



**Kimeu v Teachers Service Commission (Cause E507 of 2021)
[2026] KEELRC 417 (KLR) (19 February 2026) (Judgment)**

Neutral citation: [2026] KEELRC 417 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E507 OF 2021
BOM MANANI, J
FEBRUARY 19, 2026**

BETWEEN

ABEDNEGO KIMONDO KIMEU CLAIMANT

AND

TEACHERS SERVICE COMMISSION RESPONDENT

JUDGMENT

Background

1. Until he was retired from service, the Claimant was a teacher by profession. He has instituted these proceedings against the Respondent, his former employer, claiming that the latter unlawfully terminated his services.
2. The Claimant contends that the Respondent hired his services as a teacher from 11th May 1989 at a salary of Ksh. 81,212 per month. He contends that he was thereafter posted to Kalulini Boys School.
3. The Claimant avers that he suffered spinal and cervical injuries following a road traffic accident which occurred on 29th November 2001. He avers that the injuries affected him from the neck thus confining him to a wheel chair.
4. The Claimant contends that the Respondent transferred him to Mbooni Boys High School with effect from 17th April 2003. He contends that he continued to discharge his duties diligently despite the injuries he had suffered in the accident until he was no longer able to do so.
5. Whilst in Mbooni Boys High School, the Claimant avers that the Principal of the school disconnected water supply to his house. He also avers that he was subjected to a series of security threats forcing him to raise the matter with the Respondent and the police.



6. The Claimant contends that his doctor advised him to procure an assistive device whose cost was approximately Ksh. 600,000.00 but he was unable to raise the cash. As a result, he contends that he approached a bank for a loan but the School Principal blocked the process.
7. The Claimant contends that these actions were intended to push him into retiring from service. He contends that in addition to the foresaid, he received many threats from the Respondent's agents and employees in a bid to force him to exit employment without securing his retirement benefits.
8. The Claimant contends that he raised these matters with the Respondent. However, he avers that the Respondent did not take action on them.
9. Further, the Claimant contends that the Respondent stopped paying his salary from October 2018. He contends that the Respondent thereafter terminated his services through its letter dated 30th November 2018.
10. The Claimant avers that the Respondent's decision to terminate his services was informed by a letter dated 5th November 2018 through which he had allegedly requested to resign from service. He denies writing the aforesaid letter to seek voluntary retirement from service.
11. The Claimant contends that the Respondent subsequently wrote to the Principal of Mbooni Boys High School claiming that he (the Claimant) had asked for voluntary retirement with effect from 30th November 2018. He contends that the Principal received the Respondent's letter on 13th November 2019.
12. The Claimant contends that he had left Mbooni Boys High School by 5th November 2018. As such, he denies that he authored the letter purporting to seek for voluntary retirement. He contends that the purported letter does not express his will.
13. The Claimant further contends that the purported letter alleging that he had opted for voluntary retirement was received in November 2019 long after the Respondent had stopped paying his salary. As such, it is his case that his contract had already been terminated by then.
14. The Claimant avers that after the Respondent stopped paying his salary in October 2018, he visited its (the Respondent's) Headquarters on 31st October 2018 with a view to ascertaining the reason why he had been removed from the payroll. He avers that the Respondent's officers advised him to write a letter of resignation in order for his salary and other benefits to be released.
15. The Claimant further contends that the Respondent's Director of Human Resources forced him to write a letter of retirement during the aforesaid visit. Despite this, he avers that he did not receive salary from October 2018.
16. The Claimant further contends that the Respondent issued a circular dated 21st May 2015 through which it approved payment of remuneration to personal guides for public officers with disabilities. He avers that on 6th October 2015, the National Council for Persons with Disabilities wrote to the Respondent to inform it that he qualified for this benefit. However, he contends that the Respondent did not facilitate his enjoyment of the aforesaid benefit.
17. The Claimant contends that the Respondent's actions were discriminatory. He avers that on 18th June 2013, the National Council for Persons with Disabilities wrote to the Respondent demanding that it ceases all acts of discrimination against him but to no avail.
18. The Claimant contends that whenever he pushed for his rights, the Respondent would accuse him of being rude. Yet, it never subjected him to disciplinary action on account of the alleged rudeness.



