

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT NAIROBI

CAUSE NUMBER 2430 OF 2017

ZACHARY MOKAYA MAINA.....CLAIMANT

-VERSUS-

SQUID KENYA LIMITED.....RESPONDENT

Coram

Before Lady Justice J. W. Keli

C/A Otieno

JUDGMENT

1. Vide a memorandum of claim dated the 7th of December 2017, the Claimant sued the Respondent and sought the following Orders:-
 - a) Certificate of Service
 - b) A declaration that termination of his employment was unfair and unlawful.
 - c) The sum of Kshs 528,000/- as particularized in Paragraph 3 of the claim
 - d) Cost of this suit
 - e) Interest on (ii) and (iii) above
 - f) Any other relief as the court may deem just.
2. The Claimant, in support of the claim, filed his list of witnesses dated 7th December 2017; a list of documents of the same date with the bundle of documents attached; and an undated witness statement.

3. The Respondent entered appearance through the law firm of Igeria & Ngugi Advocates on 28th April 2018 and filed a reply to the memorandum of claim dated 28th September 2018. In support of their response, they filed a list of witnesses dated 28th September 2018; a witness statement of BRUCE KANIU dated 28th May 2018; and a list of documents dated 28th September 2018, with the bundle of documents attached.

Hearing and evidence

4. The claimant's case was heard on the 14th October 2025, when the claimant testified on oath, adopted his witness statement dated 7th December 2017, and produced documents filed as a bundle with the statement of claim, all as his evidence in chief. He was cross-examined by counsel for the respondent, Ms. Wamuyu. and re-examined by his counsel, Mr. Nyaga.
5. The respondent's case was heard on even date. The respondent called Bruce Kaniu as its witness, RW1. RW1 testified on oath and adopted his witness statement, dated 28th May 2018, as his evidence in chief. He further produced as Respondent's documents under the list dated 28th September 2018 as evidence in chief. He was cross-examined by counsel for the claimant, Mr. Nyaga, and re-examined by his counsel, Ms. Wamuyu.

The Claimant's case in summary

6. The Claimant's case is that he was employed by the Respondent on 1st April 2015 on a one-year (renewable) contract basis as a driver at an agreed gross pay of Kshs. 30,000/- per month. In December 2015, without notice, the Claimant's employment was wrongfully terminated through a summary dismissal. The Claimant states that he received a call a from the

Respondent's Managing Director, asking him not to return to work after the December holidays.

7. The Claimant complains that there was no justifiable reason for the summary dismissal. He also complains that he was not paid his December salary or any of his other terminal dues.

Respondents' case in brief

8. The Respondent admits that the Claimant was its employee, having been employed as a driver on temporary basis in January 2015. His employment was confirmed in April 2015 and he was issued with a one-year contract. It is admitted that the Claimant was issued with a termination letter on 6th January 2016.
9. It is stated that there were several incidences that called into question the Claimant's conduct and which led to his lawful summary dismissal, including:
 - a) Sometimes in March 2015, the Claimant while in the course of duty and putting up at the Miryan Village Hotel at the cost of the Respondent, stole a kettle to the detriment of the Respondent's reputation;
 - b) On 23rd December 2015, the Claimant without authorization, accessed the office and stole monies from the finance office, which unauthorized access was captured by CCTV footage. The Respondent reported the incident to the police who undertook to conduct their own investigation, and the Respondent sent the Claimant on suspension pending their internal investigations. The Claimant was subsequently invited to a disciplinary meeting which was held and is evidenced by minutes. The Respondent not being satisfied with the

reasons given by the Claimant, proceeded to make a decision to terminate the Claimant's employment on the basis of gross misconduct.

10. The Respondent states that the Claimant was duly paid his dues on issuance of the termination letter and clearance process. The Respondent has also not declined to issue a Certificate of Service but it is the Claimant who has never collected the same. The dues indicated in the Claimant's claim are denied, with the Respondent stating that the Claimant is not entitled to house allowance as the same was provided for in the gross salary as stipulated in his employment contract. The Claimant is not entitled to damages for unfair termination as he was not wrongfully dismissed; and neither is he entitled to one month's pay in lieu of notice or advocates' costs, as due process was followed.

