

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
ELRC CAUSE NO. E529 OF 2021
(Before Hon. Justice Abuodha Jorum Nelson)

WYCLIFFE ALOO NDALO.....
CLAIMANT

-VERSUS-

KENYA AIRPORTS AUTHORITY.....1ST
RESPONDENT

JUDGMENT

- 1.** The Claimant through a Statement of Claim dated 10th June, 2021 pleaded inter alia: -
 - a)** At all material times relevant to this claim the Claimant was an employee of the Respondent working as a Security Warden (Grade IV) on a permanent and pensionable basis from 17th January, 2007 until 29th October, 2018 when the Respondent unlawfully, unprocedurally, and unfairly terminated his contract of service.
 - b)** The Claimant avers that the termination of his employment was unfair and unlawful and in contravention of provisions of Section 44 45, 46 and 47 of the Employment Act. The termination was unlawful since;
 - a)** The termination was done without any cause recognized by law as required by Section 35(4) (b) of the Employment Act or the Standard Operating Procedures of the Authority;
 - b)** There was no proof of the reasons for the termination as required by

Section 43 of the Employment Act;

- c) The allegations leveled against the claimant were not proved as required by the law;
 - d) The Respondent did not give the claimant a fair and reasonable hearing at the disciplinary hearing;
 - e) The Claimant was not given any statements of his accusers neither was he allowed to cross examine any of the witnesses;
 - f) The Respondent did not prove that the reason for termination related to the Claimant's conduct, capacity or compatibility neither did they prove that it was based on the operational requirements of the Authority;
 - g) The Respondent did not adhere to the laid down and hearing procedures including the hearing of the Claimant's Appeal.
 - h) The Respondent did not act in accordance with justice and equity in terminating the employment of our Claimant.
 - i) The Respondent did not pay our Client for the notice period as required by the law.
 - k) The Respondent deliberately refused to pay the claimant terminal benefits including the remaining period of the Contract as required by law. As a result of the unlawful and illegal actions aforesaid I Claim.
- c) As at the time of termination of the Claimant's employment unfairly, his salary was Kshs. Kshs.91, 722.00 per month and by reason of the foregoing the Claimant claim from the Respondent is;-
- i. Payment 3 months in lieu of Notice
at Kshs.91, 722.00 per month **Kshs 275,166.00**
 - ii. Leave days 36 days on prorated basis **Kshs. 110,066.40**
 - iii. Salary as from 24/10/2018 until 10/7/2020
when the appeal was found to be admissible **Kshs 1,834,440.00**

iv. General damages 12 months' salary **Kshs**
1,100,664.00

Total **Kshs**
3,320,366.00

d) The Claimant therefore affirms that the total amount payable to him by the Respondent is **Kshs 3,320,366.00** together with the other benefits due to him pursuant to the contract of employment. Due notice has been given to the Respondent.

2. The Claimant in the upshot prayed for the following against the Respondent;

- i. Payment of 3 months' salary in lieu of notice at Kshs. 91,722/-
- ii. 34 leave days on pro rata basis Kshs. 110, 066.40
- iii. Salary as from 24th October, 2018 until 10th July, 2020 when the appeal was found to be inadmissible at Kshs. 1,834,440/-
- iv. General damages for 12 months' salary at Kshs. 1,100, 644
- v. Interest on the claimed amount at court rates.
- vi. Costs of the suit.

3. The Respondent filed their Statement of Defence dated 23rd October, 2023 and pleaded among others:

- i) The Respondent denies all the allegations and averments contained in the Claimant's Statement of Claim except where expressly admitted below and states as follows;
- ii) The Respondent engaged the Claimant as a Security Warden up until 30th October 2018 when his employment was terminated. The claimant's terms of service were guided by Appointment Letter, Job Description, the Employment Act, 2007, Respondent Human

Resources Policy and any other relevant laws. Refer to a copy of the Appointment Letter dated 15th January 2007 annexed hereto and marked Appendix 1.

