

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
OF KENYA AT KITALE

CAUSE NO. E004 OF 2024

(Before Hon. Lady Justice Maureen Onyango)

COSMAS MNYIKA

CLAIMANT

VERSUS

MARY MEALS KENYA

RESPONDENT

JUDGMENT

1. Vide his Statement of Claim dated 24th July, 2024 the Claimant avers that he was initially employed by a non-governmental organisation registered under No. OP.218/051/15-082/12376 and that after the repeal of the Non-Governmental Organizations Act, 1990 by dint of section 70 of the Public Benefits Organizations Act, No. 18 of 2013 which came into effect on 14th May, 2024, the Respondent enjoys the status of a body corporate by dint of section 10(3) of the Public Benefits Organizations Act.
2. The Claimant states that the Respondent has an office in Lodwar within Turkana County.

3. The Claimant states that he sat for his Kenya Certificate of Secondary Education in the year 1993 and attained a mean grade of C (plain) at the St. Mary's H. S. Lushangonyi. He thereafter undertook a suitability test for a driver and on 30th September, 2016 he was found to be a competent driver and issued with a certificate by the Ministry of Transport and Infrastructure. He was admitted to the Kenya Institute of Management and pursued a Diploma in Project Management. He subsequently pursued a Bachelor of Arts in Development Studies (Project Management) Degree at the Management University of Africa successfully.
4. The Claimant avers that he was engaged by the Respondent on the basis of his Kenya Certificate of Secondary Education mean grade C (plain), driver's licence and his suitability test for a driver's certificate by Mary Meals Company incorporated in the United Kingdom and having a registered branch in Kenya under company no. CF/2014/135150 and of Postal Box 44-30100, ELDORET as a driver on 1st November, 2016 and he rose through the ranks on merit to the position of a Security and Risk Manager.

5. The Claimant states that Mary Meals Company commenced a process of winding up it's operations in the Republic of Kenya on 17th April, 2023 which included declaring it's staff redundant pursuant to section 40 of the Employment Act, Cap.226.
6. The Claimant further states that on the 17th April, 2023, he entered into a tripartite agreement with Mary Meals Company and the Respondent by which his employment with Mary Meals Company was terminated pursuant to clauses G and 21 of the agreement.
7. The Claimant states that amongst the salient terms of the tripartite agreement were that: -
 - a. The Claimant was to execute an employment contract with the Respondent.
 - b. The Claimant released Mary Meals Company his erstwhile employer from any claims, obligations and liabilities in connection with the employment and it's termination.
 - c. The Claimant agreed that he had no claim of whatsoever nature against the erstwhile employer

8. The Claimant states that on 20th April, 2023 he granted his consent to the termination of his employment with his erstwhile employer and agreed to enter into a new contract with the Respondent. By the grant of the consent the contract with his erstwhile employee became extinguished with no claims arising from it.
9. The Claimant on the 19th April, 2023 executed a new contract with the Respondent in which he was to be engaged as a Security and Risk Manager with effect from 1st May, 2023 on a permanent contract.
10. By clause 7.1 of the employment contract it was acknowledged that the Claimant had successfully completed service on probation.
11. The Respondent submitted to the Claimant a job description in tandem with section 10(2) of the Employment Act, which *inter alia* set out the essential qualifications skills and experience for the position to be a bachelor's degree in strategic management, Security or Risk Management, Business Administration, Logistics and Supply Chain Management or a relevant subject or equivalent level of professional experience which the

Claimant possessed by dint of his Bachelor of Arts in Development Studies-Project Management Option.

12. It is the Claimant's case that he served the Respondent with diligence and dedication until 23rd April, 2024 when he was served with a notice to show cause why he should not be summarily dismissed over falsification of his Kenya Certificate of Secondary Education (KCSE) certificate.
13. The Claimant states that he tendered his response to the show cause letter on 29th April, 2024, denying the allegations. He states that he was thereafter issued with an invitation to a disciplinary hearing on 2nd May, 2024. That he attended the disciplinary hearing and on 3rd June, 2024 he was summarily dismissed from employment.
14. The Claimant states that he appealed against the decision to dismiss him and was invited for hearing of his appeal on 1st July, 2024. He was later informed by letter dated 8th July, 2024 that his appeal was unsuccessful and the summary dismissal had been upheld.
15. The Claimant avers that the summary dismissal was unfair and unlawful for reasons that:

- a) The agreement dated 17th April, 2023 effectively terminated the contract between Mary's Meals Company which was his erstwhile employer under which it had the sole mandate to question and query the validity of any dealings entered into with it to the exclusion of the Respondent and clause 2.1 of the agreement was very explicit.
- b) Mary's Meals Kenya, the Respondent, is bereft of privity of contract to carry out any disciplinary inquiry on events arising from the contract between Mary's Meals Company and the Claimant.
- c) The contract between Mary's Meals Kenya and the Claimant dated the 20th April, 2023 constituted a novel relationship which commenced on the 1st May, 2023 based on clause 1.1 therein and it could not retrospectively apply to matters that allegedly arose in the year 2016.
- d) By clause 3 of the agreement dated the 17th April, 2023 Mary's Meals Company not only terminated the contract of employment between it and the Claimant but also all existing claims as between the Claimant

and itself which became spent and which included the validity of the formation of the contract. Effectively Mary's Meals Kenya had nothing to take over that entitled it to carry out a disciplinary inquiry that could result in the termination of the employment contract that commenced on the 1st May, 2023.

- e) The employee's consent executed between Mary's Meals Company and the Claimant was explicit that the contract of employment was terminated and by forbearance of any claims under the said contract by way of reciprocation and in recognition of the maxim *quid pro quo* Mary's Meals Kenya cannot take any adverse action against the Claimant arising from the said contract which is in any event now spent.
- f) The current employment contract commenced on 1st May, 2023 as between Mary's Meals Kenya and the Claimant with the designation of a Security & Risk Manager and matters of the Claimant being a driver at Mary's Meals Company could not be raised in it.

- g) Mary's Meals Kenya and the Claimant are bound by the rule which confines parties to a written contract to the four corners of their document also known as the parole evidence rule or extrinsic evidence rule and as such matters arising under the contract between myself and Mary's Meals could not be addressed by yourself as constituting a basis to terminate the employment contract.
- h) Section 41 of the Employment Act, 2007 was observed in breach as the Claimant was not accorded a fair hearing as the decision to terminate was premeditated and actuated by spite and malice with the immediate process of putting into motion the recruitment of the Claimant's possible replacement.
- i) The Respondent engaged in an unfair labour practice in clear breach of article 41 of the Constitution of Kenya, 2010 by summarily dismissing the Claimant over matters that did not arise in the contract which commenced on the 1st May, 2023.
- j) An unfair termination of employment under section 45 of the Employment Act, 2007 was effected over

matters that did not arise during the pendency of the contract that commenced on the 1st May, 2023.

- k) The matters alleged to lead to termination by summary dismissal could not fit those contemplated in section 44 of the Employment Act, 2007 in order to be deemed to be amongst those a reasonable employer would contemplate to terminate when they never arose within the scope of the contract that commenced on the 1st May, 2023.
- l) The test of proportionality in meting out the sanction of summary dismissal was breached and the management was actuated by malice as it opted for the most severe sanction as communicated in the Respondent's letter dated the 3rd June, 2024.
- m) An opportunity to tender mitigating factors was never accorded to the Claimant which is a contradiction of what the termination letter alludes to as lack of tendering mitigating factors.
- n) The Respondent engaged in an unfair labour practice under article 41 of the Constitution of Kenya, 2010 by denying the Claimant entitlement to representation

at the appeal hearing while he had ceased being its employee.

- o) The Bill of Rights having vertical and horizontal application, the Respondent breached the provisions of article 47 of Constitution of Kenya, 2010 by denying the Claimant the opportunity to be legal presentation during the appeal hearing.

16. The Claimant seeks the following remedies against the Respondent in his Statement of Claim:

- a) The Claimant seeks a declaration that his summarily dismissal from employment was unfair, unlawful and wrongful.
- b) The Claimant seeks for an award of compensation of: -
 - i. 1 month notice pay Ksh. 229,719
 - ii. 12 months' salary as damages @ Ksh. 229,719 - Ksh. 2,756,628.
- c) The Claimant seeks for a declaration that the Respondent breached his rights to fair labour practices and fair administrative action under article 41 and 47 of the Constitution of Kenya,

2010 respectively by the denial of legal representation during the hearing of the appeal coupled with an award of damages.

