



Omach v Universities Academic Staff Union (UASU) & another (Employment and Labour Relations Cause E137 of 2024) [2026] KEELRC 180 (KLR) (29 January 2026) (Judgment)

Neutral citation: [2026] KEELRC 180 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E137 OF 2024**

**BOM MANANI, J
JANUARY 29, 2026**

BETWEEN

SAMWEL OTIENO OMACH CLAIMANT

AND

UNIVERSITIES ACADEMIC STAFF UNION (UASU) 1ST RESPONDENT

**UNIVERSITIES ACADEMIC STAFF UNION, UNIVERSITY OF NAIROBI
CHAPTER 2ND RESPONDENT**

JUDGMENT

Background

1. The Claimant instituted these proceedings through a Memorandum of Claim dated 20th February 2024. He avers that the 2nd Respondent hired him as Office Administrator through its letter dated 1st August 2003.
2. The Claimant avers that the appointment was initially on probationary terms. However, he contends that he was subsequently confirmed on 1st August 2004.
3. The Claimant contends that the letter of appointment set out his job description which included: attending and taking minutes in all meetings of the 2nd Respondent; filing returns with the Registrar of Trade Unions and ensuring general compliance; distributing the 2nd Respondent’s memos across campuses; serving as part of the secretariat for all National Delegates Conferences; and undertaking any other duties that were to be assigned to him.
4. The Claimant contends that he executed these duties diligently until 4th January 2024 when the 2nd Respondent irregularly, unlawfully and unfairly suspended him from duty. He contends that the suspension was indefinite. He further avers that the 2nd Respondent barred him from accessing any of its offices.



5. The Claimant avers that at the time the 2nd Respondent suspended him from duty, he had been in its service for twenty (20) years without blemish. He thus avers that the suspension was unjust and resulted in constructive termination of his contract of service.
6. The Claimant contends that despite attending the National Delegates Conference in Mombasa in December 2023, the 2nd Respondent did not pay him the allowance of Ksh. 200,000.00. Yet, he contends that other delegates were paid the allowance.
7. The Claimant further avers that he has outstanding leave days which he earned in 2021. Yet, the 2nd Respondent has not paid him in lieu thereof. Thus, he claims Ksh. 130,000.00 under this head.
8. The Claimant avers that after the 2nd Respondent suspended him from duty, it withheld his salary for January and February 2024. Thus, he claims for Ksh. 416,000.00 to cover the aforesaid salary arrears.
9. The Claimant prays for the following primary reliefs:-
 - a. A declaration that his suspension from duty and the delay in processing administrative action against him was illegal, null and void.
 - b. An order directing the Respondents to reinstate him back to his position.
 - c. A permanent injunction to restrain the Respondents from demoting, summarily dismissing and or terminating his contract of service based on the accusations leveled against him in the letter of suspension dated 4th January 2024.
 - d. An order to compensate him for the time he lost whilst out of employment and an order that he be paid all the emoluments which the Respondents withheld from him during his suspension.
 - e. General damages for unlawful suspension from duty.
10. In the alternative, he claims the following reliefs:-
 - a. A declaration that the indefinite suspension that was handed to him amounted to constructive termination of his contract.
 - b. An award of terminal dues.
 - c. Interest.
 - d. General damages for unfair termination of his contract.
 - e. An order directing the Respondents to issue him with a Certificate of Service.
 - f. Costs of the suit.
11. The 1st Respondent did not enter appearance or file a defense to the cause. However, the 2nd Respondent filed a response opposing the claim.
12. The 2nd Respondent avers that the Claimant was its employee and not an employee of the 1st Respondent. It contends that the Claimant was engaged to serve as Office Administrator.
13. The 2nd Respondent avers that on 3rd May 2023, the Claimant was asked to conduct reconciliation of its members' records and to present a report to its treasurer within two weeks. However, it avers that he failed to execute this assignment.
14. The 2nd Respondent contends that in view of the Claimant's failure to undertake the aforesaid reconciliation, it asked him not to attend the National Delegates Conference so that he could work on



the assignment. It contends that the Claimant defied these instructions and travelled for the National Delegates Conference.