- iii)** At the time of leaving employment the Claimant was earning a basic salary of 60, 858.00/= Refer to a copy of the October 2018 pay slip annexed hereto and marked Appendix 2.
- iv)** As a security warden, the Claimant was bound and guided by Standard Operating Procedures dated 30th April 2018. Refer to a copy of Standard Operating Procedure for Terminals 1B, C, D 81 E annexed hereto and marked Appendix 3.
- v)** The Claimant was also bound by the provisions of the Human Resource Manual. Refer to a copy of extract of Human Resource Manual annexed hereto and marked Appendix 4.
- vi)** The reason for termination of the Claimant's employment was breach of security procedures on facilitation of miraa through passenger Terminal 1 B. This was an offence that went against the Standard Operating Procedures of the respondent, the Human Resource Policy, The Managing Director/CEO Circular and the Employment Act.
- vii)** The Claimant failed to/refused and/or completely neglected to follow the directives of the Respondent managing director Circular issued on 8th March 2018 and titled "UNAUTHORIZED CONVEYANCE OF MIRAA (KHAT) THROUGH PASSENGER TERMINALS". Refer to a copy of the Circular annexed hereto and marked Appendix 5.
- viii)** That on or about 13th April 2018, the Claimant was deployed for duty at Jomo Kenyatta International Airport, Terminal 1B to man the x-ray machine monitor. The Claimant was a certified screener.
- ix)** On the said date, the Claimant facilitated the prohibited transportation of miraa aboard Emirates flight EK 722 to Dubai in contravention of the circular on prohibition of conveyance of miraa through the passenger terminal.
- x)** That on the subject date, the Claimant was deployed at the X-ray screening machine at Terminal 1B. The Claimant, as per Section 4.10 (d) was therefore expected to interpret x-ray images produced by the

x-ray machine and select by reasoned selection those bags that might contain prohibited article for further processing by hand searcher.

- xi)** It was clear and known to the Claimant that Miraa(KHAT)was not allowed to pass through the passenger terminals and yet still he allowed the same. Dubai.
- xii)** The actions of the Claimant offended Clause 41.0 (1) of the Collective Bargaining Agreement, Section N4(I)(a) of the Human Resources Manual, Sections 44(4) (c) (e) of the Employment Act. He also contravened the provisions of the Standard Operating Procedure.
- xiii)** The Claimant was a repeat offender. On 21st June 2018 he facilitated illegal transportation of Mirraa through passenger terminal 1 A, on Kenya Airways to Mumbai. He received a warning letter after going through disciplinary procedures. Refer to a copy of Warning Letter and previous disciplinary record annexed hereto and marked Appendix 6.
- xiv)** Following the report of the incident that occurred on 13thApril 2018 involving the prohibited transportation of miraa, the respondent conducted investigations to determine what exactly happened and who was involved. Refer to a copy of Investigation Report annexed hereto and marked Appendix
- xv)** The respondent consequently issued the Claimant with a show cause letter dated 24th July 2018. Refer to a copy of Show Cause dated 24th July 2018 annexed hereto and marked Appendix 8.
- xvi)** The show case letter was clear that the claimant was suspected to have been involved in the facilitation of the prohibited transportation of miraa aboard Emirates flight EK 722 to Dubai in contravention of the circular on prohibition of conveyance of miraa through the passenger terminal. The Claimant was accorded 3 days to respond to the allegations levied against him.
- xvii)** The Claimant responded to the show cause letter. Refer to a copy of Claimant's letter dated 31st July 2018 annexed hereto and marked Appendix 9.
- xviii)** The Claimant's response was not satisfactory, and consequently, the Respondent invited him to a disciplinary hearing that was scheduled

for 16th August 2018 at JKIA EOC Conference. He was informed of his right to be accompanied by an employee of his choice or union representative. He was also requested to bring any evidence of witnesses he may have to the meeting. Refer to a copy of letter dated 8th August 2018 annexed hereto and marked Appendix 10.

