

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E347 OF 2023

AMIT KUMAR

SHARMA.....CLAIMANT
T

VERSUS

MEDITEST DIAGNOSTIC SERVICES

T/A MEDITEST HOSPITAL.....

RESPONDENT

JUDGMENT

Introduction

1. The Claimant lodged this suit vide a Statement of Claim dated 2nd May, 2023 and filed on 9th May, 2023. He seeks the following reliefs:-

- i. A declaration that the Claimant was unfairly, wrongfully, and unlawfully terminated.
- ii. A declaration that the letter dated 22nd April 2023 is unconstitutional, therefore null and void.
- iii. An order for the payment for the actual pecuniary loss suffered as a result of the wrongful termination being his terminal benefits and compensation, as follows:-
 - a) 1 month's salary in lieu of notice
 - b) Salary for December, 2022
 - c) Salary for January 2023
 - d) Salary for February 2023

- e) Salary for March 2023
 - f) Salary for 22 days worked in April
 - g) House allowance
 - h) Gratuity /service pay for 1 complete year
 - i) Prorate leave days
 - j) Refund of the air ticket fee to India
 - k) Compensation for irregular loss of employment
- iv. Award of general damages for violation of the Claimant's constitutional right not to be discriminated against as set out in Article 27[5] of the Constitution of Kenya and the right to fair labour practices as set out in Article 41 of the Constitution of Kenya.
 - v. Any other relief or order the Honourable Court may deem fit and just to grant in the circumstances.
 - vi. A certificate of service.
 - vii. Costs of the suit.
 - viii. Interest of 3, 4, and 7 from the date of termination.

2. The Respondent entered an appearance and subsequently filed a Response to the Claim and Counterclaim dated 11th October, 2023. The Respondent further filed an Amended Response dated 18th July, 2024, denying the Claimant's claim and withdrawing its earlier counterclaim.

3. The suit was heard on 22nd September, 2025, when the Claimant testified in support of his case, adopted his witness statement, and produced his documents as exhibits in the case. The Respondent's case was similarly heard on the same date, when one Mr. Sunil Kumar testified in support of

the Respondent's case, adopted his witness statement, and produced the Respondent's documents as exhibits in the cause.

4. Submissions were received from both parties and have been duly considered.

The Claimant's Case

5. The Claimant states that by a letter dated 10th August 2021, he was offered a full-time position at the Respondent's company as a Quality Analyst at a salary of USD 1,700. The Claimant further avers that he subsequently submitted his curriculum vitae and professional certificates demonstrating the critical skill sets required by the Respondent, as part of the documentation necessary for the processing of work permits.
6. It is his case that by a letter dated 16th September 2021, the Respondent invited him to travel to Kenya, and that upon his arrival in Kenya and subsequent confirmation, he diligently and faithfully served the Respondent until 22nd April 2023, when he was issued with a termination letter.
7. The Claimant avers that the events leading to his termination were that, as at 18th January 2023, he had not been paid his salary for the months of October, November, and December 2022, and that despite the non-payment of salary, he continued to report on duty and perform his duties without pay. The Claimant states that owing to the prolonged

non-payment, he was compelled to borrow funds from friends in order to meet his basic subsistence needs.

8. It is his case that throughout this period, he persistently requested payment of his salary from the Respondent's Director, Mr. Sunil Kumar, but that the said Director appeared to be aggrieved by the Claimant's persistent demands for his lawful salary.
9. The Claimant further avers that on 20th April 2023, the Respondent paid him a sum of Kshs. 111,250/=, being the outstanding balance for the month of November 2022, and subsequently, on 22nd April 2023, his employment was terminated.
10. The Claimant further avers that prior to his termination, he had written letters to the District Labour Office and the Department of Immigration complaining about the treatment he was receiving from the Respondent.
11. The Claimant avers that his termination was unfair and unlawful, as the Respondent failed to establish a valid reason for termination, in contravention of Sections 43 and 45 of the Employment Act, 2007.
12. The Claimant further avers that the Respondent's persistent failure and delay in payment of salary was deliberately intended to frustrate him into resigning, amounting to unfair labour practice.

