2017 as alleged. Following this, the Claimant was issued with a show cause letter and suspended from duty. According to the Respondent, the Claimant admitted in his response to reporting on 23rd October 2017.
 19. The Respondent states that it found the Claimant's explanation unsatisfactory and subsequently invited him to a disciplinary hearing scheduled for 8th November 2017, which was later adjourned to 17th November 2017, with due notification to the Claimant. After considering a report on his conduct and performance, the Respondent resolved to terminate his employment.
 20. On the basis of the foregoing, the Respondent maintains that the Claimant is not entitled to any of the reliefs sought and urges the Court to dismiss the Claim with costs.
 21. The matter proceeded to hearing on 21st November 2024 and 3rd March 2025, during which both parties presented oral evidence in support of their respective cases.

Claimant's Case

22. The Claimant testified in support of his case as CW1. At the outset, he adopted his witness statement and the list and documents filed on his behalf to constitute his evidence in chief.



23. The Claimant testified that his dismissal was malicious, ill-motivated, and driven by spite. In his view, the Respondent Bank harboured personal grudges against him and was intent on punishing him unfairly.
24. He asserted that the termination letter did not disclose any valid or reasonable grounds to justify his dismissal, describing it as trivial, vexatious, and baseless.
25. The Claimant further maintained that his dismissal was procedurally flawed, alleging that the disciplinary hearing was a mere formality. He added that the Respondent's actions, from transferring him from Nairobi to Lamu, denying him disturbance allowance, and culminating in issuing what he termed a petty dismissal letter, were all unjustified and malicious.
26. The Claimant also alleged that when he went to collect his pension cheque, the Respondent attempted to compel him to sign a disclaimer, which he refused to do.
27. He testified that his Trade Union subsequently reported a labour dispute to the Ministry of Labour and Social Protection, whereupon a Conciliator was appointed to attempt an amicable settlement.
28. The Claimant stated that although the parties were invited to attend three conciliation meetings, no agreement was ultimately reached.

Respondent's case

29. The Respondent called oral evidence through Yvonne Murichu, who testified as RW1. She identified herself as the Respondent's Chief Manager- Human Resources. Similarly, she adopted her witness statement and the list and bundle of documents filed on behalf of the Respondent to constitute her evidence in chief.
30. RW1 testified that in March 2015, the Claimant was negligent in the performance of his duties, resulting in a loss of Kshs. 100,000/= at the Respondent's Thika Branch. In accordance with the Respondent's Human Resources Policy and Procedures Manual, the Claimant was surcharged the said amount and issued with a warning letter.
31. RW1 further stated that during the Claimant's tenure at the Thika Branch, he served under three branch managers, all of whom raised concerns about his habitual lateness and insubordination. Consequently, he was issued with a second warning letter on 4th March 2016 and a third on 19th September 2017.
32. She averred that due to the Claimant's strained relationship with his supervisor at the Thika Branch, the Respondent decided to transfer him to the Crossroads Branch effective 8th March 2016. However, shortly after reporting there, complaints arose from the Branch Manager regarding the Claimant's lateness, rudeness, and negative attitude toward work.
33. According to RW1, the Claimant's subsequent transfer from the Crossroads Branch to the Lamu Branch was prompted by continued strained relations with colleagues and customers at the Crossroads Branch, coupled with his poor attitude, which adversely affected the Bank's operations.
34. RW1 testified that the Claimant absented himself from work without prior notification or reasonable explanation, adding that by the time of his termination, the Claimant had already been issued with three warning letters.
35. According to RW1, the warning letters, together with the show cause and termination letters, clearly set out the specific issues and grievances the Respondent had with him.



36. RW1 maintained that the Claimant's termination was effected in accordance with the Respondent's internal policies and the provisions of the *Employment Act*.
37. She further stated that, pursuant to the Claimant's terms and conditions of service, he was paid one month's salary in lieu of notice as well as all terminal dues due to him, and was issued with a Certificate of Service.
38. In RW1's opinion, the termination of the Claimant's employment was lawful, justified, and in accordance with the law.