15. The 2nd Respondent contends that in view of the Claimant's conduct, it issued him with a notice to show cause letter dated 19th December 2023. It contends that the Claimant gave his response to the show cause on 20th December 2023.
16. The 2nd Respondent avers that on 4th January 2024, it issued the Claimant with a letter suspending him from duty pending conclusion of investigations and initiation of disciplinary action against him. It further avers that on 2nd April 2024, it invited the Claimant to a disciplinary hearing which was scheduled for 9th April 2024.
17. The 2nd Respondent avers that on 8th April 2024, the Claimant wrote declining to submit to the Disciplinary Committee (DC). It contends that despite this, the DC convened on 9th April 2024 and after it deliberated on his case, it terminated his services.
18. The 2nd Respondent contends that it asked the Claimant to process his clearance in order to be paid his terminal dues but he is yet to do so. Meanwhile, it contends that another employee was recruited to fill his position. As such, it contends that the instant suit is unmerited and ought to be dismissed with costs.

Issues for Determination

19. After evaluating the pleadings, evidence and submissions by the parties, the following issues arise for determination:-
 - a. Whether the decision to suspend the Claimant from work was unlawful.
 - b. Whether the Claimant's contract of service was terminated through constructive dismissal from employment.
 - c. Whether the Claimant is entitled to the reliefs he seeks in the Memorandum of Claim.

Analysis and Determination

20. The first issue for determination relates to whether the decision to suspend the Claimant from service was unlawful. The Claimant asserts that the 2nd Respondent issued him with a letter of indefinite suspension from duty on 4th January 2024. He contends that following the suspension, the 2nd Respondent withheld his salary.
21. On the other hand, the 2nd Respondent avers that the suspension was not indefinite. The 2nd Respondent contends that it (the suspension) was meant to remain in force for the duration of the disciplinary process against him. As such, it (the 2nd Respondent) denies that the suspension was illegal. However, it is noteworthy that the Respondent does not deny that it withheld the Claimant's salary after it suspended him from duty.
22. Suspension of an employee from duty is usually available to an employer for two purposes. First, it may be deployed for administrative purposes to enable the employer to undertake investigations against an employee. Second, it may be deployed as a disciplinary measure against the employee (*Tassia Catholic Primary & Nuseri School v Kanini* [2024] KEELRC 1761 (KLR)).
23. The employer has no general right to impose a disciplinary suspension on an employee unless the law or the contract between the parties permits it. An example of where the law permits a disciplinary suspension of an employee is to be found under section 87(6)(b) of the *National Police Service Act* Cap



84 Laws of Kenya which allows the Inspector General of Police to suspend an officer as a disciplinary measure (*Tassia Catholic Primary & Nuseri School v Kanini (supra)*).

24. In contrast, an administrative suspension is available to an employer to enable him to undertake an inquiry into suspected misconduct by an employee. The employer is allowed this latitude in order to prevent the employee from interfering with the investigation process (*Mary Chemweno Kiptui v Kenya Pipeline Company Limited [2014] KEELRC 905 (KLR)*).
25. However, an administrative suspension should be time bound. As a consequence, it is impermissible for the employer to suspend an employee from duty for an indefinite term (*Mutwol v Moi University [2022] KECA 537 (KLR)*).
26. Further, owing to the fact that suspension of an employee from duty disrupts the discharge of obligations under a contract of service, the employer should resort to it sparingly. Usually, the tool of suspension should be deployed as a measure of last resort where there is cogent evidence that the continued presence of the affected employee at the workplace will interfere with the disciplinary process against him.
27. In the instant case, the 2nd Respondent suspended the Claimant from duty through its letter dated 4th January 2024. The letter, in part, reads as follows:-

“Reference is made to the show cause letter to you dated 19th December 2023 and your subsequent reply dated 20th December 2023.

You are hereby suspended from your duties as Office Administrator-UON w.e.f 4th January 2024 pending a full disciplinary hearing as will be communicated to you in due course.

You will be required to immediately hand over all records, assets and any other effects as owed to UASU-UON to Mr. Geoffrey Oburu Nyaoga. Additionally, you are restricted around UASU-UON premises until your hearing date is scheduled.

Sincerely,

.....”