- d) The Claimant avers that during the employment relationship the Respondent breached the basic minimum conditions of employment as to housing provided for in section 31(1) of the Employment Act and prays based on the employment practice that 15% of the basic pay be awarded as house allowance thus Ksh. 34,457.85 for 11 months when the employment between the parties lasted thus sh.379,036.35.
- e) The Claimant avers that during the employment relationship, the Respondent allocated him higher responsibilities being in addition to his employment contract to act as the Global Security and Risk In-charge but he was not compensated during the period of November, 2023 to January, 2024 and the Claimant claims for remuneration according to the Higher Responsibility Allowance policy as follows:--

Salary sh.1,619,500

Pension @8% sh. 129.500

Sh.1,749,000

f) The Claimant prays for reinstatement and/or re-engagement to the position of Risk and Security Manager or a similar position without loss of benefits and/or seniority with back salary from June, 2024 at s h.229,719 basic salary plus house allowance of sh.34,457.85 until the date of judgment.

g) Costs and interests.

17. The Respondent filed a Memorandum of Response dated 26th November, 2024 in which it admits employing the Claimant. The Respondent however avers that despite his averment that he attained grade C (Plain) in his Kenya Certificate of Secondary Education examination the Claimant at the time of applying for employment in 2016 presented a forged KCSE Certificate indicating that he had attained a mean grade of C+ (Plus) in his KCSE.

18. The Respondent avers that it engaged the Claimant on the basis of the forged KCSE Certificate which he presented at the time of applying for the position of driver.

19. On its identity the Respondent states that the Claimant's averments at paragraph 5 of the Statement of Claim are misleading and clarifies that:

- a) Mary's Meals is an organization incorporated in Scotland in the United Kingdom, and having a registered branch in Kenya, which was engaged in school feeding programs in various parts of Kenya in support of needy and vulnerable learners.
- b) Sometime in 2023, Mary's Meals registered a local Non-Governmental Organization pursuant to the provisions of the Non-Governmental Organizations Act with the view of the locally registered entity taking over the running of operations in Kenya.
- c) The locally registered entity that was created to take over the running of programs in Kenya was

the Respondent herein, Mary's Meals Kenya (MMK).

- d) The Scottish entity, Mary's Meal, is the principal member of Mary's Meal Kenya (the locally registered entity).
- e) As the Scottish entity was ceasing operations and handing over the operations in Kenya to the locally registered entity, there was a legal necessity to initiate redundancy proceedings in relation to the employees of the Scottish entity in Kenya.

20. The Respondent agreed with the Claimant on the facts relating to his employment history. It stated that the Claimant gave his consent for his employment to be taken over by the Respondent from the Scottish entity.

21. The Respondent states that the Claimant was issued with a Notice to Show Cause dated 29th April, 2024 setting out the accusations against him being that he presented a falsified Kenya Certificate of Secondary Education certificate for purposes of securing employment. It states that the documents and details presented by the Claimant in

response to the notice to show cause did not tally with the details contained in the KCSE Certificate presented by him at the time of his initial employment.

22. The Respondent states that it gave the Claimant sufficient time to prepare for the hearing and informed him of his right to be accompanied by a fellow employee of his choice to the hearing. That after the hearing the Panel found the Claimant guilty of the charge laid against him and a termination letter was duly issued to him.

23. The Respondent avers that according to the terms of the Tripartite Agreement entered into between Mary's Meals, Mary's Meals Kenya and the Claimant, he effectively transferred his employment to the Respondent. That as such there was continuity of employment which fact is evidenced by the various clauses of the Tripartite Agreement among them:

- a) Recital (F) of the Agreement which provided inter alia that in lieu of being declared redundant, the Claimant agreed to the arrangement under which his employment would be transferred to the Respondent herein;

- b) Clause 1.1 which provided that the Respondent herein would take over all the rights and liabilities associated with the Claimant's employment with Mary's Meals; and
- c) Schedule 3 of the Agreement which provided that the Claimant's years of service as well as accrued leave days would be carried over to the Employment with the Respondent herein.

24. The Respondent avers that-

- b) In view of the forgoing provisions of the Tripartite Agreement, the Respondent herein, as the Claimant's employer, was entitled to initiate disciplinary proceedings as it did, upon discovering the Claimant's previous impropriety. This is especially in view of the sensitive position held by the Claimant which required a high level of trust.
- c) In view of the foregoing, any matters that arose at the time of the Claimant's initial employment were relevant to the Claimant's employment with the Respondent herein and the Respondent was entitled to take the steps it did in the circumstances.

d) As already averred above, in view of Clause 1.1 of the Tripartite Agreement, the Respondent herein was entitled to carry out the disciplinary action it did in the circumstances. Clause 1.1 of the Tripartite Agreement provided explicitly that the Respondent took over all the rights and liabilities arising from the Claimant's transferred employment.