Submissions

39. The Claimant submitted that the Respondent was obligated to incorporate the terms and conditions of the CBA into his contract of employment, thereby entitling him to all the benefits accruing under the said Agreement.
40. He further argued that the Respondent's refusal to pay him the transfer allowance and the act of evicting him from the Head Office constituted unfair labour practices and discrimination, contrary to Section 5 of the *Employment Act* and Article 41(1) of *the Constitution*.
41. The Claimant further posited that his termination was unfair, wrongful, and unlawful. On this score, he submitted that the charges levelled against him were invalid, unfair, and unlawful, as they did not amount to acts of gross misconduct under the CBA capable of warranting disciplinary action. He further asserted that the Notice to Show Cause and subsequent disciplinary process contravened Sections 43 and 45 of the *Employment Act* as well as Clause A5 of the CBA, rendering the process unfair and unlawful.
42. The Claimant further argued that he was initially required to respond to specific allegations, which he did, but was ultimately tried and found culpable for different charges without being given an opportunity to respond to them. He contended that the Respondent's decision was based solely on a unilateral performance report rather than his written defence and representations, thereby violating his right to a fair hearing.
43. According to the Claimant, he had demonstrated, to the requisite standard of proof, that his termination was both substantively and procedurally unfair, whereas the Respondent had failed to establish that the termination was procedurally and substantively justified, fair, or lawful.
44. The Claimant further argued that an employee becomes entitled to the benefits of a CBA once they are classified as a unionisable employee within the meaning of the *Labour Relations Act*. In his view, all unionisable employees are automatically entitled to enjoy the terms and benefits negotiated under the CBA between their representative trade union and the employer.
45. On its part, the Respondent submitted that the Claimant's conduct, specifically absconding duty and refusing to carry out lawful instructions as required under his letter of appointment amounted to insubordination, which is a valid ground for summary dismissal. To support this position, reliance was placed on *Christopher Komen Chebet v Brinks Security Services Limited* [2019] eKLR and *Banking Insurance & Finance Union (Kenya) v Barclays Bank of Kenya Ltd*, Cause No. 1660 of 2013 [2014] eKLR.
46. The Respondent further contended that the Claimant's termination complied with the requirements of the *Employment Act*, as there existed a fair and valid reason for dismissal based on misconduct, including lateness, rudeness, negligence, absenteeism without authorization, and insubordination.



That these instances of misconduct led to the issuance of three warning letters, followed by a Notice to Show Cause.

47. The Respondent maintained that it had lawful and justifiable grounds to terminate the Claimant's employment based on the allegations outlined in the Show Cause letter.
48. It was also submitted that due process was observed, and the termination procedure fully complied with the provisions of the *Employment Act*.
49. Relying on *Nazareno Kariuki v Feed the Children Kenya* [2013] eKLR, the Respondent urged the Court to find that the Claimant's termination was fair, lawful, and justified in the circumstances.
50. The Respondent further contended that the Claimant was not a member of the Union, and as such, the provisions of the CBA including those relating to wages and other employment terms, were inapplicable to him.

Analysis and Determination

51. Having considered the pleadings by both parties, the evidentiary material on record and the rival submissions, the issues identified for the Court's determination are as follows: -
 - i. Whether the Respondent has demonstrated that there existed a fair and valid reason for terminating the Claimant's employment;
 - ii. Whether the Claimant was accorded procedural fairness prior to termination;
 - iii. Whether the Claimant fell within the scope of the Collective Bargaining Agreement between the Kenya Bankers Association and the Banking, Insurance and Finance Union; and
 - iv. Whether the Claimant is entitled to the remedies sought.

Fair and valid reason for termination?

52. Section 43(1) of the *Employment Act* places the burden on the employer to establish the reasons for terminating an employee's contract, and where the employer fails to do so, such termination is deemed unfair. Connected to this, Section 45(2)(a) and (b) provides that termination of employment is unfair if the employer fails to demonstrate that the reason for termination was valid and fair, and that it related to the employee's conduct, capacity, compatibility, or to the employer's operational requirements.
53. From the termination letter dated 21st November, 2017 it is evident that the employment relationship ended on the ground that the Claimant was allegedly unable to work with the Respondent's staff in different branches, namely Thika, Crossroads, and Lamu, where he had previously been stationed. It was further alleged that the Claimant's "recent actions" confirmed that he had "irreconcilable differences" with the bank.
54. Revisiting Sections 43 and 45(2)(a) and (b) of the *Employment Act*, it is evident that the Respondent bore the burden of proving that the reason for termination was fair and valid.
55. A close examination of the letter of termination reveals that the allegations cited as reasons for termination were general and devoid of specific particulars. The Respondent simply alleged that the Claimant was unable to work harmoniously with staff across its three branches, implying incompatibility, yet failed to provide any specific incidents or examples to substantiate this assertion.
56. Further, the reference to the Claimant's "recent actions" and irreconcilable differences" was vague and unexplained.