28. A perusal of the letter demonstrates that the 2nd Respondent did not state the reason for the suspension. There is no indication that the suspension was necessitated by the desire to conduct investigations against the Claimant. The letter does not suggest that the 2nd Respondent had reasonable apprehension that the Claimant would interfere with the disciplinary process if he remained on duty during the pendency of the inquiry against him. In effect, the 2nd Respondent did not justify why the Claimant had to be suspended from duty.
29. Suspension from duty is not a tool that the employer should deploy arbitrarily without justification. If this were to be allowed, the tool would be susceptible to abuse.
30. The Claimant contends that the 2nd Respondent withheld his salary from the time it suspended him from duty. Although the 2nd Respondent denied this fact in its Statement of Defense, it did not present evidence to demonstrate that it paid the Claimant’s salary after it had issued him with the impugned suspension.
31. On the contrary, the available evidence tends to support the Claimant’s assertion that his salary from January onwards was not paid. For example, in the 2nd Respondent’s letter of summary dismissal from employment of the Claimant dated 9th April 2024, it (the 2nd Respondent) informed him that his salary



arrears were to be paid to him after he finalized the clearance and exit procedures implying that the Claimant was owed salary arrears.

32. It is noteworthy that it is the employer who effects payment of salary. As such, he (the employer) is the one who is ordinarily expected to be the custodian of the salary records. Therefore and in terms of section 112 of the *Evidence Act*, the burden of proof whether an employee has been paid salary for a particular period rests on the employer as the individual with special knowledge of this fact (see also the holding by the Court of Appeal on the effects of section 74 of the *Employment Act* in the case of *Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune* [2021] eKLR).
33. Unless the law or the contract between the parties specifically empowers the employer to withhold an employee's emoluments when the employee is on suspension, withholding of the emoluments constitutes a breach of a fundamental term of the contract between the parties. It is for this reason that an employee who is on suspension is usually paid a per centum of his salary.
34. The fact that the employer is not entitled to withhold an employee's salary during suspension unless the law or the contract between the parties sanctions it is affirmed in the Halsbury's Laws of England quoted in the case of *Mutwol v Moi University* (supra) where it was observed as follows:-

“989. Suspension. Whether or not the master has power to suspend a servant during the duration of the contract of service depends upon the construction of the particular contract. In the absence of any express or implied term to the contrary, the master cannot punish a servant for alleged misconduct by suspending him from employment and stopping his wages for the period of the suspension. Where, however, such a term is included in the in the contract, it is not rendered void by the statutory provision restricting deductions from workmen's wages for or in respect of fines, for the intention of the parties is taken to have been that for the period of suspension mutual duties and rights, including the right of wages, would be suspended.”

35. In the Canadian case of *Cabiakman v. Industrial Alliance Life Insurance Co.*, 2004 SCC 55, [2004] 3 S.C.R. 195, the court affirmed the reality that an administrative suspension should be with pay unless there are exceptional reasons to justify denial of salary. The court set out the underpinnings of a lawful suspension in the following terms:-

“This residual power to suspend for administrative reasons because of acts of which the employee has been accused is an integral part of any contract of employment, but it is limited and must be exercised in accordance with the following requirements: (1) the action taken must be necessary to protect legitimate business interests; (2) the employer must be guided by good faith and the duty to act fairly in deciding to impose an administrative suspension; (3) the temporary interruption of the employee's performance of the work must be imposed for a relatively short period that is or can be fixed, or else it would be little different from a resiliation or dismissal pure and simple; and (4) the suspension must, other than in exceptional circumstances that do not apply here, be with pay.”

36. In the instant case, the 2nd Respondent did not allude to any exceptional circumstances which justified the decision to withhold the Claimant's salary. In the premises, the court finds that there was no justification to withhold the Claimant's salary during the suspension period.
37. The foregoing fortifies the Claimant's contention that the suspension which was imposed on him was irregular and not justified. It is apparent that the 2nd Respondent did not speak to the reason why it



