

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS  
COURT AT NAIROBI  
CAUSE NO. E708 OF 2023**

**DAVID MAINA MBATIA  
CLAIMANT**

**v**

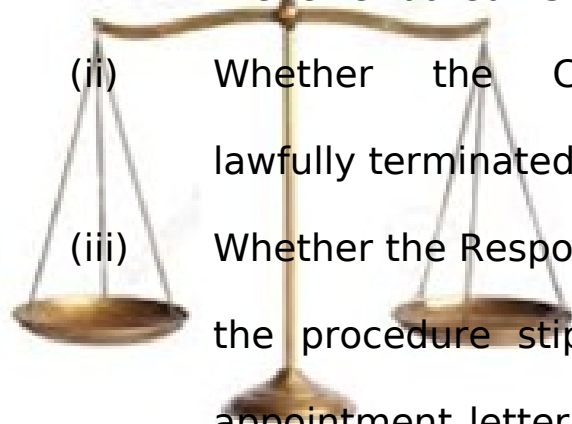
**KM LOOK UP MEDIA GROUP LTD  
(LOOK UP TV)  
RESPONDENT**

**EMPLOYMENT AND LABOUR RELATIONS COURT  
JUDGMENT**

1. KM Look Up Media Ltd (the Respondent) offered David Maina Mbatia (the Claimant) the position of General Manager with effect from 1 June 2022 for two years. The contract indicated that the Claimant would be on probation for six months.
2. On 22 December 2022, the Respondent notified the Claimant that it had decided not to confirm him and therefore it was terminating the contract.
3. Aggrieved, the Claimant sued the Respondent on 28 August 2023, alleging unfair termination of employment.

4. The Respondent filed a Response on 4 October 2023, prompting the Claimant to file a Reply to the Response on 7 February 2024.
5. The parties filed a Joint Statement of Agreed Issues on 22 November 2024, to wit:

(i) Whether the Claimant fulfilled the obligations imposed on him by the letter dated 25 August 2022?



(ii) Whether the Claimant was lawfully terminated?

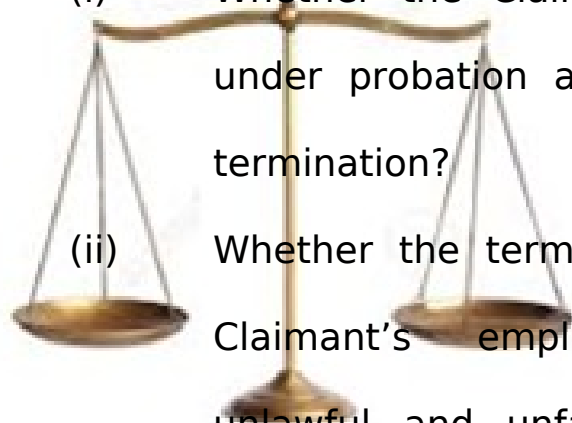
(iii) Whether the Respondent followed the procedure stipulated in the appointment letter dated 23 May 2022 before terminating the Claimant?

(iv) Whether the Claimant is entitled to the reliefs sought?

(v) Who should bear the costs of the suit?

6. The Cause was heard on 26 May 2025 and 14 October 2025. The Claimant and a Director with the Respondent testified.
7. The Claimant filed his submissions on 21 October 2025, and the Respondent on 12 November 2025.
8. The Claimant set out the issues for adjudication as:

**EMPLOYMENT AND LABOUR RELATIONS COURT**

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- (i) Whether the Claimant was still under probation at the time of termination?
  - (ii) Whether the termination of the Claimant's employment was unlawful and unfair under the Employment Act?

- NAIROBI**
- (iii) Whether the Respondent observed due process and procedural fairness before termination?
  - (iv) Whether the Claimant is entitled to the remedies sought?

9. It is apparent that the Claimant introduced new Issues after the same had been agreed.
10. The Court has considered the pleadings, evidence and submissions.

### **Unfair termination of employment**

11. Section 35(1)(c) of the Employment Act contemplates written notice of termination of employment of at least 28 days where the employee is paid by the month.

12. The Claimant was paid by the month.
13. The Claimant's contract provided for termination of the contract by the giving of one month's notice or pay in lieu during probation and after confirmation.

14. The Respondent notified the Claimant of the termination of his contract through a letter dated 22 December 2022.

15. The Respondent offered, and the Claimant accepted one month's salary in lieu of notice.

16. Apart from the notice, section 41 of the Employment Act requires the employer to hear the employee out before taking the decision to terminate.

17. The decision is ordinarily triggered through a show cause notice. In such instances, the employer is considering as a basis of the termination decision and affording the employee a chance to make representations.

18. It is not in dispute that the Respondent's Directors held a meeting with the Claimant on 20 December 2022.

19. The Respondent's witness stated that the meeting was to discuss the Claimant's performance, and he was allowed to explain himself.

20. The Claimant, on his part, testified that he was not given the agenda of the meeting in advance and that it was a routine management meeting.

21. The Respondent did not place before the Court any notice calling the meeting and its agenda. It

also did not place before the Court the minutes of the meeting.

22. The Court therefore finds that the Respondent did not demonstrate in Court that it notified the Claimant in advance that the termination of his contract was on the grounds and the grounds thereof, and that he was allowed an opportunity to make representations.

23. The Court concludes that the termination of the Claimant's employment was unfair.

### **Compensation**

24. The Claimant served the Respondent for about 7 months, and he was offered pay in lieu of notice.

25. Considering these factors, the Court is of the view that the equivalent of one month's gross salary as compensation would be appropriate (gross salary was Kshs 450,000/-).

### **Conclusion and Orders**

26. The Court finds and declares that the termination of the Claimant's employment was unfair and he is awarded:

(i) Compensation Kshs 450,000/-

27. The award to attract interest at court rates from the date of judgment to payment in full.

28. The Claimant to have costs.

**Delivered virtually, dated and signed in Nairobi on this 11<sup>th</sup> day of December 2025.**

**Radido Stephen, MCI Arb  
Judge**

**Appearances**

For Claimant

Njogu & Associates  
Advocates

For Respondent

**NAIROBI**

Maina Makome &  
Co. Advocates

Court Assistant

Wangu