- xix)** At the hearing, the Claimant was given an opportunity to defend himself against the allegations. Refer to a disciplinary committee letter, report and recommendation forwarded vide letter dated 10th September 2018 annexed hereto and marked Appendix 11.
- xx)** The Claimant was unable to convince the disciplinary committee of his innocence and consequently, his employment was terminated on vide letter 29th October 2018. Refer to a copy of termination letter dated 29th October 2018 annexed hereto and marked Appendix 12.
- xxi)** The Claimant being aggrieved by the decision to terminate his employment, appealed against the said decision on 5th November 2018. Refer to a copy of Claimant's letter dated 5th November 2018 and annexed hereto and marked Appendix 13.
- xxii)** The Respondent acknowledged receipt of the Appeal on 29th November 2018, and on 22nd February 2019 he invited the Claimant to an Appeal hearing. Refer to a copy of Respondent's letters dated 29th November 2018 and 22nd February 2019 annexed hereto and marked Appendix 14 (a) and (b).
- xxiii)** The Claimant responded to the invitation to Appeal hearing and asked that the same be adjourned because his union representative was not available. Refer to a copy of Claimant's letter dated and annexed hereto and marked Appendix 15.
- xxiv)** The Respondent allowed the Claimant's request and scheduled a fresh date for hearing of the Appeal. The hearing was slated for 28th June 2019. Refer to a copy of Respondent's letter dated 19th June 2019 and annexed hereto and marked Appendix 16.
- xxv)** The Claimant did not avail himself for the Appeal hearing on 28th June 2019. He was given a final opportunity to appear before the Appeals Committee on 2nd December 2019. Refer to a copy of Respondent's

letter dated 20th November 2019 and annexed hereto and marked Appendix 17.

- xxvi)** The Claimant's Appeal was finally heard on 2nd December 2019. Refer to a copy of minutes/report and annexed hereto and marked Appendix 18.
- xxvii)** The Appeals Committee after considering the all the facts, evidence and representations of the Claimant and his representative, reached the decision to uphold the decision of the Disciplinary Committee. Refer to a copy of Appeal's Committee Report dated 29th January 2020 annexed hereto and marked Appendix 19.
- xxviii)** The decision of the appeals committee was duly communicated to the Claimant. Refer to a copy of Respondent's letter dated 10th July 2020 and annexed hereto and marked Appendix 20.
- xxix)** The Respondent reiterates that the termination of the Claimant was justified, legal and fair in accordance with statutory and contractual requirements.
- xxx)** That during the Claimant's engagement with the respondent, the Respondent made all relevant statutory deductions and remitted the same including N.S.S.F. Refer appendix 2.
- xxxi)** Upon terminating the Claimant's employment, the respondent paid him his terminal dues in full. Refer to appendix 2 and copy of cheque annexed hereto and marked Appendix 21.
- xxxii)** The Claimant did not have leave days accrued.
- xxxiii)** The Respondent issued the Claimant with a Certificate of Service. Refer to a copy of the Certificate of Service dated 21st June 2019 annexed hereto and marked Appendix 22.

4. The Respondent in the upshot prayed that the court finds the claim frivolous and without merit and should be dismissed with costs to the respondent.

EVIDENCE

- 5.** At the hearing the claimant adopted his statement dated 8th August, 2021 and supplementary statement filed on 17th May, 2024 as his evidence in chief and further stated that he was not in any employment yet. He also relied on the documents filed with the claim.
- 6.** It was his evidence that he was working as a screener at terminal 1D and his role included bag screening. He stated that it was not possible to see anything in the bag and that he repeatedly informed the respondent of his role after the impugned incident but was nevertheless terminated.
- 7.** In cross-examination he stated that he was a certified screener and was a bag searcher at the material time and that where he was screening he could not see anything inside the bag. He was behind the screener and that he did not identify the bag. There was a previous similar incident.
- 8.** Regarding the disciplinary process, he confirmed that he was issued with a notice to show cause letter and was invited for a disciplinary hearing and that he attended. Was dismissed thereafter and appealed against the decision to dismiss him. But the appeal was dismissed. He further confirmed that he was paid in lieu of notice and was issued with a certificate of service and that his pension was paid.
- 9.** In reexamination he stated that they rotated after every 20 minutes and one is automatically logged out. This was intended to preserve concentration. At the material time he

had just been logged out and someone else took over. It was Solomon Matiaki. According to him, the screener was the one to identify the bag and if suspicious of the bag, refer the same to the bag searcher. He maintained that he was not the machine operator at the material time and that no bag was presented to him to search.

10. On 21st March, 2018 there was a similar incident and that he was the X-ray operator. It was his evidence that if a suspicious bag is spotted the screener would stop the machine and search the bag. He stated that when he asked the passenger to search the bag, he put it on the trolley and proceeded to check in counter. He stated that he followed the passenger and demanded to check the bag.