DETERMINATION

Issues for determination

11. The claimant outlined the following as the issues for determination in the suit-
 - a) Whether the Respondent wrongfully and unfairly terminated the Claimant's employment.
 - (b) Whether the Claimant's Claim is merited.

12. The respondent outlined the following as the issues for determination in the suit-
 - a. Whether the Claimant's termination was fair, legal and lawful;
 - b. Whether there were valid reasons for the Respondent to terminate the Claimant's employment.
 - c. Whether fair procedure was applied before disengaging the Claimant from employment
 - d. Whether the Claimant is entitled to the reliefs sought; and

e. Costs.

13. The court found the parties were in agreement on the issues for determination to be -
- a. Whether the Respondent wrongfully and unfairly terminated the Claimant's employment.
 - b. Whether the Claimant is entitled to the reliefs sought;

Whether the Respondent wrongfully and unfairly terminated the Claimant's employment.

claimant's submissions

14. Whether the Respondent wrongfully and unfairly terminated the Claimant's employment - It is our submission that the Respondent terminated the Claimant's employment both wrongly and unfairly, and the summary dismissal was in total disregard of the legally required procedures and applicable laws that dictates the termination of employment. In their Reply to Claim, the Respondent alleged that the Claimant had been Summarily Dismissed on account of an alleged theft of money occasioned by the Claimant, and that the Summary Dismissal was effected on the 06.01.2016 when the Respondent allegedly issued a Termination letter to the Claimant. The alleged theft as posed by the Respondent in their Reply to Claim as well as by the testimony given by their witness, Simon Bruce Kaniu, stated that the Claimant had re-entered the Respondent's offices on 23.12.2015 without authorization and stole monies from the finance office. The Respondent further claimed that there were CCTV footage that captured the said unauthorised access to the respondent's office by the Claimant. However, when put to task in proving the said allegations, the above mentioned Respondent's witness failed to produce or even ascertain the allegation as being true, him not having the said CCTV footage, and the documentary evidence provided in the form of an entry in the investigations diary stamped by

the Kilimani Police Station, does not in any way, manner or form, point nor hint to the Claimant either directly or indirectly. It is important for this court to note that the evidence produced by the Respondent, vary in timelines and amounts of the alleged stolen money, with the Respondent claiming that the money was stolen by the Claimant on 23.12.2015, while the investigations diary report clearly indicated that the matter of the stolen money was reported a day later, on 24.12.2015 at 5:35 p.m. when put to account on the exact amount that was reported as stolen, the Respondent's witness was oblivious as to the actual amount, giving varying amounts of Kshs 46,000/= on one hand, and Kshs 50,000/= on the other as supported by the investigations diary. How the precise amount as allegedly stolen by the Claimant could not be precisely ascertained by the Respondent is leaves a lot to be desired on the sworn truths of the Respondent and the Respondent's witness. As a serious allegation of theft by servant levied against the Claimant, this court will take note that no arrests, statements nor charges were brought against the Claimant in this allegation of the stolen/missing money by the Respondent since the same was reported, and the matter went cold, was dead and buried, up until later when the Respondent sought to have the police investigations diary report unearthed, action of which still blew their cover as the report indicates the date it was issued as being on 15.05.2018, which was 1 year and 5 months from the date of occurrence. Suffice it to say, the same evidence by the respondent led to a dead-end and cannot be pegged on the Claimant. In an act of clutching at the straw in their drowning case, the Respondent tried to shift their focus on an incident of a missing kettle that was taken by the Claimant at a hotel during an official excursion by the Claimant and his colleagues. The Respondent tried to pin the incident of the kettle as a matter of theft, to try and sow a non-existent pattern of the Claimant having sticky fingers in pinching other people's property. However, as if by murphy's law, this allegation also fails miserably, as it was not contested that the incident did happen and the Claimant did