- found it necessary to suspend the Claimant during the pendency of the disciplinary process against him. There is no indication that the Claimant's presence at the workplace during the process was likely to interfere with it. Further, the 2nd Respondent did not speak to any exceptional circumstances which informed the decision to withhold the Claimant's salary during the period he was on suspension.
38. Having regard to the totality of the foregoing, it is apparent that the Claimant's suspension from duty was irregular. It is so declared.
 39. The next issue for determination is whether the Claimant's contract of service was terminated through constructive dismissal from employment. The Claimant's case in this regard is that the 2nd Respondent terminated his services on 4th January 2024 when it allegedly issued him with an indefinite suspension.
 40. The letter of suspension did not fix the duration of the suspension. However, it alluded to the fact that the suspension was to remain in force for the duration of the disciplinary case against the Claimant.
 41. The 2nd Respondent tendered evidence to demonstrate that after it issued the Claimant with the impugned suspension, it invited him for a disciplinary hearing through its letter dated 2nd April 2024. Vide the letter, the 2nd Respondent asked the Claimant to attend a disciplinary hearing which was scheduled for 9th April 2024.
 42. The 2nd Respondent provided further evidence to demonstrate that although the Claimant was invited for the aforesaid disciplinary session, he declined to submit to the DC. As a result, the disciplinary case was processed on the appointed date in his absence following which a decision was made to summarily terminate his services.
 43. Although the letter of suspension did not explicitly speak to the duration of the suspension, it alluded to the fact that it was to last until the Claimant's disciplinary case was heard and determined. The 2nd Respondent tendered separate evidence to show that the disciplinary hearing was in fact undertaken and closed on 9th April 2024. In the court's view therefore, the totality of the evidence which was presented demonstrates that the suspension lasted until 9th April 2024, the date the disciplinary case against the Claimant was heard and determined.
 44. The Claimant relies on the decision in the case of *Tassia Catholic Primary & Nusery School v Kanini* (supra) to contend that his suspension was for an indefinite period. However, the facts in the two cases are distinguishable.
 45. In the case of *Tassia Catholic Primary & Nusery School v Kanini* (supra), although the employer stated that the suspension was to remain in force until further notice, it (the employer) went silent on the matter thus leaving the employee in a state of limbo regarding the fate of her employment. Unlike in the instant case, there was no attempt by the employer in the aforesaid case to convene a disciplinary hearing to determine the employee's fate.
 46. Thus, the totality of the facts in the *Tassia* case suggested that the suspension was indefinite. Conversely in the instant case, the fact that the 2nd Respondent convened a disciplinary hearing for the Claimant and determined his fate on 9th April 2024 cured the deficiency on the timelines for the suspension as communicated in the letter of 4th January 2024 thus rendering the suspension for a definite term.
 47. The jurisprudence which has developed over time on constructive dismissal from employment suggests that for an employee to be able to successfully plead constructive dismissal from employment, he must have resigned from employment in reaction to an intolerable environment or breach of his contract unless it is demonstrated that the employer had removed him from the workplace indefinitely. The employee need not give notice of his intention to resign. He is entitled to resign with or without notice.



However, the bottom line is that he ought to quit employment in response to the breach of his contract or the intolerable work environment to enable him to plead constructive dismissal from employment (Coca Cola East & Central Africa Limited v Maria Kagai Ligaga [2015] KECA 394 (KLR)).