11. It was the claimant's further evidence that he responded to the show cause letter and attended the disciplinary hearing and presented his defence. On appeal he raised new issues including that the reasons for termination of his service were not fair. Concerning terminal dues he stated that he was paid in lieu of notice and that he had just come from leave and that his last salary was in October, 2018.

12. The respondent's witness Mr. Anthony Njagi stated that he working for the respondent as the General Manager in charge Human Resource Development. He relied on his statement recorded on 17th April, 2024 as his evidence in chief and on the bundle of documents filed with the response

as his exhibits. He further stated that the claimant's role on the particular day was a bag searcher. According to him the investigation report showed that the claimant was behind the machine operator and he did not identify the bag in question. There was an earlier similar incident involving the claimant and it was investigated. The passenger travelled to Mumbai and the Indian Government complained. The claimant was subsequently issued with a warning letter.

13. Regarding terminal dues, Mr. Njagi stated that the claimant was paid his terminal dues less taxes and that the claimant was taken through the disciplinary process and he defended himself. He attended the hearing with a colleague of his choice. A decision was made thereafter to dismiss the claimant. He appealed against the dismissal and the appeal was found unmerited and disallowed.

14. In cross-examination he stated that claimant was a security warden and that a security warden is a certified screener which included bag screening, x-ray, travel documents and body search. It was his evidence that there are at any time four people performing these duties and one cannot perform all the roles. He stated that at the material time the claimant's role was a bag searcher and that there was another officer on the screening machine. His name was Solomon and that he equally appeared before the disciplinary panel and was terminated. According to him, the CCTV footage showed the claimant standing behind the bag

screener which was unprocedural and that rotation in the International Aviation requirement since it was not safe to expose one person to x-rays for long and that both the screener and the bag searcher must have high concentration. It was further his evidence that the bags were escorted by the supervisor and that they contained miraa and that miraa is supposed to go through cargo and not in the cabin. The circular was issued on 8th March, 2018 and that miraa had never been allowed in the cabin. Mr. Njagi further stated that the security wardens are trained after every three months and re-certified. He confirmed that the the Human Resource Manual provides for warning but serious omissions do not require a warning

- 15.** In re-examination he stated that at the material time the claimant was a bag searcher and that Solomon, the machine operator at the time was terminated as well and that there were previous circulars on items that can go in the cabin or cargo and that the placard on prohibited items is displayed at the terminal

CLAIMANT'S SUBMISSIONS

3. Despite having counsel on record, the claimant filed his own submissions contending among others that the termination of his service was unlawful, unsupported by evidence and breach of both substantive and procedural fairness. According to the claimant, the respondent's witnesses including the Human Resource Manager and the X-ray operator Mr.

Lemayan provided testimony that entirely exonerated the claimant. According to the claimant, Mr. Lemayan was responsible for screening the luggage and admitted during the disciplinary proceedings that he never referred any bag to the claimant for inspection and that the human resource manager confirmed that the claimant was not the X-ray operator at the material time.

4. The claimant further submitted that he had no operational control over the screening process and that there was no evidence linking him to the alleged contraband, making the termination of his service totally unfounded. The Claimant complained that the respondent conducted superficial investigations that ignored key exonerating evidence and that the respondent relied on generalised, collective allegation that ignored key exonerating evidence. That the respondent failed to consider individual culpability and arrived at a predetermined decision. Mr. Ndalo complained that dismissing him based on proximity to the x-ray operator rather than personal misconduct was arbitrary, irrational and unlawful.
5. Regarding the reliefs sought, the claimant submitted that in view of the egregious misconduct by the respondent he prayed for reinstatement to his former position with full retention of rank, benefits and seniority. He submitted in the alternative that if reinstatement was not possible he be awarded maximum compensation of 12 month's salary, payment of his terminal dues and costs.

