



**Ahmed v JS & Company Hardware Limited (Cause E180 of 2020)  
[2025] KEELRC 3360 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3360 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E180 OF 2020  
BOM MANANI, J  
NOVEMBER 28, 2025**

**BETWEEN**

**HASSAN FARID AHMED ..... CLAIMANT**

**AND**

**JS & COMPANY HARDWARE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant avers that the Respondent hired his services as a Store Manager with effect from 1<sup>st</sup> May 2016. He contends that although his starting salary was Ksh. 40,790.00, the amount was increased to Ksh. 81,580.00 with effect from June 2016.
2. The Claimant contends that he discharged his duties diligently over the duration of the contract. Despite this, he asserts that in October 2019, the Respondent unilaterally reduced his salary from Ksh. 81,580.00 to Ksh. 57,106.00 without justification.
3. The Claimant further contends that for the duration of his service, the Respondent did not allow him to take his annual leave. He avers that he was also not paid commuted leave pay.
4. The Claimant avers that on 23<sup>rd</sup> August 2021, he suffered an injury whilst at work forcing him to seek medical attention. He contends that he notified his supervisor of the accident and further informed him that the doctor had recommended that he be given 10 days sick off to enable him attend medication.
5. The Claimant contends that when he sought to resume duty in September 2021, the Respondent's management informed him not to. He avers that in compliance with the aforesaid directions, he stayed away from work awaiting further communication from the Respondent on the matter. However, he contends that he did not get any further advice on the way forward. As such, it is his case that the Respondent unlawfully terminated his services in September 2021 when it advised him not to resume duty.



6. The Claimant avers that the Respondent breached the law by terminating the employment relationship between them without providing reasons for the decision and without affording him a hearing. As such, he prays that the court declares their separation as unlawful.
7. The Claimant also claims the following other reliefs:-
  - a. Underpaid salary from October 2019.
  - b. Compensation for unfair termination of his contract of service.
  - c. Service pay.
  - d. Pay in lieu of accrued leave days.
  - e. Sick leave pay.
  - f. Interest on the amount to be awarded.
  - g. Costs of the suit.
8. The Respondent has opposed the claim. In addition, it has filed a counter-claim.
9. The Respondent avers that on 7<sup>th</sup> August 2020, it held a discussion with the Claimant regarding the manner in which he was discharging his duties as a Store Manager. It contends that following the meeting, the Claimant was re-designated from the position of Store Manager to driver.
10. The Respondent avers that following these changes, the Claimant's salary was adjusted downwards to Ksh. 57,106.00. It contends that the process, including the downward review of the Claimant's salary, was undertaken with the full knowledge and consent of the Claimant. Further, it contends that the Claimant voluntarily continued to serve in the new role and at the reduced salary without raising any complaints until he left employment.
11. The Respondent avers that on 23<sup>rd</sup> August 2021, the Claimant was tasked to make a delivery to a client using its (the Respondent's) vehicle. It contends that the Claimant executed the task and returned the vehicle to its yard.
12. The Respondent avers that the Claimant did not report on duty the following day (24<sup>th</sup> August 2021). It avers that it is only on 27<sup>th</sup> August 2021 that he delivered a medical note stating that he had been involved in an accident and that the doctor had recommended that he be granted sick off for 10 days.
13. The Respondent avers that the Claimant's sick off was to end on 6<sup>th</sup> September 2021. However, he did not report back to work on this date or at all.
14. The Respondent avers that on 18<sup>th</sup> October 2021, it was served with a letter from the Ministry of Labour demanding that the Claimant be paid his terminal dues. It denies that the Claimant's services had been unfairly terminated at the time or at all.
15. The Respondent contends that following an order by the court that parties try to resolve the dispute out of court, the two opened mediation in respect of the dispute. It contends that after the mediation, they recorded a partial resolution of the dispute under which the Claimant was to be paid one month's salary in lieu of notice and compensation at the rate of one month's salary for every year worked.
16. The Respondent avers that although the Claimant accepted the aforesaid settlement, he insisted on the following additional reliefs:-
  - a. Further compensation equivalent to salary for six months and under payment of his salary.