write an apology for moving one of the hotels' kettles from the dining area to his room, but that the kettle was found and the matter was resolved. No disciplinary action was again taken against the Claimant by the Respondent, and to top it off, the Claimant's salary was actually increased a few months later from an amount of Kshs 25,000/= to 30,000/= as stated by the Claimant during trial. During the hearing of this matter, the Respondent's witness admitted to having not been present to bear witness of the alleged theft of the kettle, but that he heard it from the Claimant's colleagues, Section 63 of the Evidence Act, Cap 80, Laws of Kenya, in dealing with admissible evidences provides that: (1) Oral evidence must in all cases be direct evidence "direct evidence" means:- (2) (a) with reference to a fact which could be seen, the evidence of a witness who says he saw it; It is important for the court to note that the said statement as brought to court amounts to hearsay seeing that it was not the Respondent's witness before the court who was a witness of the alleged theft by the Claimant.. When cross-examined on his evidence and testimony as presented, the Respondent's witness, contradicted himself in the manner at which the dismissal of the Claimant occurred, by claiming that the Claimant was first suspended on 04.01.2016 and then summarily dismissed on 06.01.2016, whereas the Claimant had already testified that he was summarily dismissed in December 2015 through a phone call by the Respondent's director, who was the Respondent's witness in this matter. Further, the Respondent tendered documents alleging a disciplinary hearing as having been held prior to dismissing the Claimant, but again the Respondent failed to prove that indeed the hearing actually took place, and that the Claimant and his representative were present during the said hearing. When asked if the Claimant or other attendees of the meeting appended their signatures to the alleged minutes as produced by the respondent, the Respondent's witness could not ascertain the same, further nailing the Respondent on the cross of unfair termination as even the signatures scribbled on the presented minutes were not

verified to be of either the Claimant or the Respondent's attendees at the time of the alleged disciplinary hearing. Section 41 of the Employment Act, 2007 provides for the procedure to dismissal for the reason of gross misconduct, poor performance or incompetency. In fact, under Section 44 of the same Act, the employer must first explain to the employee in a language he understands, the reason for which he intends to dismiss him and that during such explanation, the employee is allowed to be accompanied by a workmate or shop floor union representative of his choice. That before the dismissal, the employee and the companion of his choice shall be given an opportunity to make representations which must be considered in the decision for dismissal. In SAMSON OWILI vs KENYA PORTS AUTHORITY [2013] ECLR, the court held that "the employer must first explain to the employee in a language he understands, the reason for which he intends to dismiss him and that during such explanation the employee is allowed to be accompanied by a workmate or shop floor union representative of his choice. That before the dismissal, the employee and the companion of his choice shall be given an opportunity to make representations which must be considered in the decision for dismissal." None of these provisions of law have been proved to have been commenced and followed through by the Respondent, so much so that even on a balance of probabilities, the same have not been shown to have been accorded to the Claimant prior to his summary dismissal, and thus the same cannot be assumed to have been complied with. Section 45 of the Employment Act, 2007 specifies the concept of unfair termination with emphasis being drawn to Section 45 (4) (b) of this Act vis: termination of Employment shall be unfair for the purposes of this Part where it is found out that in all the circumstances of the case, the employer did not act in accordance to justice and equity in terminating the employment of the employee." Flowing from the narration above, it is clearly evident that the Respondent in a frantic bid to justify the summary dismissal of the Claimant, opted to fabricate and adduce doctored and untrue

evidence stacked against the Claimant for an innocent kettle incidence that actually occurred well before the Claimant was employed by the Respondent. The apology letter as admitted by the Claimant, clearly shows that the letter was received by the concerned hotel on 19.05.2015, while it is on court record that the Claimant was employed by the same Respondent who accused him of theft of the kettle, on 01.04.2015. If really the Claimant was a conduct of a thief and had been marked as such by the Respondent, questions arise as to; i. why the Respondent would seek to employ a thief into their ranks in less than 2 weeks after the alleged theft occurring?; ii. why would the Respondent continue with the employ of the Claimant for a further 8 months if his “conduct” was that of a thief?; and, iii. why were there no conclusive investigations, arrest, report to the police or disciplinary action taken against the Claimant in relation to the missing kettle?; 21. Similarly for the reason for Summary Dismissal owing to stolen money from the accounts office, various questions arise as to the veracity of the Respondent and it’s witness vis: i. Where are the CCTV footage allegedly capturing the Claimant as having unauthorised access to the office?; ii. Why are there discrepancies in the amounts allegedly stolen form the Respondent’s office?; iii. Why did the police investigations not point to the Claimant as having taken the alleged stolen money?; iv. Why was there no implication of the Claimant as having stolen the alleged money from the Respondent’s accounts offices in the police investigations diary?; and, v. Why were there no witnesses at all (including the one at trial) who could authoritatively testify to the Claimant’s involvement in either the stolen money or the alleged disciplinary hearing:? The inconsistencies in the Respondent’s case conspicuously points to a malicious attempt at soiling the Claimant’s name by making him look bad in order to justify an unfair dismissal. The Respondent’s actions are aptly captured in the case of JOSEPH SITATI NATO vs KENYA PORTS AUTHORITY [2010] eKLR, where the learned judge held that the dismissal of the Plaintiff had been totally