19. The Claimant avers that although the Respondent accused him of poor performance, it did not subject him to performance appraisal or offer him trainings. He further contends that despite these accusations, the Respondent did not provide him with a chance to improve his performance.
20. The Claimant contends that all factors remaining constant, he ought to have retired on 27th December 2025. However, he asserts that the Respondent terminated his services more than seven (7) years before this date.
21. The Claimant contends that the Respondent did not serve him with notice of intention to terminate his services or pay him salary in lieu thereof as required under the Employment Act. As such, he contends that his release from service was unlawful.
22. The Claimant thus prays for: one month's salary in lieu of notice to terminate his contract; compensation for unlawful termination of his contract; damages for discrimination on account of disability; an order that the Respondent computes and pays his pension; interest; a Certificate of Service; and costs of the suit.
23. The Respondent is opposed to the claim. It filed a statement of defense, a list and bundle of documents and witness statements to anchor its response.
24. The Respondent confirms that the Claimant was indeed its employee. It contends that his contract was governed by various instruments including: the Constitution of Kenya 2010; the Teachers Service Commission Act; the Employment Act; the Code of Regulations for Teachers (2015); the Code of Conduct and Ethics for Teachers; the Leadership and Integrity Act; and other legal instruments which include administrative circulars issued by it from time to time.
25. The Respondent avers that the Claimant alleged that he was involved in an accident on 27th November 2001 while at Kalulini Secondary School. However, it contends that he did not notify it of the alleged accident within the timeframe that is set by law. It further contends that the Claimant did not comply with other requirements relating to reporting of an accident at work.
26. The Respondent avers that it only became aware of the alleged accident on 15th February 2018 after the Principal of Mbooni Boys School alluded to the matter through his letter of even date. It contends that through the letter, the Principal notified it that the Claimant had not been performing his duties since occurrence of the accident.
27. The Respondent contends that after it received the aforesaid letter, it commissioned an investigation into the matter. It further avers that after the investigations were completed, an investigation report setting out the findings and recommendations was prepared.
28. The Respondent contends that despite the Claimant having suffered injuries in the accident, he did not apply for sick leave as required by the Code of Regulations for Teachers. It contends that the Claimant ignored the advice of the District Human Resource Officer and the Principal of his school to lodge the sick leave application. As a result, it contends that he continued to draw full salary for several years without working.
29. The Respondent avers that regulation 113 (wrongly indicated as 133 in the witness statement) of the Code of Regulations for Teachers makes provision for sick leave. It avers that the regulation entitles a teacher who is unwell and is unable to work to sick leave with full pay for the first three months. Thereafter, the teacher will be entitled to a further three months of sick leave but with half pay and without pay after the sixth month.



30. The Respondent further avers that if a teacher is unable to resume duty for a period exceeding one year, he is supposed to be subjected to medical review by a Medical Board to determine whether he should be retained in service. It contends that the Board will make recommendations on the way forward after such review.
31. The Respondent contends that having regard to the aforesaid regulations, the Claimant ought to have earned full salary for only three months from the date of the accident. However, it avers that he remained on full salary for seventeen (17) years without rendering services to it or applying for the requisite sick leave.
32. The Respondent avers that notwithstanding this, it indulged the Claimant by asking him to submit his medical records in order to kick start the process of retiring him on medical grounds. Meanwhile, it contends that it made a decision to stop his salary with effect from 1st October 2018.
33. The Respondent contends that the Claimant subsequently applied for retirement on medical grounds through his letter dated 5th November 2018. It avers that it accepted this request and asked him to furnish it with medical records to facilitate the process. However, it contends that he did not submit the required records thereby stalling the process.
34. The Respondent contends that after the Claimant failed to submit his medical records to facilitate his retirement on medical grounds, it elected to retire him on the basis of voluntary retirement. It contends that this was, in any event, advantageous to him since he did not have to be subjected to the laborious process of retirement on medical grounds.
35. The Respondent avers that after it issued the Claimant with the retirement notice, it requested him to submit certain documentation to facilitate the processing of his pension. However, it contends that the Claimant opted to apply for compensation under the Work Injury Benefits Act instead of submitting the aforesaid documentation.
36. The Respondent contends that it declined the Claimant's aforesaid application for compensation. It avers that it informed him the reasons for the decision.
37. The Respondent asserts that it acted fairly and procedurally in releasing the Claimant from employment through voluntary retirement. As such, it prays for dismissal of the claim.