- b. Further service pay.
  - c. Leave for 5 years.
17. The Respondent contends that it did not accede to the further claims by the Claimant. And hence the decision to have the court resolve the matter.
  18. The Respondent avers that it issued the Claimant with a cheque for Ksh. 348,667.30 pursuant to the partial mediation agreement between them. It contends that the Claimant accepted and cashed the cheque.
  19. The Respondent contends that the Claimant's claim for compensation should not be entertained because he has already been compensated pursuant to the mediation agreement. It contends that the Claimant was paid one month's salary for every year worked as compensation for unfair termination of his contract. It further avers that this amount was paid to the Claimant not as an admission of liability but as a show of good faith.
  20. The Respondent contends that since the Claimant has reneged on the mediation settlement and now seeks for the court to settle the dispute between them, the court should bear in mind that he was paid compensation which is equivalent to seven (7) months. However, it points out that this should not be construed as an admission of liability by it.
  21. The Respondent contends that the Claimant's claim for underpayment of salary should not be entertained since the matter was addressed in the mediation agreement. It contends that the agreement is binding on the parties.
  22. The Respondent avers that the Claimant took his leave days as required in law. It contends that any leave days which remained unutilized were commuted and the Claimant paid. It further avers that the Claimant dutifully signed off the payments signifying settlement of the leave claims.
  23. The Respondent contends that the Claimant is not entitled to service pay because he was a registered member of the National Social Security Fund. It contends that it remitted the Claimant's contributions to the Fund and is up to date.
  24. The Respondent asserts that it is the Claimant who in fact owes it money on account of a loan he took to purchase a motor vehicle. It contends that the Claimant did not clear the loan balance of Ksh. 600,000.00 despite several demands. As such, it counter claims for this amount.
  25. In response to the Counter Claim, the Claimant denies that he took a loan from the Respondent to purchase a motor vehicle. As such, he prays for the Counter Claim to be dismissed.

### **Issues for Determination**

26. After analyzing the pleadings by the parties, the evidence and submissions on record, it is apparent that the following are the issues which require determination in the cause:-
  - a. Whether the Claimant's contract of service was improperly terminated.
  - b. Whether the parties resolved the dispute through mediation.
  - c. Whether the Claimant is in any event entitled to the reliefs which he seeks through this action.
  - d. Whether the Respondent is entitled to the reliefs it seeks through the Counter Claim.