13. It is his case that in the termination letter, the Respondent unlawfully demanded payment of medical treatment costs and purported to offset the same against his terminal benefits, contrary to the Respondent's existing medical cover policy, and in a discriminatory manner.
14. The Claimant further avers that his termination was conducted in a discriminatory and procedurally unfair manner, contrary to the principles of fair administrative action under Article 47 of the Constitution of Kenya, in that he was terminated without notice on 22nd April 2023 and required to vacate the Respondent's guest house by 28th April 2023 without payment of his dues.
15. The Claimant further avers that as a result of the Respondent's actions, he suffered embarrassment and distress among his peers, colleagues, and family, having been compelled to seek financial assistance to meet his basic daily needs while in the Respondent's employment in Kenya.
16. The Claimant avers that his termination was irregular and unlawful, as the Respondent lacked any probable cause, and that the termination was precipitated by a witch-hunt, in breach of Section 41 of the Employment Act, 2007, and Part IV of the Act relating to the protection of wages.
17. The Claimant further avers that by a letter dated 24th April 2023, he appealed against the termination and requested an opportunity to be heard and to exonerate himself from any

alleged act or omission that may have formed the basis for termination, but the Respondent failed, refused, and/or neglected to respond to or communicate the outcome of the said appeal.

18. The Claimant states that by a letter dated 26th April 2023, he, through his advocates on record, formally demanded payment of terminal dues and a return air ticket within seven (7) days, which the Respondent declined, alleging that the termination was fair.

19. It is his case that, as a result of the foregoing, his termination was both unlawful and unfair, and he seeks against the Respondent payment of his terminal benefits together with damages for the embarrassment and humiliation occasioned by the Respondent's actions.

20. On cross-examination, the Claimant told the court that the Respondent paid for his travel back from India and that he was given a house. It is his further testimony that he agreed to go to Nigeria.

21. It is his further evidence that he did not receive a salary from the company he consulted for while in Nigeria, and that he was only paid consultation fees, and that the salary was to be paid by the Respondent.

22. The Claimant urges the court to allow his claim as prayed.

The Respondent's Case

23. The Respondent denies all allegations of unlawful and unfair termination and avers that the Claimant did not work for it until 22nd April 2023 as alleged. The Respondent contends that the Claimant's employment effectively ended in December 2022, when he agreed to be seconded to Ariel Foods FZE Nigeria, and that as of 31st December 2022, he was no longer its employee.

24. The Respondent further states that the Claimant worked in Nigeria from December 2022 to April 2023, during which period his salary was paid by Ariel Foods FZE Nigeria, and that his return to Nairobi on or about 11th April 2023 was unannounced, following which he unlawfully occupied the Respondent's guest house.

25. The Respondent further avers that the Claimant demanded various payments and benefits upon his return, prompting the Respondent to issue a letter dated 22nd April 2023 clarifying that the employment relationship had already ended and outlining the terminal dues offered, including one month's salary in lieu of notice, leave pay, a certificate of service, a recommendation letter, and an air ticket to India.

26. The Respondent maintains that the Claimant's October and November 2022 salaries were temporarily withheld to offset an outstanding medical bill arising from kidney stone surgery received by the Claimant in 2021 at the Respondent's hospital, and that the withheld amounts were eventually released out of compassion following persistent requests by the Claimant. The Respondent further avers

that the outstanding medical bill was lawfully offset against the Claimant's terminal dues, leaving a balance payable by the Claimant.

27. The Respondent denies breaching any medical policy, contending that the policy relied upon by the Claimant was introduced in January 2023, after the Claimant had left employment, and could not apply retrospectively to treatment received in 2021.

28. The Respondent further denies all allegations of discrimination, unfair labour practices, and procedural impropriety, and accuses the Claimant of insincerity and manipulation, including misrepresenting facts to the Court, unlawfully occupying company premises, and authoring misleading complaints to government authorities.

29. The Respondent denies liability in its entirety, avers that all the Claimant's dues were fully addressed in the letter dated 22nd April 2023, and contends that no cause of action has arisen against it.

30. The Respondent's witness told the court in his oral testimony that the company experienced huge losses and could no longer afford the Claimant, and that it approached a food company to take him on board. He further stated that the company agreed to onboard the Claimant at the same salary of USD 1,700 per month.

