



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E498 OF 2024**

**PUBLIC TRANSPORT OPERATORS  
UNION.....CLAIMANT**

**-VERSUS-**

**NORTH EAST COACHES TRAVELLERS SACCO.....  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant is a trade union and it brings this suit on behalf of its member Mr. John Muturi Ngare (herein after called the grievant). It averred that the grievant was employed as a driver of a bus from January 2010 to December 2022 when his services were terminated by the Respondent. His salary was Kshs. 15,000 upto 2018 when it was increased to Kshs. 20,000 upon being assigned to Mandera route. The salary was allegedly underpaid because he was driving a 51 seater bus

which is classified as Heavy Commercial Vehicles under the General Wages Order.

2. The Claimant, further averred that the termination of the grievants services was done unlawfully without compliance with the procedure set out in section 41 and 43 of the Employment Act. The matter was referred to the Cabinet Secretary of Labour for conciliation but the same was not resolved. The suit herein seeks the following reliefs:

***a. Payment of sum of money claimed under paragraph 5 of the submissions herein above, as terminal dues and compensation to the Grievants (Mr. John Muturi Ngare) employment services amounting to Kshs. 2,971,663.00/= (two million, nine seventy one thousand, six hundred and sixty three Kenya shillings).***

***b. The costs of the suit.***

***c. Interest on (b) and (c) above.***

***d. The issuance of the Certificate of Service within the meaning of Section 51 of The Employment Act, 2007, Laws of Kenya.***

***e. Any other and/or further relief the Honourable Court may deem fit to grant.***

3. The Respondent was served with summons and the Claimant but failed to enter appearance and as such the Claimant obtained direction to proceed by formal prove.
4. The Claimant adopted as evidence the grievant's statement dated 28<sup>th</sup> June 2024 and produced, 7 documents in the list dated 28<sup>th</sup> June 2024 as exhibits as exhibits. The Claimant further relied on the statement of Mr. Festus Okonji the Secretary General of the Claimant dated 28<sup>th</sup> June 2024.
5. In brief, the grievants stated that he was orally employed by the Respondent in January 2010 as a Bus Driver and worked until June 2021 when he was shot while in Mandera. He was hospitalized for six months and in January 2023 [sic], he resumed work and was assigned Moyale route where he worked until December 2022 when he was told not to report to duty for one week.
6. After the week he was told that there was no work for him because another person had been employed in his place. He contended that the termination of his employment was unfair because the mandatory procedure in law was not followed as he was not given any chance to defend himself.
7. He further contended that during the six months he was undergoing medication the employer paid him for four (4) months and refused to pay for 2 months. He further stated that

the employer failed to remit National Social Security Fund and National Hospital Insurance Fund contributions during his employment as required by the law. That the employer further underpaid his salary, and failed to pay him for his accrued leave and off days, and also terminal dues. He contended that the matter was referred for conciliation but the same was not resolved as the Respondent failed to attend meetings. Therefore the Claimant prayed for the reliefs set out in the claim.

8. The Claimant appointed the firm of Mutunga Mwesigwa LLP Advocates on 14<sup>th</sup> October 2025 who filed written submissions dated 7<sup>th</sup> October 2025. In brief it was submitted that the Claimant had proved that the grievant was its member, and that he was employed by the Respondent as a driver. It was further submitted that the termination of the grievant's services was unfair because he was denied a hearing as required under section 41 and 45 of the Employment Act. Therefore the court was urged to award the reliefs sought.
9. Having considered the pleadings, evidence and submissions, the following issues arose for determination:
  - a. *Whether the grievants employment was unfairly/unlawfully terminated by the Respondent.*
  - b. *Whether the reliefs sought are merited.*