RESPONDENT'S SUBMISSIONS

6. Ms. Obiayo for the respondent raised issue with the difference in dates between the verifying affidavit and the claim however the court in doing justice to the matter will not regard it as fatal to the claim since the purpose of the affidavit is to verify the correctness of the matters pleaded in the claim and does not necessarily have to be contemporaneously filed with the claim. It can be filed at any time in the proceedings before the commencement of the trial. In any case if counsel considered it fatal to the suit she could have raised it as a preliminary point of law to be determined before the trial started.
7. Regarding substantive and procedural fairness, counsel submitted that the claimant confirmed to court that he was taken through an disciplinary process. He confirmed that he was issued with a show cause letter dated 24th July, 2018 to which he responded through his letter dated 31st July, 2018. He further confirmed that he attended the disciplinary hearing on 6th August, 2018 at the conclusion of which his services were terminated. He appealed the termination through a letter dated 5th November, 2018 and was called for the hearing of the appeal on 27th February, 2019. The appeal was unsuccessful. Counsel therefore submitted that. From the foregoing, counsel submitted that the claimant was accorded procedural fairness in accordance with section 41 of the

Employment Act. In this regard, Counsel relied on the case of **Pius Machafu Ishindu vs. Lavington Security Guards Limited [2017] eKLR** and the case of **Langat vs. Unilever Tea Kenya Limited [2022] KEELRC 1238**.

8. Counsel further urged the court to consider the fact that the claimant had previous disciplinary record on March, 2018 when he facilitated the illegal transportation of miraa through passenger terminal 1A which was a disciplinary offence and was issued with a warning letter.
9. Regarding the claim for 3 months' notice pay, Ms. Obiayo submitted that the claimant's dues were computed as per his termination letter and were paid. Besides, the claimant's letter of appointment provided for one month's notice or pay in lieu. Concerning leave pay, counsel submitted that no evidence was led to prove that the claimant was entitled to leave pay hence the claim should be dismissed. On the issue of payment of salary from 24th October, 2020 until 10th July, 2020 when the appeal was found to be inadmissible, counsel submitted that this award should not be allowed as to allow it would amount to unjustly enriching the claimant and that salary is only paid for service rendered and not for unjust enrichment. In this regard, counsel relied on the case of **David Mwangi Kioko Gioko & 51 Others vs. Nairobi Water & Sewerage Co. Ltd [2013]eKLR**. Regarding 12

months' salary as compensation, counsel submitted that the claimant was terminated for valid reasons and that the termination was carried out through a lawful and fair process. He was therefore not entitled to any compensation.

DETERMINATION

10. The court has reviewed and considered the pleadings, testimonies and submissions by both counsel in support and opposition to the case. The court has also considered authorities relied on by counsel.

11. The issues for determination are: -

- a. *Whether the Claimant was dismissed unfairly by the Respondent*
- b. *Whether the Claimant is entitled to the reliefs sought.*

Whether the Claimant was dismissed unfairly by the Respondent

12. In this case, the Claimant stated that the Respondent terminated his on the ground that he allowed the passage of miraa through the passenger terminal with the knowledge that miraa was one of the prohibited items in the aircraft cabin and could only be transported as cargo. The claimant

however contended that at the material time he was a bag searcher and could only search a bag flagged for searching by the screener. The respondent however contended that the claimant was seen through the CCTV footage standing behind the bag searcher and being a certified screener he could have noticed the suspicious parcel and required that it be searched.

13. At the disciplinary hearing conducted on 16th August, 2018 the claimant admitted that he and Mr. Lomayian were at some point viewing the screen but stated that he did not concentrate because his role by then was a bag searcher and that Lomayian did not flag any bag for him to search. The claimant however admitted that he was a certified bag searcher.

14. In the previous disciplinary hearing for a similar offence conducted on 10th May, 2018, the claimant stated among others that he had intention to search the passengers bags but did not do so since his supervisor came soon thereafter and took charge. The claimant further admitted that he was aware of the Managing Director's circular prohibiting miraa in the aircraft cabin.

15. Section 43(2) of the Employment Act is clear that the reason or reasons for termination of a contract of employment 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. Further, section 45(2) of the Act further provides that a termination of employment will be found unfair if the employer fails to prove that the reason for termination is valid and or fair reason and that it is related to employee conduct or compatibility or **based on the operational requirements of an employer** (*emphasized added*).