Issues for Determination

38. After evaluating the pleadings and evidence on record, the main issues that present for determination are as follows:-
 - a. Whether the contract between the parties was legitimately terminated.
 - b. Whether the Respondent discriminated against the Claimant.
 - c. Whether the Claimant is entitled to the reliefs which he seeks in the action.

Analysis and Determination

39. The controversy between the parties, as I see it, centers on whether the Respondent's decision to terminate the Claimant's services on the basis of voluntary retirement was legitimate. There is no doubt from the evidence on record that the Claimant suffered disability following a road traffic accident which occurred in November 2001. As a result, his health deteriorated over time with the consequence that at some point, he was no longer able to discharge his duties of teaching.



40. The parties are not in agreement on when the Claimant became completely unable to teach. According to the Respondent, the Claimant was unable to continue discharging his duties from around 2007 after he underwent a second surgery following the suit accident.
41. The Respondent appears to suggest that the Claimant concealed his inability to discharge his duties by not applying for sick leave in line with the applicable law. As a result, it contends that he continued to earn a salary for several years without rendering services.
42. On the other hand, the Claimant contends that despite the injuries he sustained in the accident, he continued to discharge his duties normally until 2013 when his health substantially deteriorated. He however avers that he was not hospitalized as a result.
43. The trigger for the controversy between the parties appears to have been the letter by the Principal, Mbooni Boys High School to the Respondent dated 15th February 2018. Through the letter, the Principal informed the Respondent that the Claimant had not been carrying out his teaching duties for a long while because of the injuries he had sustained in the aforesaid accident. The Principal asked the Respondent to conduct investigations into the matter in order to determine the Claimant's suitability to continue in service.
44. Following this letter, the Respondent commissioned an investigation into the matter. On completion of the exercise, an investigation report dated 9th April 2018 was prepared.
45. According to the report, the Claimant suffered a road traffic accident on 19th November 2001 whilst he was teaching at Kalulini Boys High School. He was later transferred to Mbooni Boys High School but suffered incapacity after an operation he underwent in March 2007. According to the report, the Claimant began using a wheel chair from that time and could no longer teach although he continued to stay in the staff quarters.
46. Following the report, the Respondent's personnel formed the view that the Claimant could not continue in service due to his condition. As a result, it appears that they began exerting pressure on him to consider retiring on medical grounds.
47. Although the Respondent asserts that it only learned of the accident which caused the Claimant disability on 15th February 2018 after the Principal of Mbooni Boys High School wrote to it on the matter, the evidence on record suggests that this is not true. The Respondent appears to have become aware of the accident much earlier.
48. This reality is self-evident from the aforesaid letter which, in part, states as follows:-

“The above named teacher was posted to this school in 2003 to teach English/CRE. Before the teacher was posted here, he had been involved in a road accident. For many years, the teacher has been sick and the Teachers Service Commission has frequently been updated.”
49. From this extract, it is apparent that the author of the letter underscored the fact that the Claimant had been sick for a number of years and that the Respondent had been kept updated about the matter. This demonstrates that contrary to the Respondent's assertion that it only learned of the accident in February 2018, it had been aware of the Claimant's ailment associated with the accident long before 2018.
50. Further evidence that the Respondent became aware of the accident and the Claimant's disability much earlier than 2018 is to be found in the letters by the National Council for Persons with Disabilities dated 18th June 2013 and 6th October 2015. Whilst the first letter was copied to the



Respondent, the second one was addressed to it. Both letters alluded to the Claimant's disability. Importantly, the letter dated 18th June 2013 mentioned that the disability arose from the accident of November 2001.