## **Analysis**

### **Unfair/unlawful terminated**

10. Section 45 ((1) &(2) of the Employment Act provides that:

***“45. Unfair termination***

***(1) No employer shall terminate the employment of an employee unfairly.***

***(2) A termination of employment by an employer is unfair if the employer fails to prove:***

***(a) that the reason for the termination is valid;***

***(b) that the reason for the termination is a fair reason—***

***(i) related to the employee’s conduct, capacity or compatibility; or***

***(ii) based on the operational requirements of the employer; and***

***(c) that the employment was terminated in accordance with fair procedure.”***

11. In the instant case, the Claimant’s pleadings and evidence have not been controverted by the Respondent. There is evidence that the grievant was employed by the Respondent and after their separation the Claimant lodged a trade dispute for conciliation alleging unfair termination. The court finds that the Respondent unfairly terminated the grievant’s employment without any valid reason and without following the mandatory procedure set out under section 41 of the Employment Act. The section provides that:-

***“(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity 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.***

***(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”***

12. I gather support from **Pius Machafu Isindu v. Lavington Security Guards Limited [2017]KECA 225 (KLR)** where the Court of Appeal held that:

***“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 reasons are valid and fair (Section 45) ... among other provisions. A mandatory and elaborate process is then set up under Section 41 requiring notification and hearing before termination.”***

13. Again, in **George Musamali versus G4S Security Services Kenya Ltd [2016] eKLR** this Court stated that:

***“14. A termination of employment takes two stages. First there must be a valid and justifiable reason for termination and once this is established, the termination must be carried out in accordance with the procedure laid down in the employers’ human resource manual or as set out in the Employment Act or both. The most important thing to be ensured is that there is a valid or justifiable reason for termination and that the termination must be conducted by following a fair procedure. This includes furnishing the employee with the charges he or she is facing and affording them an opportunity to defend themselves. It does not matter whether the employee’s guilt is apparent on the***

***face of the record. He or she must be heard no matter how weak or useless his or her defence might seem to be. However, the conduct of the disciplinary hearing does not have to take the rigour of a Court trial. It suffices that the employee was notified of the charges and afforded an opportunity to respond before the decision to dismiss is made.”***

### **Reliefs**

14. In view of the forgoing finding, I hold that the Claimant is entitled to the prayer for compensation for unfair termination under section 49 and 50 of the Employment Act. The grievant worked for 13 years and he never contributed to the termination through misconduct. Therefore I award him 10 months gross salary as compensation for the unfair termination equally to Kshs. 200,000. I also award him one month salary in lieu of notice under section 35 (1) (c) of the Act equaling to Kshs. 20,000. The section provides for a minimum notice period of 28 days.
15. The Claimant prayer for leave, is exaggerated because it is based on the last salary yet it is pleaded that the grievant did not earn equal salary through out. He started with Kshs. 15,000 and in 2018 it was increased to 20,000. I award him Kshs. 15,000 x 8 years x 21/30 = Kshs. 84,000. He will also

have Kshs.  $20,000 \times 5 \times \frac{21}{30} =$  Kshs. 70,000. The total award for leave is therefore Kshs. 154,000.

16. The Claim for underpayment has not been proved by evidence. It is therefore not awarded. However, the claim for unpaid salary for October and November 2021 is allowed as the Respondent has not adduced evidence to rebut the same. Hence I award the Claimant Kshs. 40,000 for the two months.
17. The claim for service pay is granted because there is evidence that the Respondent never made National Social Security Fund contribution for the grievant. Section 35(6) of the Employment entitles an employee to service pay unless there is proof that he/she was a beneficiary of National Social Security Fund pension or gratuity scheme. Therefore I award him service pay of 15 days salary for each year of service being Kshs.  $20,000 \times 12 \text{ years} \times \frac{15}{30} =$  Kshs. 120,000.

### **Conclusion**

18. I have found that the Respondent terminated the grievants employment unfairly. I have further found that the Claimant is entitled to some of the reliefs sought. Consequently I enter judgment for the Claimant as against the Respondent for payment of the following:
- a) Compensation.....Kshs. 200,000
  - b) Notice.....Kshs. 20,000
  - c) Leave.....Kshs.154,000

d) Unpaid salary.....Kshs. 40,000

e) Service.....Kshs. 120,000

**Total.....Kshs. 534,000**

19. The above award is subject to statutory deductions but in addition to costs and interest at court rates from the date of the judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN COURT AT NAIROBI THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

**ONESMUS MAKAU  
JUDGE**

**Appearance:**

Mutunga for the Claimant

No appearance for the Respondent