16. The Claimant herein was accused of failing to search a bag containing miraa that eventually found its way into the aircraft cabin. He admitted at the disciplinary hearing that he was aware of the Managing Director's circular on the prohibition of miraa in the aircraft cabin and that the same could only be transported as cargo.

17. The Court takes judicial notice that air travel is a security intensive transport system hence it is an essential requirement that all security protocols are observed to ensure

the safety of the aircraft and the air passengers. Security of the aircraft and the passengers is therefore a key element in any organization handling air travel. It is as such a key operational requirement that air passengers and their luggage are screened to ensure they do not carry on board the aircraft any prohibited item.

18. This Court in appropriate cases is clothed with power to indulge in a merit review of the reasons for termination of service of an employee by dint of provisions of section 43 of the Employment Act. However the Court will not replace its subjective views of what constitutes a valid reason for termination of an employment contract with that of the employer. Justice Professor Ojwang' in the case of **Kenya Revenue Authority Vs Menginya Salim Murgani, Civil Appeal No. 108 of 2009** as cited in **Republic Vs National Police Service Commission Exparte Daniel Chacha Chacha JR 36 of 2016 (2016) eKLR** observed as follows:

“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their tasks. It is for them to decide how they will proceed”

19. And the Court of Appeal in **Civil Appeal No 66A of 2017, Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others [2019] eKLR** stated as follows:

"...It is improper for a court to expect that an employer would have to undertake a near forensic examination of the facts and seek proof beyond reasonable doubt as in a criminal trial before it can take appropriate action subject to the requirements of procedural fairness that are statutorily required. The standard of proof is on a balance of probability, not beyond reasonable doubt, and all the employer is required to prove are the reasons that it "genuinely believed to exist," causing it to terminate the employee's services..."

20. Further Lord Denning in the often cited case of **British Leyland UK Ltd v. Swift [1981]IRLR 91** stated:

‘The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which an employer might reasonably take one view: another quite reasonably take a different view. One would quite reasonably dismiss the man. The other quite reasonably keep him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him”

21. Drawing from the above cited cases, once the Court is persuaded that there existed reasonable grounds upon which a reasonable employer would consider termination of service as commensurate to the infraction perpetrated by the employee, a judge presiding over the matter must not

substitute their own view or feeling of what is reasonable with that of an employer unless unavoidable in the circumstances.

22. As observed earlier in the judgment, air travel is a security sensitive undertaking and there is reason why the respondent prohibited the conveyance of miraa as in-cabin baggage. Further the Court notes that the claimant was not a first offender for a similar offence and barely a month had passed when he was warned over a similar offence. The court is therefore persuaded that the respondent had valid and justifiable reason for terminating the claimant's service.

23. Regarding procedural fairness, the Claimant was issued with a Notice to Show Cause dated 24th July, 2018. He responded to the same and was thereafter invited for disciplinary hearing through a letter dated 8th July, 2018 to take place on 16th July, 2018. He attended the hearing with a Union Official and at the conclusion of the hearing a recommendation was made by the committee to terminate his service which was done through a letter dated 29th October, 2018. The termination letter detailed his terminal dues payable less any liabilities owed to the respondent. By a

letter dated 5th November, 2018, the claimant appeal against the termination of his service. The appeal was initially set for hearing on 27th February, 2019 but was rescheduled upon the claimant's request to 28th June, 2019, which was later changed to 2nd December, 2019. The appeal was found unmerited and the claimant informed of the outcome through a letter dated 10th July, 2020.

24. From the foregoing, the Court is satisfied that the respondent reasonably followed a fair procedure while terminating the claimant's service as required by sections 41, 43 and 45 of the Employment Act as read together.

25. Regarding the reliefs sought, the court having found that the respondent had valid and justifiable reasons for terminating the claimant's service, the claims sought in the claim are unsustainable and are hereby dismissed with costs.

26. In conclusion the Court finds and holds that the respondent had valid and justifiable reasons for terminating the claimant's service and that the termination was carried through a fair procedure

within the meaning of section 45 of the Employment Act.

27. The claim is therefore found without merit and is hereby dismissed with costs.

28. It is so ordered.

Dated at Nairobi this 19th day of December 2025

Delivered virtually this 19th day of December 2025

Abuodha Nelson Jorum

Presiding Judge-Appeals Division