51. The two letters were addressed to the Respondent through its Private Bag address long before 2018. The Respondent does not deny receipt of the letters. As such, it cannot contend that it only became aware of the suit accident in February 2018. It is clear from the letters that the Respondent was aware of the accident and the Claimant's disability much earlier. What it may not have known was the fact that he eventually stopped working because of the effects of the accident.
52. The record shows that the Claimant wrote to the Respondent on 5th November 2018 requesting to retire on medical grounds. According to the receipt stamp on a copy of the aforesaid letter, the Respondent received the letter on 5th November 2018.
53. In the Claimant's Memorandum of Claim and witness statement, he appeared to disown the aforesaid letter by suggesting that he did not author it perhaps because the Respondent had treated it as a request for voluntary retirement. However, during trial, he conceded that he was indeed the author of the letter. As such, the court is convinced that the Claimant wrote the request to retire on medical grounds dated 5th November 2018.
54. At the trial, the Claimant contended that he asked to be retired on medical grounds. However, he averred that the Respondent purported to terminate his services on voluntary retirement.
55. The record shows that after the Respondent received the Claimant's letter dated 5th November 2018 for retirement on medical grounds, it wrote to him on 30th November 2018 accepting to retire him. However, it informed him that the retirement was considered as voluntary as opposed to retirement on medical grounds.
56. The Claimant contends that he only received the Respondent's aforesaid letter in November 2019. He relies on the receipt stamp by Mbooni Boys High School affixed on a copy of the letter to contend that the Respondent released the letter in November 2019.
57. The Claimant's contention is that because the Respondent stopped paying his salary in October 2018, it (the Respondent) impliedly terminated his services in October 2018. As such, he implies that acceptance of his resignation in November 2019 came long after his contract had already been unlawfully terminated.
58. The Claimant's other contention is that although he had requested the Respondent to retire him on medical grounds, it (the Respondent) purported to treat his request as one of voluntary retirement. As such, he contends that the purported voluntary retirement was in effect an unlawful termination of his employment.
59. On the other hand, the Respondent contends that the Claimant was not entitled to continue earning salary after it became apparent to him that he was no longer able to work. It contends that he was supposed to have applied for sick leave to enable it (the Respondent) to determine when his salary was to be stopped. However, it contends that he did not do so.
60. As a result, the Respondent contends that the Claimant continued to earn despite the fact that his salary should have been stopped. Because of this state of affairs, the Respondent contends that it stopped his salary in October 2018 pending processing of his exit from service on medical grounds.
61. The Respondent contends that although the Claimant applied for retirement on medical grounds, he was unwilling to provide his medical records to enable it to process the retirement on medical grounds.



- Further, it contends that retirement on medical grounds was going to take a considerably long time. As such, it avers that it opted to process his request as a voluntary retirement as opposed to retirement on medical grounds.
62. Regulation 113 of the Code of Regulations for Teachers, 2015 entitles a teacher to apply for sick leave. Upon such application, the Respondent may grant the request.
 63. The regulation further provides that a teacher who is on sick leave is entitled to full pay for the first three months of the leave. Thereafter, he is entitled to half pay for three months after the lapse of the first three months. However, he will not be entitled to pay after the lapse of six months.
 64. What is apparent from the foregoing is that a teacher can only be deemed to be on sick leave if he has lodged a formal application for the leave and the Respondent has acceded to the application. It does not appear to the court that such leave can either be unilaterally imposed by the Respondent or can arise by implication.
 65. During the trial, the Claimant stated that he did not apply for sick leave from the time he got involved in the suit accident to the time he was retired from service. As such, he contends that no such leave was granted to him.
 66. The Claimant stated in re-examination that he worked up to 2013 when it became apparent to him that he could not continue working due to the effects of the accident. Having come to this conclusion, the Claimant should have applied for sick leave to enable the Respondent to determine when to stop his salary. However and as the record shows, he did not do so with the consequence that he continued to draw salary after 2013 when he admits he could no longer work. Apparently, he continued to earn the salary without working until October 2018 when the Respondent stopped the payments.
 67. Was the Claimant's conduct equitable and justifiable in the circumstances? Certainly not. The failure by him to disclose to the Respondent's management that he could no longer work as from 2013 so that the Respondent could stop his salary and process his release from service on medical grounds was improper.
 68. The court is alive to the fact that the aforesaid regulations came into force in 2015 approximately two years after the Claimant had come to the realization that he could no longer work. As such, it may be argued that the Claimant could not have been expected to comply with non-existent regulations.
 69. Such argument may appear persuasive. However, it is noteworthy that after the regulations came into force in 2015, the Claimant did not seek to comply with the requirement of sick leave provided therein. Instead, he continued to draw a salary up to October 2018, long after the said regulations had come in force.
 70. Having said so, was it legitimate for the Respondent to unilaterally stop the Claimant's salary in the absence of a formal application for sick leave and without having conducted some form of disciplinary action against him? I think not.
 71. The moment it dawned on the Respondent that the Claimant had been drawing salary without working for some while, it ought to have considered instituting disciplinary action against him in order to lay a basis for discontinuance of the salary. In the court's view, it was not within the Respondent's mandate to unilaterally stop further payments to the Claimant without instituting disciplinary proceedings against him through which he would have been offered an opportunity to react to the matter.
 72. Irrespective of the justification for the decision, unilateral withdrawal of an employee's salary constitutes a breach of the contract of service (*Duncan Murunyu Mungai v Slopes Media House*