unsubstantiated, unfair and therefore wrongful, when he stated that: There clearly was some unholy haste to get rid of the Plaintiff so much so that the ridiculous situation of his being served with a letter of interdiction well after his letter of dismissal was left to occur. There was clearly a very poor attempt to legitimize the Plaintiff's dismissal long after it had occurred." In premise of the above, the Claimant submits that he has proved the issue of the Respondent having unfairly and wrongfully terminated his employment, and invite you to consider Sections 41, 44 and 45 of the Employment Act, 2007, as well as Section 63 of the Evidence Act, Laws of Kenya, which ably guides this Honourable Court in its considerations in the final decision in regards to a just and equitable termination of the Claimant's employment.

Respondent's submissions

15. WHETHER THE CLAIMANT'S TERMINATION WAS FAIR, LEGAL AND LAWFUL -
- Section 41 of the Employment Act which provides that: (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.

16. WHETHER THERE WERE VALID REASONS FOR THE RESPONDENT TO TERMINATE THE CLAIMANT'S EMPLOYMENT. - The Claimant's assertion that his termination was arbitrary, un-procedural, and unlawful is wholly unfounded and is directly contradicted by the objective evidence on record. His case represents a belated and disingenuous attempt to recant his own admitted and proven acts of dishonesty. The Respondent summarily dismissed the Claimant for a fundamental breach of trust rooted in gross misconduct: theft. The evidence conclusively demonstrates that on 23rd December 2015, the Claimant made an unauthorized entry into the office after hours, an act that directly coincided with the theft of Kshs. 46,500 from a locked locker. This Court's attention is drawn to the incriminating CCTV footage, which showed the Claimant in the office with a bulging pocket and spending a significant amount of time, conduct entirely inconsistent with his purported innocent errand. This incident was not isolated; it formed part of a pattern of dishonesty, as evidenced by the Claimant's prior written apology for stealing an electric kettle from a hotel during a company-funded trip. In the circumstances, the Respondent has adduced prima facie evidence establishing valid and fair reasons for the termination. This position is firmly supported by jurisprudence. In *Jacob Juma Makokha v Radar Security (K) Limited* [2018] eKLR, which relied on *Naqvi Syed Qmar v Paramount Bank Limited* [2015] eKLR, the Court affirmed that an employer has the right to summarily dismiss an employee suspected of stealing under Section 44(4) of the Employment Act, 2007. Furthermore, the reasonableness of the Respondent's decision is fortified by the precedent in *Joseph Mwaniki Nganga v United Millers Limited* [2022] eKLR. The test, as enunciated, is whether the employer held a genuine belief in the reason for termination at the time of dismissal. A dismissal is fair if it falls within the "band of reasonableness," and a reasonable employer in the Respondent's position, faced with such a grave breach of trust, was entirely justified in viewing this as gross misconduct

warranting dismissal. The procedure followed was in strict compliance with the mandatory provisions of Section 41 of the Employment Act, as the Claimant was accorded a full and fair disciplinary hearing. Consequently, the Claimant has failed to discharge the burden of proof placed upon him by Section 47(5) of the Act. For the foregoing reasons, we pray that this Honourable Court finds that the Respondent held genuine, valid, and substantiated reasons for the termination, and that the dismissal of the Claimant was both substantively and procedurally fair and lawful within the meaning of Section 45 of the Employment Act.