48. In the instant case, although the Claimant contends that the 2nd Respondent's decision to suspend him from service without pay amounted to constructive termination of the contract between the parties, he did not resign from employment in reaction to the employer's undesirable conduct before the 2nd Respondent summarily dismissed him from service on 9th April 2024. Yet, as has been demonstrated earlier in the judgment, his suspension from service was not indefinite. As such, he ought to have resigned before he could plead constructive dismissal.
49. Although the Claimant contends that he considered himself as constructively dismissed from employment on 4th January 2024 when he was issued with the suspension letter, the evidence on record does not support this contention. The fact that the Claimant did not consider his services as terminated on 4th January 2024 is self-evident from the pleadings he presented to court. For instance, at paragraph 12 of the Memorandum of Claim, he accused the 2nd Respondent of having failed to pay him salary for February 2024. This underscores the reality that he considered himself as still in the 2nd Respondent's employment in February 2024 long after 4th January 2024, the date he contends that his contract was constructively terminated.
50. The fact that the Claimant did not quit employment after 4th January 2024 in reaction to the 2nd Respondent's intolerable conduct but elected to stay on until his contract was summarily terminated on 9th April 2024 deprived him of the right to plead constructive dismissal. As such, the court finds that his contract was terminated through summary dismissal on 9th April 2024 after he declined to attend the disciplinary hearing which was scheduled on that date.
51. Once again, it is critical to point out the fact that the facts in the case of *Tassia Catholic Primary & Nusery School v Kanini* (supra), are distinguishable from the facts in this case. In *Tassia Catholic Primary & Nusery School v Kanini* (supra), after the employer suspended the employee from duty, it did not communicate to her regarding the fate of her employment effectively leaving her in a state of limbo. At the time of the trial of that cause, the employer had not communicated to the employee whether she was still an employee or whether her services had been terminated. Put differently, her removal from the workplace had become indefinite. Hence the holding that the employee's services had been constructively terminated.
52. In contrast in the instant case, although the Claimant's letter of suspension dated 4th January 2024 did not speak to the specific time the suspension was to end, the Respondent subsequently subjected the Claimant to a disciplinary hearing and terminated his services on 9th April 2024 before trial of his case. In the court's view, this redressed the lack of timelines in the letter of suspension with the consequence that the suspension qualified to be for a definite time which ran up to 9th April 2024 when the Claimant's contract was terminated.
53. The Claimant has referred to the Canadian case of *Potter v. New Brunswick Legal Aid Services Commission* 2015 SCC 10 to bolster his case for constructive dismissal. However, the facts in that case are also distinguishable from the facts in the instant case.
54. In the *Potter* case, it is noteworthy that the employee's suspension was for an indefinite term hence the holding that he was constructively dismissed. On the contrary, in the instant case, the court has found that the events that followed issuance of the suspension letter to the Claimant rendered the suspension period definite. It ran up to 9th April 2024 when the Claimant was dismissed from employment before



he resigned in order to be able to plead constructive dismissal from employment. As such, the claim for constructive dismissal fails.

55. The final issue for determination is whether the Claimant is entitled to the reliefs which he seeks in the Memorandum of Claim. As pointed out earlier, the Claimant prays for a series of reliefs, some of them in the alternate.
56. The first relief he seeks is a declaration that the suspension which was handed to him was unlawful. As indicated earlier in the judgment, the suspension was irregular. It is so declared.
57. The second prayer is for an order to reinstate him to his employment. It is noteworthy that the Claimant's case is premised on the fact of his suspension from duty on 4th January 2024. He has not challenged the 2nd Respondent's decision of 9th April 2024 by which it (the 2nd Respondent) summarily dismissed him from employment.
58. During trial of the case, the Claimant confirmed this fact when he stated as follows:-

‘As at the date I filed suit on 20.2.2024, I was on suspension without pay. I filed suit to challenge the suspension..... I was suspended pending full disciplinary hearing. I confirm the Respondent held a disciplinary hearing. On 9th April 2024, the Respondent issued me with a letter for summary dismissal. In my pleadings, I have not challenged the letter of summary dismissal. I was already in court when the decision to dismiss me was made. I was in court over the suspension. The suit does not challenge the disciplinary hearing the Respondent held against me.....

...I have not challenged the dismissal because I was in court when it was rendered. I was not aware I could challenge the decision to dismiss me.’

59. Suspension from duty does not constitute termination of a contract of service. It is merely a temporary disruption of the contract to enable investigations. Consequently, an employee who is on suspension remains in employment and cannot seek to be reinstated to a position he is still holding in law and fact.
60. Affirming the fact of continuity of the employment relationship during the currency of an employee's suspension from duty, the Court of Appeal in the case of *Amatsi Water Services Company Limited v Francis Shire Chachi* [2018] KECA 255 (KLR) stated as follows:-

‘... the respondent continued to be an employee of the appellant throughout his suspension, as admitted in the pleadings filed by the appellant.’

61. Having regard to the foregoing, the Claimant could not legitimately seek reinstatement to his position based on the impugned suspension from duty on 4th January 2024. This is because despite the suspension, he remained in the employment of the 2nd Respondent. As such, he could not legitimately pray to be reinstated to a position he was still holding at the time he instituted the suit.
62. The Claimant would have been entitled to seek reinstatement following the 2nd Respondent's decision of 9th April 2024 by which he was summarily dismissed from employment. However and as the record shows, he did not amend his pleadings to challenge the summary dismissal. This being the case, the court cannot grant him reinstatement on the basis of the events of 9th April 2024 which he has not challenged.
63. The third relief which the Claimant seeks is an order to retrain the Respondents from demoting, summarily dismissing or terminating his employment. However, this prayer cannot be granted since it has been overtaken by events.