25. The Respondent avers that the Claimant's contract provided for payment of consolidated salary and he is not entitled to house allowance pursuant to section 31 of the Employment Act as his salary included house allowance.

26. The Respondent avers that the termination of the Claimant's employment having been for valid grounds and having complied with proper procedure the Claimant is not entitled to any of the remedies sought in his claim. It prays that the claim be dismissed with costs

Evidence

27. At the hearing the Claimant testified on his own behalf as CW1 while the Respondent called Geofree Githinji, its Head of Human Resource and People Development who testified on its behalf as RW1. The parties thereafter filed and

exchanged written submissions. The Claimant's submissions are dated 1st July, 2025 while the Respondent's are dated 22nd September, 2025. Both CW1 and RW1 largely adopted and relied on their written statements filed in court which mirror their pleadings as summarized herein above.

Analysis and Determination

28. Having considered the pleadings, evidence and submissions on record, the issues for determination are whether the termination of the Claimant's employment was valid both substantively and procedurally and if he is entitled to the remedies sought.

29. Termination of employment is provided for in sections 41, 43 and 45 of the Employment Act. Section 41 provides for notification and hearing before termination on grounds of misconduct as follows:

(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.

30. Section 43 provides for proof of reason for termination as follows:

(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the

time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

31. Section 45(2) provides-

(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.

32. In the instant case it is common ground that the Claimant was first employed by Mary's Meals International incorporated in UK. It is further common ground that in 2023 Mary's Meals International registered a local NGO,

Mary's Meals Kenya and offered the employees to opt either to be declared redundant or a transfer of services to Mary's Meals Kenya. The Claimant opted for transfer of services and through a tripartite Agreement dated 17th April, 2023, between Mary's Meals International, Mary's Meals Kenya and the Claimant, the employment of the Claimant was transferred to Mary's Meals Kenya.

33. According to the Claimant, his employment with Mary's Meals International was extinguished with no claims arising from it and he entered into a new contract with Mary's Meals Kenya, the Respondent, which according to him is a separate entity registered under the Non-Governmental Organizations Coordination Act. That under section 12 of the Act, the Respondent is a body corporate with perpetual succession, capable of suing and being sued, taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property and entering into contracts in its name.

34. The Claimant avers that he was summarily dismissed based on events that occurred before the existence of his employment contract with the Respondent. That the

contract between the Claimant and Mary's Meals International was effectively terminated on 17th April, 2023 vide the tripartite agreement which states at Clause 2.1 thereof that **"The employment contract between the employee and MM is hereby terminated on the date of execution of this agreement."** That the contract between him and the Respondent commenced on 1st May, 2023 based on clause 1.1 of the said contract. That by Clause 3 thereof the all existing claims, if any, became spent which included the validity of the formation of the contract. He submits that the contract could not apply retrospectively to matters that arose in 2016.

35. The Claimant relied on the decision in ***Aineah Liluyani Njirah v Aga Khan*** Health Services where the court discussed privity of contract.

36. For the Respondent it is submitted that the transfer of the Claimant and all other employees included transfer of employee files, and taking over all rights and responsibilities arising from his previous employment with the Respondent's parent entity. It is submitted that schedule 3 of the Tripartite Agreement provided that the

Claimant's years of service as well as accrued leave days would be carried over to the employment with the Respondent. That one of the rights the Respondent took over was the right to terminate employment for offences committed against the former employer should the former employer have discovered the offence previously.

37. The Respondent submitted that the Claimant acknowledged this continuity when he sought Higher Responsibility Allowance based on the policy of the previous employer published in 2019 before the Respondent came into existence.
38. From the point of view of the court, the first port of call is to establish whether there was falsification of KCSE Certificate by the Claimant for purposes of getting employment with the Respondent's predecessor.
39. It was the evidence and submission of the Claimant that he was employed by Mary's Meals International on the basis of his Kenya Certificate of Secondary Education mean Grade C (plain), a driver's licence and his suitability test for driver's certificate by Mary Meals International on 1st November,

2016. That he rose through the ranks on merit to the position of Security Risk Manager.

40. The letter informing the Claimant of the outcome of the disciplinary hearing dated 3rd June, 2024, is reproduced below:

June 3, 2024

To

Cosmas Righa Mnyika

The Security and Risk Manager

Mary's Meals Kenya

Lodwar.

Dear Cosmas,

Subject: Allegation of Misconduct and Summary Dismissal

Reference is made to your disciplinary hearing that the was Disciplinary Hearing held virtually on 17th May 2024 in which you attended. You were given the opportunity to be accompanied by a work colleague

of your choice during the hearing. However, you chose to attend unaccompanied.