17. WHETHER FAIR PROCEDURE WAS APPLIED BEFORE DISENGAGING THE CLAIMANT FROM EMPLOYMENT? -The Respondent fully and scrupulously complied with the principles of procedural fairness as mandated by Section 41 of the Employment Act and affirmed by judicial precedent. The test, as articulated in cases such as *Obara, Lydia Moraa v Tusker Mattresses Limited* [2016] eKLR, is whether there was substantial compliance with the obligation to afford the employee a fair hearing. The Respondent not only met but exceeded this standard. The procedure followed was meticulous and fair in every respect. Firstly, upon the discovery of the misconduct, the Claimant was placed on suspension to allow for a thorough and unimpeded investigation, during which the reasons for the suspension were clearly communicated to him. Secondly, upon concluding the investigation, the Respondent convened a formal disciplinary hearing. Crucially, during this hearing, the Claimant was confronted with the evidence against him, including the incriminating CCTV footage which showed him leaving the office with a bulging pocket, and was given a full and adequate opportunity to respond to the allegations. The hearing also established that his purported reason for returning to the office, to return car keys, was false, as the assigned driver had already returned them. Following this fair hearing, and based on the overwhelming evidence, the

Respondent formed a valid belief that the Claimant had committed an act of gross misconduct warranting summary dismissal. This decision and the reasons for it were formally communicated to the Claimant via a termination letter dated 6th January 2016. In conclusion, the Respondent has demonstrated through compelling evidence that it adhered to the statutory procedure to the letter. The entire process, from investigation to dismissal, was conducted fairly and lawfully. We therefore humbly submit that the termination of the Claimant's employment was procedurally impeccable and in strict compliance with Sections 41, 44(4), and 45(2) of the Employment Act, 2007.

Decision

18. The threshold for determination of fairness of termination of employment is according to the provisions of section 45 (2) of the Employment Act to wit:- *'45(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 employees 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.'*
- To pass the fairness test the termination must pass the substantive (in terms of reasons) fairness and the procedural fairness under section 41 of the Employment Act (Walter Ogal Anuro v Teachers Service Commission[2013] eKLR).
19. It was the claimant's case that his employment was unlawfully and unfairly terminated in December 2015. The burden of proof of employment claims is as per section 47(5) of the

Employment Act to wit- *‘For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.’* The

Respondent produced a letter of termination of the employment of the claimant dated 6th January 2016, which stated as follows-*‘Ref; Termination of Employment*

This is to notify you that your employment with Squid Kenya Limited herein referred to as "the company has been terminated with immediate effect. This is in relation to the theft incident that occurred on 23rd Dec 2015.

According to CCTV footage obtained from the office building's security manager you accessed the office at 1525hrs without express authority using a key in your possession which you were meant to handover to the IT manager. This is contrary to the office administrative procedures which require access to the office be authorized by either of the company managers. It is for this reason -unauthorized access to the office and in consideration of a report case of a similar nature of theft against yourself that your employment with the company has been terminated immediately.

20. The company wishes you the best in your future endeavors’’ (R-exhibit 4). The reason for the termination were thus as per the letter. Were the reasons justified as per section 43 of the Employment Act to wit- ‘43. Proof of reason for termination

(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' Prior to the letter, the respondent alleged there was a meeting of which the claimant denied attendance. Minutes were produced of the hearing of the case, with the claimant indicated as present, and it was established that he was at the office unauthorized when money was reported missing at the crime scene. His reason for being in the office to drop off the key was contested by a fellow driver. The minutes were dated 4th January 2016. (R-exhibit 3).

21. The lost money was further reported to the police and the extract of the investigation diary produced OB NO. 59/24/12/2015 where a complaint of theft of around Kshs. 50000 was reported on behalf of the respondent by its finance manager called Fredrick Gituthu. (R-exhibit 2).