64. The evidence on record shows that after the Claimant instituted these proceedings on 21st February 2024, the 2nd Respondent conducted disciplinary proceedings against him on 9th April 2024 whereupon his employment was summarily terminated. That being the case, the court cannot issue an order to restrain the 2nd Respondent from doing that which it has already done, that is say to stop the 2nd Respondent from summarily terminating the Claimant's services.
65. The Claimant also prays for general damages for the irregular suspension. However, as a general rule, the remedy of general damages is not awardable for breach of contract (*Nyamweya v Asakania* [2025] KEHC 1702 (KLR)). As such, the plea for general damages for the irregular suspension is declined.
66. The Claimant also prays for his withheld salary whilst he was on suspension. As pointed out earlier, the evidence on record supports the position that the 2nd Respondent did not pay the Claimant his salary after it suspended him from duty on 4th January 2024. As a matter of fact, the 2nd Respondent impliedly conceded owing the Claimant salary arrears in its letter dated 9th April 2024 by which it summarily terminated his services when it asked him to clear with it in order to be paid the arrears. The 2nd Respondent expressed itself on the matter as follows:-
- “Accordingly, upon compliance with all the clearing and exit procedures of the chapter and returning any chapter union property in your possession, you will be paid the salary arrears due and payable to you up to the date of this letter. The sums payable shall be subject to statutory deductions and any liability due to the chapter union.”
67. Under section 18(4) of the *Employment Act*, an employee who is summarily dismissed from employment is entitled to be paid all emoluments and benefits which had accrued to him at the time of such summary dismissal. As such, the Claimant is entitled to accrued salary from the time he was placed on suspension until the time his contract was summarily terminated on 9th April 2024. Accordingly, the Respondent is ordered to pay the Claimant the accrued salary for the aforesaid period, less the applicable statutory deductions at the time, subject to him undertaking the clearance and exit procedures as communicated in the 2nd Respondent's letter dated 9th April 2024.
68. Besides the aforesaid reliefs, the Claimant has requested for various alternative relief. These include a declaration that the indefinite suspension that was handed to him constituted constructive termination of his contract. However, this plea cannot issue since the court has found that his employment was not terminated through constructive dismissal from employment. The Claimant's suspension was rendered otiose for purposes of determining the validity of subsequent developments in the suit the moment the 2nd Respondent terminated his services through summary dismissal on 9th April 2024. As such and in this respect, the court can only evaluate the legitimacy of the suspension itself without more.
69. The Claimant has prayed for general damages for unfair termination of his contract. However, the court has found that he did not challenge the 2nd Respondent's decision of 9th April 2024 by which his employment was summarily terminated. As such, he cannot pray for general damages for unfair termination of his contract.
70. Importantly, the decision to suspend the Claimant from employment on 4th January 2024 did not constitute termination of his employment. As such, he cannot found a plea for general damages for unfair termination on the impugned suspension.
71. In any event and as observed earlier on in the judgment, the general position in law is that general damages are not awardable for breach of contract (*Nyamweya v Asakania* (supra)). As such, even if the