- Limited [2021] KEELRC 228 (KLR)). As such, notwithstanding that it was irregular for the Claimant to have continued to draw salary without working, the Respondent should only have stopped the pay after taking disciplinary action against him.
73. The above position is further fortified by section 4 of the *Fair Administrative Action Act*. The Respondent's decision to stop the Claimant's salary was going to affect his right to pay. As such, he was entitled to be heard on the matter before the decision was made.
74. The other matter for consideration is whether the Respondent was entitled to unilaterally convert the Claimant's application for retirement on medical grounds into an application for voluntary retirement. The court notes that regulation 160(3) of the Code of Regulations for Teachers, 2015 provides for voluntary retirement. This form of retirement ought to be at the instance of the teacher who wishes to retire. The Respondent can only approve an application for voluntary retirement once it is lodged by the teacher. It cannot approve voluntary retirement which has not been applied for.
75. On the other hand, regulation 162 provides for retirement on medical grounds. Here, the process of retirement may be initiated either by the teacher or the commission. Once the process is initiated, the commission is required to refer the matter to a Medical Board constituted by the Director of Medical Services for purposes of issuance of a medical report to support the process.
76. The Respondent contends that it elected to treat the Claimant's request to retire on medical grounds as a request for voluntary retirement because he had declined to share his medical records to enable the process. Looking at the applicable regulation in the Code, the court is not convinced that the Respondent had to secure the Claimant's medical records before it could refer his case to the Director of Medical Services for review. All that was required of it (the Respondent) was to forward the request for retirement on medical grounds to the Director of Medical Services who was to then set up a Medical Board. It was the Board and not the Respondent to call for the Claimant's medical records in order to come up with the requisite medical report.
77. The foregoing being the case, the court finds that it was improper for the Respondent to have unilaterally converted the Claimant's request for retirement on medical grounds into a request for voluntary retirement. The Respondent had no legitimate basis to do so.
78. As such and in so far as it (the Respondent) closed the contract between the parties on the basis of voluntary retirement which the Claimant had not applied for, this was irregular. It was also irregular for the Respondent to have unilaterally stopped the Claimant's salary in October 2018 without subjecting him to a disciplinary process through which he would have been heard on the matter. To this extent, the court finds that the Respondent improperly closed the contract of service between the parties.
79. The next issue for determination is whether the Claimant was subjected to discrimination by the Respondent. The law on discrimination at the workplace is encapsulated in section 5 of the *Employment Act* which provides in part as follows:-
- i. No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee:-
 - a. on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status;
 - b. in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.



