

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. E236 OF 2022**

*(Before D.K.N. Marete)*

**WALLACE NJAU MWAI.....CLAIMANT**  
**VERSUS**  
**MASAI KENYA LIMITED.....RESPONDENT**

**JUDGMENT**

This matter was originated by way of a Statement of Claim dated 22nd March, 2022. It does not disclose any issue in dispute on its face.

The Respondent in a Statement of Respond dated 10th February, 2024 denies the claim and prays that it be dismissed with costs

The claimant's case is that he joined the Respondent's employment in January, 2020 as a driver. He worked until only 20th September, 2021 (1 year, 9 months). His stint of service was diligent, loyal, professional and blemish free.

The claimant's further case is that he earned Kshs.22,000.00 as at the time of departure from work or termination with Kshs.5,000.00 as his contribution was to the Masai Cement Sacco.

The claimant's other case is that on 20th September, 2022, he was falsely accused of overloading the vehicle and summarily dismissed without due process. He was neither given notice or was he awarded an opportunity to defend himself. He had not done anything wrong to warrant dismissal. The claimant further avers that his dismissal was wrongful, unlawful and unjustified. He was not paid terminal dues either.

The claims thus;

- a) *Salary for the month of September 2021.....Kshs.22,000/-*
- b) *One month's salary in lieu of notice.....Kshs.22,000/-*
- c) *Simba Cement Sacco contributions.....Kshs.5,000/-(@KES. 1,000 per month for 5 months)*
- d) *Compensation for unlawful dismissal.....Kshs.264,000/-(22,000 x 12 months) **TOTAL.....Kshs.313,000/-***

This is besides salary in lieu of notice, Sacco contribution and issuance of certificate of service and over compensation for unlawful termination of employment.

He prays thus;

- a) *A declaration that the Respondent unlawfully and unfairly dismissed/terminated the Claimant's services.*
- b) *Judgment be entered against the Respondent for terminal benefits as particularized in paragraph 13 at Ksh.313,000/-*
- c) *Interest on (b) above at commercial rate from the day of filing the claim herein until payment in full.*
- d) *Costs of the suit.*
- e) *Ant other and/or further relief that this court may deem just and fit to grant in the circumstances.*

The Respondent's case is a denial of the claim.

It is their case that the Respondent was employed on a renewable fixed period on one (1) year but left the company's premises never to report back to work again. This was a case of desertion and or

absconding of duty without lawful cause and without communicating his whereabouts to the employer/respondent. A case of summary dismissal therefore does not arise and neither was the employer obligated to pay and dues owing to the nature of separation.

The claimant closes by positing that the claim is frivolous, baseless and brought out in bad faith.

The issues for determination therefore are;

1. Whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful.
2. Whether the claimant is entitled to the relief sought.
3. Who bears the costs of this course?

The 1st issue for determination is whether the termination of the employment of the claimant by the Respondent was wrongful, unfair and unlawful. The claimant in his written submission dated 26th February, 2025 seeks to rely on the authority of section 45(1) and (2) of the Employment Act, 2007 which compels a valid reason in the event of termination of employment. This is as follows;

*"(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."*

In further buttressing his case the claimant sought to rely on the authority of **Ronald Nyambu Daudi v Tornado Carriers Limited [2019] [2019] KEELRC 2150 (KLR)** where it was observed that employers must show effects taken in tracking a deserter employee. In the circumstances of this case, this has not been established and the allegations of desertion remains unsupported.

In rebuttal, the Respondent in their written submissions dated 3rd June, 2025 reiterates their case desertion of duty and adds that efforts to trace the claimant were futile and fruitless as he was could be reached on his mobile phone number. This would amount to a good defence if it was supported by evidence to this extent. In the absence of such evidence, it remains a mere allegation of having sought the claimant in the event of the alleged desertion. Coupled with paragraph 5 of defence where the Respondent denies diligent, loyal and professional service that was blemish free, a search for the claimant as alleged seems unlikely. A case of unlawful termination of employment therefore ensues and I find as such.

The 2nd issue for determination is whether the claimant is entitled to the relief sought. He is. Having won on a case of unlawful termination of employment, he become entitled to the relief sought.

I am therefore inclined to allow the claim and order relief as follows;

- (i) One (1) months salary in lieu of notice.....Kshs.22,000.00
  - (ii) Ten (10) salary as compensation for unlawful termination of employment  
.....Kshs.220,000.00
  - (iii) Unpaid salary for twenty (20) days in September, 2020 ...20/30xKshs.....22,000.00  
.....Kshs.14,667.00
- Total of award .....Kshs.256,667.00**

- (iv) The Sacco deposits should be pursued separately as this is not part of employment benefits.
- (v) The costs of this cause shall be borne by the Respondent.
- (vi) Interest of court rates from the date of this judgment of court till payment in full.

Delivered, dated and signed this 19th day of November 2025.

**D. K. Njagi Marete**  
**JUDGE**

Appearances:

1. Miss Wangui instructed by Wangui Kuria & Company Advocates for the Claimant.
2. Miss Kache instructed by Were & Oonge Advocates for the Respondent.