- Claimant had successfully demonstrated that his contract of service was unfairly terminated, he would not have been entitled to seek general damages for the alleged breach.
72. The Claimant has prayed for leave pay for 2021. He contends that he did not utilize his annual leave days during this period. As such, he claims for Ksh. 130,000.00 under this head.
 73. The 2nd Respondent denied the claim. However, it did not present evidence to demonstrate that the Claimant utilized annual leave days for 2021.
 74. Section 74 of the *Employment Act* obligates the employer to maintain employment records (including those on annual leave) for every employee. As such, the 2nd Respondent is, in law, the legal custodian of the Claimant's leave records.
 75. Section 112 of the *Evidence Act* places the burden of proof on a disputed fact on the person who has special knowledge of it. In this case, the 2nd Respondent being the legal custodian of the Claimant's annual leave records, is deemed to have special knowledge of whether or not he took annual leave for 2021. As such, the burden of proof lay on the 2nd Respondent to demonstrate, through production of the Claimant's leave records, that he had utilized his annual leave for 2021. However, it (the 2nd Respondent) did not discharge this burden.
 76. That being the case, the Claimant's contention that he did not utilize his annual leave for 2021 and is therefore entitled to pay in lieu thereof in the sum of Ksh. 130,000.00 was uncontroverted (see Jackson Muiruri Wathigo t/a Murtown Supermarket v Lilian Mutune [2021] eKLR). As such, the court finds that he has established the claim. Accordingly, the court grants him Ksh. 130,000.00 as pay in lieu of accrued leave days for 2021.
 77. The Claimant has also claimed for the award of an allowance of Ksh. 200,000.00 for attendance of the National Delegates Conference which was held in December 2023. However, he did not provide cogent evidence to demonstrate that the allowance was payable to him. During cross examination, he contended that the allowance was payable as a matter of practice. However, he did not tender independent evidence to back this claim. Consequently, absent evidence to back the claim, it fails.
 78. The Claimant also prays for pay in lieu of notice. However, the evidence on record shows that his contract was not terminated through constructive dismissal from employment on 4th January 2024 when he was suspended from duty but through summary dismissal from employment on 9th April 2024 which disentitled him to notice as a matter of right (see section 44 (1) of the *Employment Act*). Consequently, the claim for pay in lieu of notice to terminate his contract fails.
 79. The Claimant has further prayed for a Certificate of Service. By virtue of section 51 of the *Employment Act*, an employee who leaves employment is entitled to this certificate as a matter of right irrespective of the circumstances which informed his departure from the workplace. Accordingly, the 2nd Respondent is ordered to issue the Claimant with the requisite Certificate of Service.
 80. Every party shall bear own costs of the suit.
 81. Before I pen off, it is worthwhile to point out that during trial, the Claimant tendered evidence which was geared towards challenging the legitimacy of the accusations that were leveled against him in the letter of notice to show cause dated 19th December 2023. It is these accusations which informed the decision to suspend him from employment and subject him to the disciplinary hearing on 9th April 2024.
 82. As the evidence on record demonstrates, although the 2nd Respondent wrote to the Claimant on 2nd April 2024 inviting him to a disciplinary hearing on 9th April 2024, the Claimant wrote back on 8th



April 2024 declining the invite. As such, the disciplinary hearing was conducted on the appointed date in his absence and a decision made to summarily dismiss him from employment.

83. In the court's view and having regard to the provisions of section 41, 43 and 45 of the *Employment Act*, the Claimant ought to have challenged the validity of the grounds to terminate his contract before the DC that was set up to hear his case in the first instance. It is only after doing so that he would have been entitled to challenge the DC's decision in court.
84. Since he did not challenge the validity of the grounds to terminate his contract before the DC in the first instance, this court is not entitled to review the DC's decision with a view to overturning it. That will be tantamount to irregularly interfering with the employer's managerial prerogative at the workplace, an eventuality which is generally undesirable.
85. However, assuming that the court was entitled to evaluate the validity of the 2nd Respondent's decision of 9th April 2024, it will be required to consider whether the 2nd Respondent had valid grounds to terminate the Claimant's contract and whether the procedure it (the 2nd Respondent) adopted to release the Claimant from employment was fair. It is upon this evaluation that the court will be in a position to determine the legitimacy of the decision.
86. According to the evidence on record, the 2nd Respondent accused the Claimant of a number of infractions including failure to reconcile members' accounts. In the Claimant's response, he, inter alia, denied that he had failed to undertake the required reconciliation. He contended that the reconciliation was hampered by the 2nd Respondent failure to provide him with the appropriate records, tools and instructions for the exercise.
87. The 2nd Respondent did not accept this explanation. In the 2nd Respondent's view, the Claimant's action were a deliberate dereliction of duty. Hence the charges of insubordination and misconduct.
88. The evidence on record shows that the 2nd Respondent invited the Claimant to a disciplinary hearing on 9th April 2024 to defend himself against this and other charges. However, by his letter of 8th April 2024, he declined the invite and hence his conviction on this and one other charge.
89. During cross examination in court, the Claimant stated as follows on the subject:-