- ii. In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.
80. According to existing jurisprudence, the burden of disproving allegations of discrimination against an employer lies with the employer. What is required of an employee is to present preliminary evidence to establish a prima facie case that he was a victim of discrimination (see *Munene v United States International University (Cause 105 of 2019) [2024] KEELRC 1635 (KLR) (28 June 2024) (Judgment)*).
81. At paragraph 18 of the Claimant’s witness statement, he claims that he faced discrimination at the school in contravention of provisions of the *Employment Act*. At paragraph 28 of the statement, he avers that although the National Council for Persons with Disabilities wrote to the Respondent on 6th October 2015 informing the latter that he qualified for assistant allowance, the Respondent did not act on the matter. At paragraph 30 of the statement, he contends that the Respondent never took steps to ensure that he could access buildings and other infrastructure within the school. He further accused the Respondent’s officers of having disconnected his water supply in a bid to force him to exit the school. These averments are reiterated in various paragraphs in the Memorandum of Claim.
82. The Claimant adopted the witness statement as his evidence in chief during the trial. He also produced some of the documents he alluded to in the statement (including the letter from the National Council for Persons with Disabilities to the Respondent dated 6th October 2015) as his exhibits thereby laying out prima facie material to anchor his claim for discrimination.
83. During trial, the Respondent’s first witness denied the Claimant’s allegation that he disconnected the Claimant’s water supply. However, he conceded that the Claimant was not assigned a personal guide whilst he was in service. He also conceded that the old buildings in the school did not have ramps. He further confirmed that he was aware that the Claimant ought to have been accorded these facilities to enable him to discharge his duties.
84. On her part, the Respondent’s second witness confirmed that the Respondent’s records show that the Claimant had filed a report showing that he was involved in an accident in 2001. Nonetheless, she sought to clarify that the report was made in 2018. However and as has been demonstrated earlier in the judgment, there is evidence that the Respondent became aware of the accident much earlier than 2018.
85. The witness stated that although the Claimant was a person with disability, the Respondent did not assign him a personal guide. She contended that this was because the Claimant did not respond to the Respondent’s inquiry regarding whether he had a guide to enable it to pay him the assistant allowance.
86. The witness stated that she was aware of the various correspondence between the Claimant and the National Council for Persons with Disabilities regarding his challenges. She confirmed that the letters raised concerns about availability of suitable amenities for the Claimant’s use at the workplace. She further confirmed that the Claimant had raised the issue of disconnection of water supply to his residence.
87. Despite acknowledging some of these issues, the witness denied that the Respondent was responsible for resolving them. She contended that matters relating to school infrastructure fall under the Ministry of Education.
88. The attempt by the Respondent to evade responsibility for ensuring accessibility in institutions of learning for teachers with disability is unconvincing. Under section 21 of the *Persons with Disabilities*



Act, the responsibility of ensuring that the workplace is accommodative for employees with disability rests with the employer.

89. In the instant case, the Respondent was the Claimant's employer in law. As such, although the primary responsibility of providing infrastructure in the school where he was teaching lay with the Ministry of Education, the Respondent retained the legal responsibility of following up on provision of disability friendly infrastructure and devises with the Ministry.
90. The on evidence record points to discrimination against the Claimant. The Respondent's second witness confirmed that his water supply was disconnected at some point. However, she did not explain why this happened to enable the court to discount the possibility that it was motivated by the desire to eject the Claimant from the school because of his condition.
91. Both defense witnesses confirmed that the Claimant was not provided with an assistant and or assistant allowance despite his condition and despite the letter dated 6th October 2015 from the National Council for Persons with Disabilities addressed to the Respondent. Further, both of the Respondent's witnesses confirmed that some of the buildings at the school where the Claimant was teaching did not have ramps to aid in his movement.
92. Having regard to this evidence, the court is convinced that the Respondent subjected the Claimant to impermissible differential treatment. It is so declared.
93. The last issue for determination relates to whether the Claimant is entitled to the reliefs which he seeks in the Memorandum of Claim. As indicated earlier, the Claimant has prayed for a number of reliefs including: payment of one month's salary in lieu of notice to terminate his contract; compensation for unlawful termination of his contract; damages for discrimination on account of disability; an order that the Respondent computes and pays his pension; interest; a Certificate of Service; and costs of the suit.
94. The court has already made a finding that the manner in which the Respondent closed the contract of service between the parties was irregular. Consequently, the Claimant is entitled to compensation for the irregular closure of his contract.
95. That said, the court is alive to the fact that the Claimant's failure to apply for sick leave in time or at all to obviate the continued payment of his salary after he stopped working contributed to the Respondent's decision to sever the employment relation between the parties.
96. Under section 49 of the Employment Act, the court is required to take this into account whilst assessing the quantum of compensation to grant. Having regard to the foregoing, the court awards the Claimant compensation for the irregular closure of his contract which is equivalent to his salary for two months, that is to say, Ksh. 162,424.00. This amount is based on the pay slip which the Claimant tendered in evidence as proof of his monthly salary.
97. The Claimant has also prayed for damages for the discriminatory treatment against him. The court has already found that he was a victim of discrimination. As such, it awards him damages of Ksh. 3,000,000.00 as compensation for the discriminatory treatment.
98. In making this award, the court has considered past decisions in which awards for discrimination were made. In *Pandya Memorial Hospital v Geeta Joshi* [2020] KECA 65 (KLR), the Court of Appeal awarded the aggrieved employee Ksh. 3,000,000.00 for discriminatory retirement. In *G M V v Bank of Africa Kenya Limited* [2013] KEELRC 162 (KLR), the court granted the employee a global award of Ksh. 3,000,000.00 to cover inter alia, a claim of discrimination against her on account of pregnancy. In the case of *Kitheka & another* (Suing as the administrators of the Estate of the Late Florence Wairimu