## Analysis

27. There is no dispute that the parties to the action had an employment relationship. There is also no dispute that the relationship is no longer subsisting. The controversy is on whether the closure of the relationship was legitimate in law.
28. The events which led to closure of the employment relationship between the parties were triggered by the accident which the Claimant alleges occurred on 23<sup>rd</sup> August 2021. According to the Claimant, he suffered injury on this day when he was transporting materials on behalf of the Respondent.
29. The Claimant avers that he sought medication and was given sick off for ten days. He contends that he notified the Respondent about the accident.
30. The Claimant further contends that when he sought to resume duty in September 2021, the Respondent asked him not to. He contends that the Respondent did not revert to him about when he was to report back to work thereafter.
31. According to the Claimant, his contract of service was irregularly terminated when the Respondent told him to stay away from work. He contends that the Respondent neither gave him reasons for its decision nor afforded him a hearing.
32. Whilst the Respondent does not deny that the Claimant may have suffered a work related injury, it insinuates that the Claimant did not notify it of this fact until 27<sup>th</sup> August 2021. The Respondent avers that the Claimant cleared his assignment on 23<sup>rd</sup> August 2021 and left for the day. However, he did not report back to work the following day.
33. The Respondent contends that it only got to learn that the Claimant had sustained an injury for which he sought medication on 27<sup>th</sup> August 2021 when he forwarded to it a medical document giving him ten days sick off. It contends that although the sick off ended on 6<sup>th</sup> September 2021, the Claimant did not resume duty.
34. The law on termination of a contract of service is now settled. The contract can only be terminated for justifiable cause and in accordance with fair procedure (*Walter Ogal Anuro v Teachers Service Commission* [2013] KEELRC 386 (KLR)).
35. If an employee fails to report to work for unexplained reasons, the employer is not entitled to rely on this absence, without more, to consider that the employee has terminated the contract of service. The employer is expected to try to establish the reasons why the employee has not reported to work and seek his (the employee's) explanation why his contract should not be terminated for unsanctioned absence from duty (*Muani v Epc Builders Limited* [2025] KEELRC 476 (KLR)).
36. Ordinarily, the employer will commence this process by issuing the offending employee a letter of show cause to explain why his contract should not be terminated for unsanctioned absence from duty. If the employee does not respond to the show cause or if his response to the show cause is unsatisfactory, the employer should convene a disciplinary session for him in terms of section 41 of the *akn ke act 2007 11 Employment Act*. It is during this session that the decision to terminate the employee's services will be take.
37. Absent adherence to this procedure, the employer's decision to consider the employment relationship between the parties as terminated will be irregular. This position has been affirmed in a series of decisions by this court (see for instance *Njeri v Lubutse* (Employment and Labour Relations Appeal E182 of 2022) [2023] KEELRC 2985 (KLR) (17 November 2023) (Judgment) & *Lumbasi v Victory*



Consultants Limited (Employment and Labour Relations Appeal E222 of 2023) [2025] KEELRC 1719 (KLR) (12 June 2025) (Judgment)).

38. Although the Respondent asserts that the Claimant did not resume duty after his sick leave expired, it does not provide evidence to demonstrate that it took steps to establish why the Claimant did not resume work. There is no evidence that the Claimant was issued with a show cause letter to account for his absence from work. There is no evidence that the Respondent convened a disciplinary session against the Claimant in terms of section 41 of the *akn ke act 2007 11 Employment Act* before it considered the contract of service between them as terminated.
39. As such, it is apparent that the manner in which the Claimant's employment was closed was irregular. It is so declared.
40. The Claimant's contract having been irregularly terminated, he would ordinarily have been entitled to the reliefs which are provided for under section 49 of the *akn ke act 2007 11 Employment Act*. These include: payment of compensation for unfair termination of his contract of service; and pay in lieu of notice.
41. However, there is evidence that after the parties approached the court over their dispute, they proceeded to mediation. On diverse dates (18<sup>th</sup> February 2023, 16<sup>th</sup> October 2023 and 9<sup>th</sup> November 2023), the parties informed the court that they had reached a partial settlement during the mediation process and that the mediation agreement had been filed. They indicated that the agreement had isolated the contested matters which they asked the court to determine.
42. On 23<sup>rd</sup> March 2025, the Respondent produced in evidence a copy of the mediation agreement with the concurrence of the Claimant. Indeed, the Claimant identified the agreement during cross examination. He confirmed that he signed the agreement even though he contended that he did not agree with it. He further stated in evidence that the mediator isolated the outstanding issues between the parties which the court was to settle.
43. The Claimant confirmed that the Respondent paid him Ksh. 348,667.00 pursuant to the mediation settlement. Although he was initially ambivalent about what the payment covered, he subsequently said that it comprised of notice pay and service pay for five (5) years. He contended that the payment did not include compensation for unfair termination of his contract of service.
44. The question which the court has to address is whether the Claimant, having been paid some amount under the mediation agreement, is entitled to seek further compensation for unfair dismissal from employment. The starting point is to appreciate that the quantum of compensation that is awardable to an employee for unfair termination of a contract under section 49 of the *akn ke act 2007 11 Employment Act* is a matter which is left to the discretion of the court handling the case (*Kenfreight (EA) Limited v Nguti* [2019] KESC 79 (KLR)).
45. The law does not fix the floor for the quantum of compensation that may be awarded. However, it fixes the ceiling to an amount that does not exceed twelve (12) months' of the employee's salary.
46. Further, the court is required to determine the amount to grant as compensation for unfair termination of a contract of service after taking into account several elements under section 49 of the *akn ke act 2007 11 Employment Act*. These include: the duration the parties had been in the employment relationship before it was terminated; the degree to which the employee's conduct contributed to termination of the contract; and the possibility of the employee securing another job.
47. Put differently, the court is not bound to grant the aggrieved employee compensation that is equivalent to what he has claimed. It is only required to award what it perceives to be fair compensation (see