The purpose of the hearing was to explain to you the reason for which the organization was considering taking disciplinary action against you up to and including termination based on the allegation of presenting a falsified document to secure employment in the organization. The alleged misconduct contravenes the organization's code of conduct policy. The hearing meeting was also an opportunity for the panel to hear and consider the representations which you made on the grounds of the alleged misconduct.

During the hearing, you were warned that if the allegations were proven true, it would be considered gross misconduct under the organization's Disciplinary Policy & Procedures, potentially leading to the termination of your employment. You confirmed that you understood the gravity of this alleged misconduct.

In the hearing meeting you stated that the copy of Kenya Certificate of Secondary Education (KCSE) in question was not yours nor did you submit it. Probed further about the application pack, you admitted that the application letter for the position of a driver in the organization came from you, that the Curriculum Vitae had similar details as you except for the grade C+ (plus) and that the rest of the certificates (namely, a diploma certificate in sales and marketing from the Institute of Commercial Management, your Kenya Certificate of Primary Education (KCPE) and your school leaving certificate from St. Mary's High School Lushangonyi were indeed submitted by you.

The management has come to the conclusion that the Kenya Certificate of Secondary Education (KCSE) presented during your job application process, which has been identified as falsified, was knowingly submitted by you. This document was also referenced in your curriculum vitae that you denied during the hearing meeting.

It is highly improbable that the similarities between your application pack and another, which contained identical details barring the falsified document and a corresponding curriculum vitae, are coincidental. It is important to clarify that the organization does not, under any circumstances, submit employment applications on behalf of potential employees, let alone applications containing academic certificates that have been forged.

You have failed to provide any mitigating factor and therefore it is the opinion of the management that gross misconduct attributed to your conduct indeed occurred and your action is a gross misconduct and violation of the MMK's Code of Conduct Policy. Having considered all alternatives, the organization has decided to take the most severe sanction an employer can take against an employee and hereby summarily dismisses you effectively Monday, June 3, 2024.

You are not entitled to notice pay. The HR and administration department will arrange for payment

of your salary up today June 3, 2024, including annual leave days that you have accrued. The organization's match up to your pension fund will not be withdrawn. It is important to note that this action is taken at the discretion of the Management.

You have the right to appeal against this decision and should you wish to do so you should write to p&c@marysmeals.org within 5 (five) working days of receiving this letter giving the full reasons why.

Yours sincerely,

For & on behalf of Mary's Meals Kenya

Signed

Geofree Githinji Mbogo

Head of Human Resource & People Development

Cc: Line Manager

41. During the hearing the Claimant denied forging the certificate. He however agreed that during the disciplinary hearing he admitted that the CV presented to him by the

Respondent was his and it indicated that he attained a mean grade C+ (plus) in KCSE.

42. From the evidence on record the court is persuaded that the Claimant presented a forged KCSE Certificate indicating that he had scored a mean grade of C+ (plus) in KCSE when in actual fact he scored a C (plain). The certificate presented by the Claimant at the time of applying for employment was therefore a falsified document.
43. The next issue is whether Mary's Meal Kenya, the Respondent, could use documents from the Claimant's former employer Mary's Meal International, to subject him to disciplinary process leading to termination of his employment. In the first place, uttering a false document is a criminal offence for which an employee would be liable to summary dismissal by any employer. The same would apply if a later employer found out that in previous employment the employee had uttered a falsified document for purposes of gaining employment.
44. In the instant case Mary's Meals Kenya inherited the Claimant from Mary's Meals International, together with all his employment records. It did not carry out a fresh

recruitment process for the Claimant but relied on the recruitment process by Mary's Meals International. He thus gained the employment with the Respondent based on the documents and recruitment process with the previous employer Mary's Meals International. If the new employer discovered any anomaly with the previous recruitment process which it relied on to take over the Claimant, it was entitled to take disciplinary action against the Claimant as these were the documents in its possession as transferred by the previous employer on which it relied to employ him.

45. Section 13 of the Employment Act provides for transfer of employment as follows:

(6) Where, after an employer has given to an employee a statement under section 10 either—

(a) the name of the employer is changed without any change in the identity of the employer; or

(b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken, and subsection

(7) applies in relation to the change,

the person who is the employer immediately after the change is not required to give to the employee a statement under section 12 but the change shall be treated as a change within subsection (1).