- Ndung'u - Deceased) v County Government of Lamu & another [2023] KEELRC 2034 (KLR), the court awarded general damages of Ksh. 2,000,000.00 for discrimination on account of ethnicity.
99. The Claimant has prayed for an order that the Respondent compute and release his pension to him. During trial, the defense acknowledged that he was entitled to pension. However, it contended that he did not fill the requisite forms to enable processing of the pension.
 100. That being the case, the court finds that the Claimant is entitled to pension payment from the Respondent and or the Pension Fund Administrator whom the Respondent has appointed to manage the pension funds. Accordingly, the Respondent is ordered to compute the pension which is due to the Claimant and to facilitate its release subject to the Claimant complying with the procedures for release of the money as will be indicated by the Respondent.
 101. The Claimant has prayed for a Certificate of Service. Under section 51 of the Employment Act, a departing employee is entitled to such certificate. Accordingly, the Respondent is directed to issue the Claimant with a Certificate of Service.
 102. The court awards the Claimant interest on the amount awarded at court rates from the date of this decision.
 103. The court awards the Claimant costs of the suit.
 104. The award to the Claimant is subject to the applicable statutory deductions at the time the contract between the parties was terminated.
 105. Any other reliefs which was sought but which has not been expressly granted is deemed to have been declined in a bid to avoid violating the principle against duplication of awards as was laid down in the cases of *Pandya Memorial Hospital v Geeta Joshi* [2020] KECA 65 (KLR) and *G M V v Bank of Africa Kenya Limited* [2013] KEELRC 162 (KLR).
 106. Finally as I close, it is necessary to revisit the matter of the fate of the salary which the Claimant appears to have continued to draw without working after 2013. As mentioned earlier in the judgment, it was unjust for the Claimant to have continued to draw this amount even after he had come to the realization that he could no longer work. As such, the Respondent would probably have been entitled to recover the amount. However, it did not file a counter-claim for the amount. As such, it may have lost the opportunity to follow the disputed payments.

Summary of the Findings and attendant Orders

107. After evaluating the pleadings, evidence and submissions by the parties against the law, the court makes the following findings and attendant orders:-
 - a. The Respondent improperly terminated the Claimant's contract of service.
 - b. The Respondent subjected the Claimant to discriminatory treatment.
 - c. The Claimant is awarded Ksh.162,424.00 as compensation for the irregular termination of his contract of service.
 - d. The Claimant is awarded Ksh. 3,000,000.00 as compensation for discriminatory treatment against him.
 - e. The Respondent is ordered to compute and facilitate the release of the Claimant's pension subject to the Claimant complying with the procedure for release of the money as will be directed by the Respondent.



- f. The Respondent to issue the Claimant with a Certificate of Service.
- g. The Claimant is awarded interest on the amount awarded at court rates from the date of this decision.
- h. The Claimant is awarded costs of the case.
- i. The award to the Claimant is subject to the applicable statutory deductions at the time the contract between the parties was terminated.
- j. Any other reliefs which was sought but which has not been expressly granted is deemed to have been declined.

DATED, SIGNED AND DELIVERED ON THE 19TH DAY OF FEBRUARY, 2026

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the 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.

