

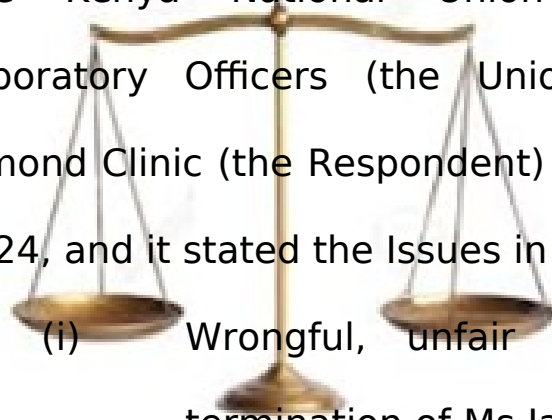
**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. E071 OF 2024
KENYA NATIONAL UNION OF MEDICAL
LABORATORY OFFICERS
CLAIMANT**

v

**THE ALMOND CLINIC
RESPONDENT**

JUDGMENT

1. The Kenya National Union of Medical Laboratory Officers (the Union) sued the Almond Clinic (the Respondent) on 29 January 2024, and it stated the Issues in Dispute as:



(i) Wrongful, unfair and unlawful termination of Ms Jane Mbusi John and refusal to pay terminal benefits.

(ii) Unfair labour practice by the Respondent as against Ms Jane Mbusi John.

2. The Respondent filed a Response and Counterclaim on 12 February 2024. The Union did not file a Response to the Counterclaim.
3. The Cause was heard on 9 June 2025. Ms Jane Mbusi John (the Grievant) and a Senior Clinical Officer with the Respondent testified.

4. The Union filed its submissions on 24 June 2025, and the Respondent on 25 August 2025.

5. The Court has considered the pleadings, evidence and submissions.

Valid Appointment letter

6. The Claimant produced an appointment letter dated 4 January 2021. The letter indicated that the monthly salary was Kshs 25,000/-.

7. The Respondent disowned the appointment letter and produced a different copy of the same date with a monthly salary of Kshs 20,000/-.

8. On the state of the record, the Court is unable to determine which of the letters was genuine.

9. Nevertheless, on the question of remuneration, the Respondent placed before the Court a letter dated 5 March 2022, informing the Claimant of an additional Kshs 5,000/- monthly for superintending over the lab.

10. The Court can therefore conclude that from 5 March 2022, the Claimant's monthly remuneration was Kshs 25,000/-.

Unfair termination of employment

11. The Grievant testified that on 5 August 2023, she received a text message from the Clinic Manager to produce a bar soap she had allegedly taken and that after responding that the bar soap was in the clinic, the husband of the Manager and owner of the clinic called her and accused her of theft from the facility and when she reached out to the Manager to ask for her July 2023 salary, she informed her to leave as she could no longer be entertained.

12. According to the Grievant, the owner of the Clinic called her and told her that she would not be paid any money, and she should go to hell.

13. The Respondent denied terminating the Grievant's employment. Its witness testified that the Grievant deserted work without any notice.

14. Section 35(1)(c) of the Employment Act, 2007, contemplates written notice of termination of employment. In the same vein, section 41 of the Act requires the employer to allow the employee an opportunity to make representations before terminating the contract.

15. None of these steps was taken. The Respondent's case was that the Grievant deserted duty.

16. Desertion of duty is a repudiation of contract. It is also a misconduct warranting summary

dismissal. A prudent employer would issue an ultimatum to the absent employee to explain the absence or risk dismissal.

17. The Respondent herein did not attempt to issue a show cause to the Grievant to explain her failure to report to work, if indeed she had absented herself without permission or other lawful cause.

18. Where an employee has proved an unfair termination of employment occurred, sections 43 and 45 of the Employment Act, 2007 place a burden on the employer to prove that there existed valid and fair reasons for the termination.

19. The Respondent did not provide any evidence that the Grievant deserted employment.

20. It therefore becomes difficult to accept the Respondent's case that this was a case of desertion.

21. The Grievant went to some length to explain the circumstances of separation, and the Court has no reason not to believe her narration.

22. The Court finds that the Respondent unfairly terminated the Grievant's employment.

Pay in lieu of notice

23. With the conclusion on unfair termination of employment, the Court will award the equivalent of 1 month's salary in lieu of notice.



Compensation **NAIROBI**

24. The Grievant served the Respondent for about 3 years, and in consideration of the length of service and the award of pay in lieu of notice, the Court is of the view that the equivalent of 2 months' pay as compensation would be appropriate.

Breach of contract

Salary arrears

25. The Grievant testified that the agreed monthly salary was Kshs 25,000/- (produced a copy of the appointment letter and that the Respondent paid her Kshs 22,000/- during the first month and thereafter, Kshs 20,000/- monthly.

26. The Grievant claimed a total of Kshs 92,000/-.

27. Section 20 of the Employment Act, 2007, obligates an employer to provide an employee with an itemised pay statement. Salary can be paid in cash or through the bank. The Grievant was paid in cash through mpesa.

28. The Respondent did not produce the employment records envisaged under sections 20 and 74 of the Employment Act, 2007 and the Court will allow this head of the claim, but from March 2022 to the time of separation.

Salary for July 2023

29. The Grievant testified she was not paid her earned salary for July 2023, and she claimed Kshs 25,000/-. The Grievant separated from the Respondent on 5 August 2023.

30. The Court will allow this head of the claim.

Accrued leave

31. Section 28(4) of the Employment Act 2007, circumscribes how much leave can be carried forward.

32. The Grievant asserted that she was entitled to accrued leave for 3 years. The Grievant did not disclose whether she applied for leave and was denied.

33. Without a proper evidential foundation for this head of the claim, relief is denied.

Overtime

34. The Grievant did not lay a contractual, evidential or legal basis for the Kshs 325,000/- pleaded as overtime pay, and the same is declined.

Counterclaim

35. The Respondent counterclaimed against the Grievant but did not explicitly set out the particulars of the Counterclaim, and it is for dismissal.

Conclusion and Orders

36. The Court finds and declares that the Respondent unfairly terminated the Grievant's employment and that it was also in breach of contract.

37. The Grievant is awarded:

(i) Pay in lieu of notice Kshs
25,000/-

(ii) Compensation Kshs
50,000/-

(iii) Salary arrears Kshs
54,000/-

(iv) July 2023 salary Kshs
25,000/-

TOTAL

Kshs

154,000/-

38. The award to attract interest at court rates from the date of judgment.
39. The Counterclaim is dismissed.
40. The Union did not demonstrate that it had a recognition agreement with the Respondent.

Each party, therefore to bear its own costs.

Delivered virtually, dated and signed in Nairobi on this 6th day of November 2025.

Radido Stephen, MCI Arb
Judge

Appearances

For Claimant

NAIROBI

Mr Odongo,
Industrial
Relations Officer

For Respondent

Ndungu Mwisyo &
Co. Advocates

Court Assistant

Wangu