57. In view of the generality of these allegations, it remains unclear in what specific manner the Claimant failed to relate with his colleagues or what “recent actions” and “irreconcilable differences” the Respondent relied upon to justify the termination of the employment contract.
58. The Respondent’s failure to provide detailed particulars renders it impossible for the Court to assess or verify whether the reasons advanced were indeed fair and valid within the meaning of Section 45(2) (a) and (b) of the *Employment Act*.
59. In *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, the Court of Appeal found that the allegations against an employee were general and lacking in specificity hence rendered the termination unfair.
60. Beyond stating the reason for the termination of employment, the Respondent was also required to substantiate the allegations with evidence.
61. In the present case, there was no evidence adduced to demonstrate that the Claimant was unable to work with other staff members in any of the branches.
62. It is noteworthy that in as much as the show cause letter dated 27th October 2017 cited the Claimant’s absence from work between 19th and 21st October 2017, this was not among the reasons advanced for the termination of the Claimant’s employment. Suffice it to say, the reasons for the Claimant’s termination from employment did not stem from or relate to the show cause letter dated 27th October 2017.
63. On the whole, the Respondent failed to produce any credible evidence to substantiate the reasons advanced for the Claimant’s termination from employment.
64. In line with Section 45(2)(a) and (b) of the *Employment Act*, the evidentiary burden lay squarely on the Respondent to prove and substantiate the reasons for termination, a burden it failed to discharge.
65. Consequently, the Court finds that the Respondent did not satisfy its evidential burden under Section 43(1) read together with Section 45(2)(a) and (b) of the *Employment Act*, and therefore failed to demonstrate that there was a valid and fair reason for the termination of the Claimant’s employment.

Procedural fairness?

66. The requirement for fair procedure is anchored in Section 45(2)(c) of the *Employment Act*, while the specific elements of a fair hearing are set out under Section 41. Under these provisions, an employer must notify the employee of the intended termination and the reasons for it, in a language the employee understands, and must also afford the employee an opportunity to respond to the allegations made against him or her in the presence of a fellow employee or a union representative.
67. In the present case, the Claimant was issued with a Notice to Show Cause dated 27th October 2017, to which he duly responded. He was subsequently invited to attend a disciplinary hearing scheduled for 8th November 2017, which was later adjourned to 17th November 2017. Notably, the invitation letters did not inform the Claimant of his right to be accompanied by a colleague or a union representative during the hearing.
68. Coupled with the foregoing, the record does not demonstrate that the disciplinary hearing of 17th November 2017 actually took place, as no minutes or proceedings from the said meeting were produced before the Court.



69. Furthermore, the Respondent presented what appeared to be a report detailing the Claimant's disciplinary record, which recommended his termination. However, it was unclear whether the Claimant had been afforded an opportunity to present his case or to be accompanied by a fellow employee or union representative, prior to the report being generated.
70. In essence, the Respondent failed to establish, to the requisite standard, that the Claimant's termination from employment was carried out in accordance with the procedural requirements set out under Section 41 of the *Employment Act*.
71. Consequently, the Respondent did not discharge its burden under Section 45(2)(c) of the *Employment Act*. To this end, the Court arrives at the inescapable conclusion that the Claimant's termination was procedurally flawed and unlawful.

Scope of the Collective Bargaining Agreement?