Kenfreight (EA) Limited v Nguti [2019] KESC 79 (KLR) & Bunyuli v Ayany Primary School [2025] KEELRC 2700 (KLR)).

48. In the instant case, the Claimant prays for compensation for unfair termination of his contract which is equivalent to six (6) months of his salary. However and as pointed out earlier, the court is not bound to grant the prayer as claimed. It may grant a lesser amount or no amount at all depending on the circumstances of the case.
49. The evidence which has been tendered by the parties demonstrates that they went to mediation after they filed the instant suit. Following the mediation, they signed a mediation agreement which was tendered in evidence and which stipulates as follows:-

“We the undersigned parties to this action have agreed as follows:-

1. That Hassan Farid Ahmed was an employee of J.S. Hardware Limited. His designation was Stores Manager earning a salary of Ksh. 81,580 = per month.
2. That J.S. & Co Hardware Limited paid Hassan Farid Ahmed’s hospital bill after he sustained an injury while at work place.
3. That when COVID 19 pandemic struck, Hassan Farid Ahmed agreed to deployment as a driver earning a salary of Ksh. 57,106 per month.
4. That Hassan Farid Ahmed be paid by J.S. Hardware & Co. Limited one (1) month salary of Ksh. 81,580 = less taxes for every year worked i.e 5 years. Payment to be made in the course of the month of January 2023.
5. J.S. Hardware & Co. Limited to pay Hassan Farid Ahmed one (1) month salary (Ksh. 81,580 =) in lieu of notice within January 2023.

That the issues left for the court to determine are:-

1. Further compensation of 6 months and underpayment.
2. Further pay for service.
3. Leave for 5 years.

Hassan Farid Ahmed.....claimant

J.s. & Co. Hardware Limited (represented By M S Daisy Chege As Per Attached Authorisation Letter)  
Anne Njagi

Mediator Date 23<sup>rd</sup> December 2022”

50. From the mediation agreement, it is apparent that the parties agreed that the Claimant was to be paid an amount that was equivalent to his salary for one month (agreed during mediation to be fixed at Ksh. 81,580 =) for every year worked. It is further apparent that the parties agreed that the Claimant had been in the Respondent’s service for five (5) years. As such, they agreed that he was to be paid Ksh. 81,580 = x 5 under this head.
51. Although the mediation agreement shows that the parties agreed on payment of the above sum, it does not specify whether the amount was to cover compensation for unfair termination of the Claimant’s contract or service pay. Because of this lack of clarity, the parties have taken different positions on the matter. Whilst the Respondent asserts that the amount was in settlement of the claim for compensation



for unfair termination, the Claimant contends, albeit with a measure of ambivalence, that it was in settlement of service pay.