Analysis of evidence

22. During cross-examination, the claimant told the court he had a contract of 1 year. He confirmed to having apologised for a kettle which was found illegally in his hotel room and was accused of theft in March 2015(R-exhibit 1). The claimant confirmed that on 23rd December 2018 he returned to the office to drop a key to the motor vehicle. He admitted the motor vehicle was used by David Mungai. The claimant was shown the minutes and fact that David Mungai had said he had given the key to Kimemia. On being asked if he had informed anyone on return to the office, the claimant said he had informed the security at the gate. The claimant confirmed he was informed on the day he returned to office that some money had been stolen. He confirmed the office had CCTV. He told the court he was not aware the CCTV showed he returned to the office and went to finance. He denied having attended the meeting.

On re-examination, the claimant told the court the lost kettle was found and that he had asked for it. He denied having attended the meeting on 4th January 2016.

23. Conversely, the Respondent called as its witness, Bruce Kaniue. (RW1) RW1 relied on his witness statement and produced the documents under list dated 28th September 2018. On cross-examination, the witness told the court that the kettle found in the claimant's hotel room was missing. The court read the letter (R-exhibit 1), by the claimant which indicated that the claimant apologized for what happened in his room regarding the missing kettle. He asked to be forgiven. On the alleged theft incident in the office, RW1 said the claimant stole Kshs. 46500 from the finance department. He said the theft was captured on CCTV. On whether the CCTV footage was in court, the witness told the court it was at the police station. He could not confirm whether the footage implicated the claimant, and the police report was not before the court. He told the court the incident was reported on the 24th December 2015 at 17:35 hours (R-exhibit 2). The witness told the court that they reported KShs. 50,000, and after reconciliation, it was Kshs. 46,500. The Police extract was stamped 15/05/2018 when they requested it.

24. On the procedural fairness, RW1 told the court the claimant was working. He came to the office on the 4th, January 2016, they had a meeting, he was suspended thereafter, and terminated on the 6th January 2016. The witness told the court the minutes indicated the claimant was present. RW1 thought one of the signatures at the bottom of the minutes was the claimant's. The witness told the court that people in the office who attended the meeting who could confirm the claimant's presence but were not in court.

25. The court concluded that there was a genuine reason for the termination being suspicion of theft. The conclusion is informed by the fact that the claimant claimed he had not admitted the theft, he went to the said office to drop a key for a motor vehicle which was driven by another driver, David. The claimant admitted he went to the office. Money was stolen, and evidence was produced that the incident was reported to the police. The court found the reason met the test under section 43 of the Employment Act and was related to the conduct of the claimant (section 45 (2)).
26. On procedural fairness the claimant denied having attended the meeting of which minutes were produced. There was no notice to show cause or evidence that the claimant was accorded the right to be accompanied to the alleged hearing. RW1 was not at the alleged disciplinary hearing. On a balance of probabilities, I found there was no proof of procedural fairness prior to the termination and in compliance with section 41 of the Employment Act.

Whether the claimant is entitled to reliefs sought

27. Certificate of Service- The issuance of the certificate is an unconditional right of the employee on termination of employment and is to be issued under section 51 of the Employment Act.
28. A declaration that termination of his employment was unfair and unlawful.- The court found a valid reason for termination, but the process was unfair. One month salary is awarded as notice pay.
29. On the claim of housing for Kshs. 90000 – the claimant pleaded he was paid a gross salary of Kshs. 30000 as a driver in 2015. Housing pay is a minimum condition of service, as per section 31 of the Employment Act-‘31(1)An employer shall at all times, at his own expense, provide

reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.’’ The claimant was paid gross pay; he did not explain the basis of the claim, and thus the same is disallowed. He who alleges proves.

30. On claim for advocates debt collection fees of Kshs 48,000 – this is a special damage and no evidence was placed before the court of the same. It is disallowed.

31. In conclusion, the claim is allowed partially. The reason for the termination is held as valid. The termination was tainted by procedural unfairness. Judgment is entered for the claimant against the respondent as follows-

- a. Notice pay for procedural unfairness- 1 month salary notice Kshs. 30000 awarded with interest at court rate from date of judgment.
- b. Certificate of service to issue under section 51 of the Employment Act within 30 days through the advocate’s office.
- c. Cost of the suit.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 29TH DAY OF JANUARY, 2026.

J. W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Claimant: Mr. Nyaga

Respondent: absent