31. On cross-examination, RW1 told the court that it was he who sent the Claimant to work in Nigeria, and he was informed verbally, and that a discussion was held with him prior to being sent to work in Nigeria.

32. RW1 further told the court that because the Claimant was working with Ariel Foods FZE Nigeria, the Respondent could not pay him a salary. It is his position that the Claimant was verbally terminated on 1st December, 2023, and that a termination letter was issued in April, 2024.

33. RW1 avers that the reason for the Claimant's termination was financial constraints, though he does not remember whether the reason for termination was indicated in the termination letter. It is his testimony that the Claimant committed no misconduct.

34. RW1 further told the court that he discussed the termination with the Claimant but admitted that he did not have any documents on the said discussion. It is his evidence that the Claimant did not claim salary for the period he worked in Nigeria.

35. In re-examination, RW1 told the court that the Claimant understood that he was terminated when he left for Nigeria and that he was offered one month's salary and an air ticket when he was leaving.

36. The Respondent prays that this suit be dismissed with costs.

Analysis and Determination

37. Having considered the pleadings, the witnesses' oral testimonies, the evidence adduced, and the submissions by both parties, the following issues arise for determination: -

- i. Whether the Claimant was an employee of the Respondent up to 22nd April 2023
- ii. Whether the Claimant's termination was fair and lawful
- iii. Whether the Claimant is entitled to the remedies sought

Whether the Claimant was an Employee of the Respondent up to 22nd April 2023

38. The Respondent contends that the Claimant's employment ended verbally on 1st December 2022 upon secondment to Ariel Foods FZE Nigeria. The Claimant on his part maintains that he remained an employee of the Respondent until 22nd April 2023, when he received a written termination letter.

39. It is not disputed that no written termination letter was issued in December 2022 when the Respondent is said to have terminated the Claimant. It is also not in dispute that the Claimant was sent to Nigeria at the Respondent's initiative and further, RW1 admitted that the Claimant committed no misconduct as to warrant termination. The termination letter dated 22nd April 2023 issued to the Claimant was also tendered in evidence.

40. Sections 9 and 10 of the Employment Act demand that employment terms and termination be in writing, which goes to say that an oral termination, unsupported by documentation, cannot lawfully sever an employment

relationship. In ***CMC Aviation Ltd v Mohammed Noor [2015] eKLR***, the Court held that termination must be clear, unequivocal, and communicated formally.

41. Further, in ***Anthony Mkala Chitavi v Malindi Water & Sewerage Co. Ltd [2013] eKLR***, the Court held that an employee remains in employment until termination is lawfully communicated.

42. In the circumstances, I find and hold that the Claimant remained an employee of the Respondent until **22nd April 2023**, when the written termination letter was issued.

Whether the Claimant's termination was fair and lawful

43. Section 41 of the Employment Act provides that before termination, an employee must be informed of the reason for termination and allowed an opportunity to be heard.

44. RW1 admitted that the Claimant committed no misconduct, that no disciplinary hearing was conducted, and that there is no record of any termination meeting. He further told the court that he does not recall whether the termination letter stated the reason for the termination, and although he alludes to a discussion with the Claimant on the termination, no documents or minutes were adduced in evidence on such discussions, and which discussions, the Claimant denies happened. In ***Postal Corporation of Kenya v Andrew K. Tanui [2019] eKLR***, the Court of Appeal emphasized that compliance with Section 41 is mandatory and not a mere formality.

45. Similarly, in **Walter Ogal Anuro v Teachers Service Commission [2013] eKLR**, the Court held that failure to follow the procedure under Section 41 renders termination procedurally unfair.

46. In the premise, I find the Claimant's termination procedurally unfair.

47. The second limb in determining the fairness of a termination, is prove that the reasons for the termination are valid, fair and justified. Under Sections 43 and 45 of the Employment Act, the employer bears the burden of proving a valid and fair reason for termination.

48. The Respondent gave inconsistent reasons for the termination of the Claimant's employment, including financial constraints and secondment to Ariel Foods FZE Nigeria. RW1 admitted in his oral testimony that the Claimant committed no misconduct and could also not confirm whether the reason for the termination was stated in the termination letter. In **Kenfreight (EA) Ltd v Benson K. Nguti [2016] eKLR**, the Court of Appeal held that where an employer fails to prove a valid reason, termination is substantively unfair.