52. The pay slips which the parties presented in evidence demonstrate that the Claimant was a registered member of the National Social Security Fund. The documents further show that the Claimant was paying a monthly sum of Ksh. 200.00 to the Fund via direct deductions from his salary.
53. Section 35 (5) of the *Kenya Employment Act 2007* entitles an employee who has exited employment to payment of service pay if he was on a monthly salary. However, sub-section 6 of the provision disentitles employees who are members of a registered Pension or Provident Fund, a gratuity or service pay scheme under a Collective Bargaining Agreement or a service pay scheme developed by the employer and the National Social Security Fund from claiming service pay (see also *Wanjiku v Vanela House of Coffees* [2018] KEELRC 663 (KLR)).
54. It is a general principle of law that parties cannot enter into an agreement which is intended to circumvent or defeat an express provision of statute. Such agreement will be contrary to public policy and therefore void and unenforceable (see *Kenya Airways Limited v Satwant Singh Flora* [2013] KECA 545 (KLR) & *David Sironga Ole Tukai v Francis Arap Muge & 2 others* [2014] KECA 155 (KLR)).
55. Section 35 (6) of the *Kenya Employment Act 2007* precludes employees who are registered contributors to the National Social Security Fund from claiming service charge. Therefore, an agreement which purports to circumvent this provision will be void.
56. By the Claimant asserting that the parties agreed to pay him service pay at the rate of one month's salary for every year worked, he is essentially suggesting that the parties were attempting to circumvent section 35(6) of the *Kenya Employment Act 2007* which precludes employees who are members of the National Social Security Fund from claiming service pay. This is because there is evidence that the Claimant was a registered member of the Fund and therefore excluded from claiming service pay. This would render the provision in the mediation agreement purporting to sanction payment of service pay to the Claimant contrary to law and therefore void.
57. Having regard to the foregoing, the court can only conclude that the proposal to pay the Claimant one month's salary for every year worked in the mediation agreement was meant to settle the claim for compensation for wrongful termination of the Claimant's contract and not service pay. Otherwise, the clause will be illegal for offending section 35(6) of the *Kenya Employment Act 2007*.
58. Having regard to the foregoing, I am convinced that the Claimant was paid compensation for unfair termination of his contract under the mediation agreement which was equivalent to his salary for five months before the contested adjustment to his salary. In the court's view and taking into account the elements that have to be considered whilst assessing compensation under section 49 of the *Kenya Employment Act 2007*, the compensation for unfair termination of contract which was paid to the Claimant under the mediation settlement was fair and just. The court takes this view in view of the fact that the Claimant's conduct of absenting himself from work beyond his sick off days directly contributed to the Respondent's decision to terminate his contract. As such, the court is not inclined to order further compensation for the unfair termination of his contract.
59. The mediation agreement also shows that the parties left the question of whether the Claimant was entitled to claim underpayment of salary for determination by the court. The Claimant claims that although his salary was increased from Ksh. 40,790.00 to Ksh. 81,580.00 from June 2016, the Respondent unilaterally and without justification reduced this amount to Ksh. 57,106.00 from October 2019. As such, he claims underpayment of salary from October 2019 to the date his contract was terminated.