“At paragraph 3 of the response, I said I had not failed to reconcile UASU records. I said I will reconcile the records once I got the right tools. By this response, I did not admit that I had not done the reconciliation. I said I will do the reconciliation once I got the right tools. I had not reconciled the accounts at the time. I was to do it once I got the right records and tools. I did not tell the Respondent which records it was to avail to me to do the reconciliation. I also asked for rightful tools to do the reconciliation. I did not specify the tools. I also did not specify the instructions I required from the Respondent to do the reconciliation.”
90. From this evidence, it is apparent that the Claimant did not undertake the reconciliation in question. Although he blamed the failure to discharge the task on the 2nd Respondent's failure to provide him with appropriate records, tools and instructions, he conceded during trial of the case that he did not specify to the Respondent what kind of records, tools and instructions he required to execute the work.
91. Based on this evidence, it is evident on a balance of probabilities that the Claimant did not have a legitimate justification for his failure to execute the impugned task. As such, the 2nd Respondent had legitimate grounds to consider terminating his services.
92. As regards procedural fairness, the evidence on record shows that the 2nd Respondent issued the Claimant with a notice to show cause letter dated 19th December 2023 which set out the particulars of



the accusations against him. There is also evidence that the 2nd Respondent wrote to the Claimant on 2nd April 2024 inviting him for a hearing on 9th April 2024 but the Claimant declined the invite through his letter dated 8th April 2024. As such, there is cogent evidence to demonstrate that the disciplinary hearing of 9th April 2024 was conducted in line with the dictates of fair procedure.

93. Having regard to the foregoing and assuming that the court was entitled to evaluate the propriety of the 2nd Respondent's decision of 9th April 2024, it is apparent that it (the court) would have arrived at the conclusion that the decision was made in compliance with the law. As such, it (the court) would not have set aside the decision in any event.

Summary of the Court's Findings and attendant Orders

94. After evaluating the evidence and the law on the contested aspects of the case, the court makes the following findings and attendant orders:-
- a. The court finds and declares that the suspension which the 2nd Respondent imposed on the Claimant on 4th January 2024 was irregular and unjustified.
 - b. Nevertheless, the court finds that the suspension was for a determinable period contrary to the Claimant's contention that it was for an indefinite term.
 - c. Having regard to the totality of the evidence on record, the court finds that the Claimant's contract of service was not terminated through constructive dismissal from employment but through summary dismissal from employment on 9th April 2024.
 - d. The court declines the Claimant's prayer for reinstatement to employment because he did not challenge the 2nd Respondent's decision of 9th April 2024 which terminated his services.
 - e. The court declines to issue an order to restrain the Respondents from demoting, summarily dismissing or terminating the Claimant's employment since this prayer was overtaken by events when the 2nd Respondent summarily dismissed the Claimant from employment on 9th April 2024.
 - f. The court declines to grant the Claimant's plea for general damages for the irregular suspension because the position in law is that general damages are not awardable for breach of contract.
 - g. The Claimant is entitled to accrued salary from the time he was placed on suspension until the time his contract was summarily terminated on 9th April 2024. Accordingly, the Respondent is ordered to pay the Claimant the accrued salary for the aforesaid period, less the applicable statutory deductions at the time, subject to him undertaking the clearance and exit procedures as communicated in the 2nd Respondent's letter dated 9th April 2024.
 - h. The Claimant's prayer for general damages for unfair termination of his contract is declined for the reasons which have been set out in the body of the judgment.
 - i. The Claimant's prayer for leave pay for 2021 is granted in the sum of Ksh. 130,000.00.
 - j. The Claimant's prayer for the award of Ksh. 200,000.00 as allowance for attending the National Delegates Conference which was held in December 2023 fails for want of proof.
 - k. The Claimant's contract of service was terminated on 9th April 2024 through summary dismissal from employment which disentitled him to notice to terminate the contract as a matter of right (see section 44 (1) of the [Employment Act](#)). Consequently, his claim for pay in lieu of notice to terminate his contract fails.



- i. The 2nd Respondent is ordered to issue the Claimant with a Certificate of Service.
- m. Every party to the suit shall bear own costs of the suit.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF JANUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimants

.....for the 1st Respondent

.....for the 2nd Respondent

Order

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