(7) Subsection (6) applies in relation to a change if it does not involve any change in any of the matters, other than the names of the parties, particulars of which are required by sections 10 and 11 to be included or referred to in the statement under subsection (1).

(8) A statement under subsection (1) which informs an employee of a change referred to in subsection (6)(b) shall specify the date on which the employee's period of continuous employment began.

46. Since the Claimant's employment by the Respondent was a transfer of employment with all rights and obligations, where the previous employer had a right to discipline before the transfer of employment that right was inherited by the new employer.

47. I therefore find that the Respondent was entitled to take disciplinary action against the Claimant for obtaining employment with its predecessor using forged documents.

48. The next issue is whether the process of termination was fair as provided under section 41 of the Employment Act. The Claimant admitted that he was issued with a show cause letter which he responded to, was invited for a disciplinary hearing and informed of his right to be accompanied by a fellow employee of his choice, he attended the disciplinary hearing and was subsequently issued with a letter of dismissal. He appealed against the dismissal and was heard after again being informed of his right to be accompanied by a fellow (or former) colleague of his choice and that the decision to dismiss him was upheld by the appeal panel. The letter informing him of the outcome of appeal explained the reasons for upholding the decision to dismiss the Claimant.

49. From the foregoing I find that the Respondent complied with fair procedure.

50. Having found that there was valid reason for termination, that the Respondent had a right to discipline the Claimant for infractions committed before the transfer of his employment and that the termination process was fair, I now turn to consider the remedies sought by the Claimant.

51. The Claimant prayed for a declaration that his summary dismissal from employment was unfair, unlawful and wrongful. Based on my findings above, this prayer fails and is dismissed.
52. The Claimant also prayed for 1 months' salary in lieu of notice and for compensation. Having not found that the termination of his employment was unfair, the Claimant is not entitled to these prayers.
53. The Claimant further prayed for a declaration that his rights under Articles 41 and 47 were violated by denial of legal representation during the hearing of his appeal and prayed for an award of damages for the said violations of his rights. No evidence was adduced in respect of this head. The evidence on record indicate that the Respondent complied with the Employment Act which is the primary legislation in respect of termination of Employment. The Act does not provide for legal representation in internal disciplinary processes by employers.
54. The Claimant prayed for house allowance. His employment contract specifically provided that his salary was consolidated. He is thus not entitled to separate payment

of house allowance as the same was included in the consolidated salary as provided in section 31 of the Employment Act.

55. The Claimant prayed for Higher Responsibility Allowance on the basis that the Respondent allocated him higher responsibilities being in addition to his employment contract to act as Global Security and Risk Incharge but he was not compensated during the period of November, 2023 to January, 2024 when he worked in that position. He seeks a sum of Kshs. 1,619,500 and pension of Kshs. 129,500. The Respondent admitted that the Claimant was given higher responsibilities for 2.25 months for which he was not paid but stated that the same was limited to 3 to 4 hours which translated to 7.5% to 10% of his time spent on the higher responsibilities. That based on the base salary of the Global Security Lead of Kshs. 543,585.74 the Claimant is only entitled to Kshs. 122,306,78 for the 9-week period he acted.

56. The Respondent has given the formular and tabulation of the same at page 57 and 58 of its bundle of documents, which the Claimant did not controvert. It has indicated that

the Acting Allowance is supposed to be based on the difference between the lowest salary of the position the employee acts in, less the salary of the employee. This is in conformity with the law as set out in rule 10 of the Regulation of Wages and Conditions of Employment (General) Order which provides:

10. Acting allowance

Where an employee is required to work for a period of not less than one month in an occupation or grade for which the basic minimum wage prescribed under paragraph 3 is higher than the basic wage normally earned by the employee, he shall be paid an acting allowance at a rate not less than the difference between that higher basic minimum wage and his basic wage

57. I therefore award the Claimant Kshs. 122,306.78 as acting allowance for the period he acted in the higher position. Acting allowance or any other allowances do not constitute pensionable income. The prayer to include pension on the acting allowance therefore fails and is dismissed.

58. The Claimant further prayed for reinstatement. Having found that he was not unfairly dismissed, he is not entitled to an order of reinstatement.

59. In end, the only prayer that has succeeded is that of acting allowance. In conclusion, judgment is entered for the Claimant against the Respondent in the sum of Kshs. 122,306.78.

60. The same shall attract interest from the date of judgment.

61. Each party shall bear its costs of this suit.

**DATED, DELIVERED AND SIGNED AT ELDORET
THIS 21ST DAY OF NOVEMBER, 2025.**

**M. ONYANGO
JUDGE**