60. In response, the Respondent averred that contrary to the Claimant's assertion, the reduction in his salary was discussed and agreed. The Respondent has variously contended that because of concerns about the Claimant's performance and the ramifications of the COVID pandemic, the parties agreed to re-designate the Claimant from the position of Store Manager to driver with effect from April 2020. The Respondent contends that concomitant with this decision, the Claimant's salary was stepped down to Ksh. 57,106.00 with his concurrence.
61. The court has examined the evidence that was tendered by the parties on this issue. First, the Respondent produced a Variation of Terms instrument dated 7<sup>th</sup> April 2020. The document, which was signed by the Claimant, provides as follows:-
- “Dear Hassan Farid Ahmed
- Nairobi
- RE: Variation of Your Terms
- We refer to the above matter and a discussion between you and the Managing Director.
- Kindly note that for the reasons extensively explained and agreed, you will be re-designated from Stores Manager to a Driver.
- Further as agreed, your salary shall be revised from Ksh. 81,580 to Ksh. 57,106.
- Kindly sign a copy of this letter to signify acceptance to the terms.
- Yours faithfully,
- Jatinder Singh
- I, Hassan Farid Ahmed, hereby agree to the terms.
- Signature.....”
62. As pointed out earlier, the Claimant signed the instrument signifying his acceptance of the deployment to the new position under new terms which included a salary reduction. As such, his assertion that the changes to his salary were effectuated by the Respondent unilaterally without his participation is untrue.
63. Second, the Respondent tendered in evidence the mediation agreement which the parties signed. As noted earlier, the parties were in consensus before the mediator that the Claimant was deployed to the position of a driver with reduced salary of Ksh. 57,106 because of the effects of the COVID pandemic. The Claimant having signed the agreement committed himself to its contents. Therefore, he cannot turn around in these proceedings to contend that the decision to step down his salary to Ksh. 57,106.00 was unilateral by the Respondent.
64. Third, in his evidence, the Claimant stated that he suffered injury whilst he was discharging the duties of a driver. By this, he indirectly confirmed that at the time of the accident, he was serving the Respondent in the position of driver and not Store Manager. This further buttresses the Respondent's contention that the Claimant's position was re-designated from Store Manager to Driver with attendant salary changes.
65. Fourth, it is apparent that the Claimant's salary was reduced in October 2019 or April 2020 as stated by the defense. There is evidence that he continued to receive the reduced salary until July 2021 if the pay slips that were tendered in evidence are anything to go by.



66. Although the Claimant continued to receive the reduced salary for a long time, there is no evidence that he ever protested about this development. The Claimant's conduct over the period he was being paid Ksh. 57,106.00 is consistent with the Respondent's position that this amount had been agreed on by the parties. Otherwise, it is difficult to explain why the Claimant continued to receive the reduced salary for this long without any protestation.
67. Having regard to the aforesaid, the court is convinced that the Claimant's salary was reduced after he was removed from the position of Store Manager and re-designated as a driver. The court is further convinced that this process was undertaken in consultation with and with the concurrence of the Claimant.
68. In the premises, the Claimant's assertion that he was underpaid after the Respondent unilaterally reduced his salary is untrue. As such, the claim for underpayment of salary is declined.
69. The mediation agreement also shows that the parties agreed to have the Claimant's claim for further service pay to be determined by the court. As noted earlier in the judgment, the Claimant was a registered contributor to the National Social Security Fund. As such and by virtue of section 35(6) of the *Kenya Labour Act 2007*, he was disentitled from making a claim for service pay. In the premises, his claim for further service pay collapses on this account.
70. The Claimant has prayed for pay in lieu of his accrued leave days. He contends that the Respondent did not allow him to utilize his leave days for the five years he was in its service.
71. The Respondent has resisted the claim. It contends that the Claimant took his leave as provided in law. It further avers that it paid him for all the leave days he did not utilize. As such, it contends that the claim for accrued leave pay should be dismissed.
72. The Respondent has tabled data to back its claim that the Claimant utilized his leave days. This data includes pay slips and alleged computations of the Claimant's leave days and the payments allegedly made to settle them.
73. However, the documents (including the pay slips) do not bear the Claimant's signature to authenticate them. Absent evidence of authentication of the aforesaid data as suggested above, it cannot be ruled out that the Respondent may have generated it to fight off the claim for accrued leave.
74. The Respondent should have tendered more persuasive evidence to demonstrate that the Claimant either took his leave days or was paid in lieu thereof. One would have expected documents such as approved leave application forms which ordinarily are expected to be in the custody of the employer. One would also have expected documents evidencing payment of leave pay such as petty cash vouchers which bear the Claimant's signature, cheques drawn in the Claimant's favour or direct cash transfers of leave pay into his account. None was produced.
75. Under section 10 (6) & (7) and 74 of the *Kenya Labour Act 2007*, the employer bears the burden of maintaining employment records including records on leave for employees. The employer should tender this evidence in court if there is a dispute regarding whether the employee took leave particularly when he (the employer) did not reduce the employment agreement into writing (see section 10 (7) of the *Kenya Labour Act 2007*).
76. This position is further augmented by section 112 of the *Kenya Evidence Act 1963*. Since the employer has custody of the employment records, he is presumed to have special knowledge of the contents of the records. In the event of a dispute in respect of the contents of the records (including on the question of leave), the burden of proof lies with the employer to tender evidence on the matter to