72. The Claimant contends that his letter of appointment excluded certain terms and conditions of service contained in the CBA between the Kenya Bankers Association and the Banking, Insurance and Finance Union (BIFU), specifically regarding basic salary, house allowance, annual leave days, annual leave allowance, and transfer allowance.
73. The Respondent, on the other hand, disputes this position and maintains that the Claimant was a non-unionised employee, and therefore, the terms of the said CBA did not apply to him.
74. The Claimant insists that he was a unionised employee, adding that it was, in fact, his trade union (BIFU) that reported the trade dispute to the Ministry of Labour and Social Protection.
75. In support of his case, the Claimant produced a copy of the CBA between the Kenya Bankers Association and BIFU.
76. Clause A1 of the said CBA stipulates that it applies to all section heads, check clerks, clerical staff, copy typists, technical staff, and subordinate staff employed by the employer. It further provides that the provisions of the *Labour Relations Act*, concerning the payment of agency fees by non-union members, shall apply.
77. Worthy to note is that Section 59(1)(b) of the *Labour Relations Act* provides that a CBA is binding, for the duration of its validity, on all unionisable employees employed by the parties to the agreement.
78. Additionally, Section 59(3) of the *Labour Relations Act* provides that the terms of a collective agreement shall be deemed incorporated into the contracts of employment of all employees covered by the agreement.
79. In the present case, it is evident that the Claimant fell within the category of unionisable employees specified under Clause A1 and was therefore covered by the terms of the CBA.
80. What's more, the CBA expressly provides for the payment of an agency fee by non-unionised employees who benefit from its terms. In the context of labour relations, an agency fee is paid by an employee who is not a union member but enjoys the benefits negotiated through a collective agreement.
81. The inclusion of a provision on agency fees implies that the terms of the CBA applied to all unionisable employees, including those who were not union members. Whether or not such fees were actually paid is a distinct matter altogether.



82. It should also be appreciated that extending the benefits of a CBA to all unionisable employees upholds the principle of equal pay for work of equal value, thereby promoting fairness, consistency in employment terms, and the elimination of pay disparities.
83. Accordingly, the Court finds that the terms and conditions of the CBA were applicable to the Claimant.

Reliefs?

Compensatory damages

84. Having found that the Respondent lacked a valid and fair reason to terminate the Claimant's employment and that the process adopted was inconsistent with the procedural requirements under Section 41 of the *Employment Act*, the Court awards the Claimant compensatory damages equivalent to six (6) months of his gross salary. This award takes into consideration the duration of the employment relationship and the circumstances surrounding the termination of the Claimant's employment. For the avoidance of doubt, the compensation will be based on the salary the Claimant was entitled to under the CBA.

Underpayments

85. The Claimant seeks payment of Kshs 1,394,128.00 being the total amount claimed for gross salary underpayment, unpaid leave days, and unpaid leave allowance.
86. It is evident that the claims relating to underpayment amount to continuing injuries. A continuing injury refers to a wrong that occurs not as a single, isolated act or breach, but as one that persists and is committed over a period of time.
87. According to Black's Law Dictionary (9th Edition p.856), a continuing injury is defined as: "An injury that is still in the process of being committed."
88. In addressing the concept of a continuing injury, the Court of Appeal in *The German School Society & another v Ohany & another* [2023] KECA 894 (KLR) held as follows:

"The principles underlying continuing wrongs and recurring/successive wrongs have been applied in employment disputes. A 'continuing wrong' refers to a single wrongful act that results in a continuing injury, while 'recurring or successive wrongs' are those that occur periodically, with each instance giving rise to a distinct and separate cause of action."

89. The Learned Judges of Appeal further referenced the decision of the Supreme Court of India in *Balakrishna S.P. Waghmare v Shree Dhyaneswar Maharaj Sansthan* AIR 1959 SC 798, where the concept was explained thus:

"It is the very essence of a continuing wrong that it creates a continuing source of injury and renders the wrongdoer responsible and liable for the continuance of the said injury. If the wrongful act causes an injury that is complete, there is no continuing wrong, even though the resulting damage may persist. However, if the wrongful act is such that the injury itself continues, then it constitutes a continuing wrong. A distinction must therefore be drawn between the injury caused by the act and the subsequent effects of that injury."



90. The Court of Appeal also cited with approval the decision in *M.R. Gupta v Union of India* (1995) 5 SCC 628, where it was held as follows:

“The appellant’s grievance that his pay was not fixed in accordance with the rules constituted a continuing wrong, giving rise to a recurring cause of action each time he received a salary that was wrongly computed. So long as the appellant remained in service, a fresh cause of action arose every month when he was paid on the basis of the erroneous computation.”

91. The Court further relied on the case of *M. Siddiq v Suresh Das* (2020) 1 SCC, where the Indian Supreme Court held that:

“A continuing wrong arises where there exists a legal, contractual, or other obligation to act or refrain from acting in a certain manner. The breach of such an obligation extends beyond a single act or omission, giving rise to a legal injury of a continuing nature.”

92. Guided by the foregoing authorities, the Court finds that the breaches complained of by the Claimant constitute continuing wrongs, as the Respondent persistently paid him a consolidated salary below the rate prescribed under the CBA and continually denied him the corresponding benefits, including the 28 days’ leave and leave allowance stipulated therein.