49. Further, financial constraints, even if genuine, require adherence to redundancy procedures laid out under Section 40 of the Act, which procedures were not followed in this case.

50. In the end, I find and hold that the Respondent failed to prove a valid reason for terminating the Claimant's employment, which renders the termination substantively unfair and unlawful.

Whether the Claimant is entitled to the reliefs sought

51. The Claimant seeks a myriad relief as against the Respondent resulting from his unfair termination. I will proceed to analyze each of the reliefs sought as follows: -

1 Month's salary in lieu of notice

52. The finding that the Claimant's termination is both procedurally and substantively unfair entitles him to notice pay as nothing shows that such notice was either given or that pay in lieu of notice was made.

53. The prayer for 1 month's pay in lieu of notice has merit and is hereby awarded.

Salaries for the months of December 2022, January, February, March, and April 2023

54. The Claimant confirmed that he agreed to be sent to work in Nigeria and further admitted being paid by the Nigerian company for the period he provided services to it. Although the Claimant described the payments made by Ariel Foods FZE Nigeria as consultation fees rather than salary, he has not shown that there was an agreement to continue being

paid by the Respondent during the period he was seconded to Ariel Foods FZE Nigeria.

55. Further, in the text exchanges between him and the RW1, it is clear that what he sought to be paid was salary for November 2022 and not for the time he served at Ariel Foods FZE Nigeria.

56. In my considered view, to allow the Claimant's prayers herein would amount to unjustly enriching him on the simple basis that he did not provide services to the Respondent in the period he seeks to be paid, and for his admission that the company that he worked for paid him during that period.

57. I find these prayers devoid of merit and are hereby dismissed.

House allowance

58. The Claimant confirmed that he lived in the Respondent's company house during his term of duty. The law requires that an employer either provide an employee with dwelling premises or pay a house allowance, but not both.

59. This prayer, therefore, fails on this account.

Gratuity/Service pay

60. Although gratuity is only payable where it is expressly provided for under an employment contract, the Respondent did not issue the Claimant with a written contract and has also not shown that it made deductions in respect of NSSF.

61. In the premise, I deem the prayer for service pay merited and is awarded as prayed.

Prorated leave

62. Leave days not taken form part of what the Respondent indicated as the Claimant's terminal dues in the letter of termination.

63. The Claimant is therefore entitled to this payment based on the Respondent's own admission and is hereby awarded.

Refund of air ticket fees to India

64. The Respondent is under an obligation to refund the Claimant's ticket fee, having made that promise under the termination letter. The prayer is similarly allowed as prayed.

Compensation for the unfair termination

65. The finding of an unfair termination entitles the Claimant to compensation in accordance with Section 49 of the Employment Act.

66. Considering that the Claimant served the Respondent for barely a year, I deem an award of 5 months' salary sufficient compensation for the unfair termination, and which is hereby awarded.

General Damages for violation of the Claimant's Constitutional rights

67. In my view, the award of compensation already granted remedies for the injuries suffered by the Claimant, and to

award damages in the circumstances will amount to double recovery since the constitutional breaches herein are not separate and distinct from the termination.

68. I find the prayer lacking in merit, and it fails.

69. In whole, Judgment is hereby entered for the Claimant and orders granted as follows: -

- a) A declaration that the Claimant was unfairly and unlawfully terminated.
- b) That the Respondent shall pay the Claimant 1 month's salary in lieu of notice at USD 1,700
- c) That the Respondent shall pay the Claimant a one-year service pay of USD 850
- d) That the Respondent shall pay the Claimant prorated leave at USD 686
- e) That the Respondent shall refund the Claimant's air ticket fees at USD 356.75
- f) That the Respondent shall pay the Claimant 5 months' salary as compensation for the unfair termination at USD 8,500
- g) The Respondent shall bear the costs of the suit and interests thereon at court rate from the date of this judgment until payment in full.

70. It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2026.

C. N. BAARI
JUDGE

Appearance:

Mr. Onenga present for the Claimant

Mr. Mekenye present for the Respondent

Ms. Esther S- C/A

ORIGINAL