prove or disprove the employee's claim (see also Jackson Muiruri Wathigo t a Murtown Supermarket v Lilian Mutune [2021] eKLR).

77. The Respondent did not tender persuasive evidence to demonstrate that the Claimant either took his leave days during the tenure of his service or was paid in lieu thereof. As such, the Claimant is entitled to be paid in lieu of the accrued leave days.
78. The evidence on record shows that between June 2016 and April 2020, the Claimant's salary was Ksh. 81,580. This was however stepped down thereafter.
79. Between May 2016 and May 2020, the Claimant is granted pay in lieu of his annual leave which is equivalent to one month's salary for every year. This works out to Ksh.  $81,580 \times 4 = \text{Ksh. } 326,320.00$ .
80. Between June 2020 and September 2021, the Claimant's salary averaged Ksh. 57,106.00. He is entitled to leave pay which is equivalent to one month's salary for the approximately one year he worked over this duration, that is to say Ksh. 57,106.00.
81. The sum total for accrued leave is therefore Ksh.  $326,320.00 + \text{Ksh. } 57,106.00 = \text{Ksh. } 383,426.00$ . Accordingly, I enter judgment for the Claimant for the aforesaid amount of Ksh. 383,426.00.
82. Although the Claimant had sought for sick leave pay in the initial Statement of Claim, the mediation agreement shows that the parties did not present it as one of the issues that the court was to determine in the post mediation process. In the court's view, the parties abandoned the claim for sick leave pay through the mediation agreement. As such, the court will not address it.
83. I award the Claimant interest on the aforesaid amount at court rates from the date of this decision.
84. The Respondent lodged a claim for Ksh. 600,000.00 allegedly on account of a loan it advanced the Claimant to purchase a motor vehicle. However, it did not tender cogent evidence to establish this claim. In any event, this was not one of the matters which the parties identified for the court to determine in the post mediation process. As such, the Counter Claim is dismissed.
85. Since the Claimant has partially succeeded in the suit, I grant him half costs of the case.

### **Summary of Award**

86. After evaluating the evidence on record, the submissions by the parties and the applicable law, the court makes the following findings and attendant orders:-
  - a. The court finds that the Respondent irregularly terminated the Claimant's contract of service.
  - b. However, the court finds that the Claimant was adequately compensated for the unfair termination of his contract through the award that was made to him through the mediation process. As such, his claim for further compensation is declined.
  - c. The court declines the Claimant's claim for service pay as this offends the express provisions of section 35(6) of the *Kenya Employment Act 2007*.
  - d. The court declines the Claimant's plea for recovery of underpayments since there is evidence that his salary was reduced from Ksh. 81,580.00 to Ksh. 57,106.00 with his knowledge and concurrence.
  - e. The court awards the Claimant the sum of Ksh. 383,426.00 on account of accrued leave days.



- f. The court finds that the parties did not identify the claim for sick leave pay as one of the matters to be determined by the court in the post mediation trial. As such, the claim for sick leave pay is declined.
- g. The amount that has been awarded to Claimant attracts interest at court rates from the date of this decision.
- h. The court disallows the Respondent's Counter Claim for want of proof.
- i. The court awards the Claimant half costs of the suit.

**DATED, SIGNED AND DELIVERED ON THE 28<sup>TH</sup> DAY OF NOVEMBER, 2025**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

..... for the Claimant

.....for the Respondent

**ORDER**

In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B. O. M MANANI**