93. Section 89 (formerly Section 90) of the *Employment Act* provides for the limitation period applicable to employment claims, including those founded on continuing injury, in the following terms:

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of, or in the case of a continuing injury or damage, within twelve months next after the cessation thereof.” (Emphasis added)

94. In essence, the *Employment Act* prescribes a limitation period of twelve months for claims based on a continuing injury, reckoned from the date the injury ceases. The cessation occurs when the breach or wrongful act comes to an end.

95. Accordingly, a claim premised on a continuing injury must be instituted within twelve months from the date the alleged breach or injury stops.

96. In *G4S Security Services (K) Limited v Joseph Kamau & 468 others* [2018] eKLR, the Court of Appeal interpreted the import of Section 89 in relation to continuing injuries and stated as follows:

“Regarding a ‘continuing injury’, the proviso to Section 90 of the *Employment Act* requires that the claim be made within twelve months next after the cessation thereof. Further, upon the claimant’s dismissal, any claim based on a continuing injury ought to have been filed within one year, failing which it became time-barred.”

97. Turning to the present case, the pertinent question is: When did the continuing injury come to an end? The record bears that the Claimant’s employment was terminated on 21st November 2017. Consequently, pursuant to Section 89 of the *Employment Act*, the Claimant had until 21st November 2018 to lodge a claim for the alleged underpayments.

98. However, the present suit was filed on 15th January 2019, which was beyond the prescribed limitation period for continuing injury claims. Needless to say, the claim was statute-barred at the time of filing.



99. In view of the foregoing, the Claimant's claim for underpayment is unsustainable for being time-barred under Section 89 of the [Employment Act](#).

Unpaid Transport Charges and Disturbance Allowance

100. The Claimant seeks payment of Kshs 100,000/= as compensation for transport charges and Kshs 164,798/= as disturbance allowance, the latter being equivalent to two months of his salary.

101. For clarity, this claim must be distinguished from that relating to underpayments. In this regard, the Respondent's failure to pay the Claimant the disturbance allowance amounted to a single breach, and therefore, under Section 89 of the [Employment Act](#), the applicable limitation period was three years from the date the cause of action arose. In this instance, the cause of action arose on 12th September 2017, when the Claimant was transferred from Nairobi to Lamu.

102. Therefore, the claim under this head was still alive on 15th January 2019, when the Claimant moved the court to file the instant suit.

103. Clause AB30 (ii) of the CBA provides for the payment of a disturbance allowance to an employee who is permanently transferred from one branch to another outside the same town. The allowance payable in such circumstances is equivalent to two months of the employee's basic salary.

104. In the absence of any evidence showing that the Claimant was paid the disturbance allowance upon his transfer from the Respondent's Crossroads Branch to the Lamu Branch, the Court finds that he is entitled to the said allowance.

105. Regarding the claim for transport charges from Nairobi to Lamu, the Claimant sought a global sum of Kshs 100,000/=. It is worth noting that the CBA does not stipulate the specific amount payable or the formula for calculating transport charges payable to an employee on transfer.

106. Consequently, it was incumbent upon the Claimant to substantiate this claim by producing supporting evidence such as receipts showing the actual costs incurred in relocating his family and household goods following his transfer from Nairobi to Lamu. As the Claimant failed to provide such proof, the claim for Kshs 100,000/= as transport charges was not proved to the requisite standard and therefore fails.

Orders

107. Against this background, I enter Judgment in favour of the Claimant against the Respondent as follows: -

- a. A declaration is issued that the termination of the Claimant's employment was unfair and unlawful;
- b. The Claimant is awarded Compensatory damages in the sum of Kshs 429,810.00 being equivalent to six (6) months of the gross salary he was entitled to under the CBA at the time of termination (Kshs + 67,135+Kshs 10,500);
- c. The Claimant is awarded Kshs 134,270.00 being disturbance allowance equivalent to two months of the basic salary he was entitled to under the CBA;
- d. The total award is Kshs 564,080.00;
- e. Interest on the amount in (d) at court rates from the date of Judgment until payment in full;
- f. The Claimant shall also have the costs of the suit.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER 2025.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Olala instructed by Mr. Litoro for the Claimant

Ms. Kadima for the Respondent

Millicent Court Assistant

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 had 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.

