

2. The Claimant in support of the claim filed his list of witnesses dated 19th February 2025; amended witness statement of even date; and list of documents of even date with the bundle of documents attached.

The Respondents entered appearance through the law firm of Kosgey & Masese Advocates on 26th May 2021 and filed a statement of defence dated 26th May 2021. The 2nd Respondent also filed a Notice of Preliminary Objection dated 26th May 2021.

3. In support of their defence, they filed a witness statement made by the 2nd Respondent and dated 26th May 2021.

Hearing and evidence

4. The claimant's case was heard on the 7th October 2025, when the claimant testified in his case as per the amended claim dated 19th February 2025, adopted his witness statement of the same date as his evidence in chief, and produced his documents under the list of the same date as C- exhibits 1-4. The claimant was cross-examined by counsel for the respondent, Mr. Masese, and re-examined by his counsel, Mr. Ojienda.
5. The Respondent's case was heard on the 11th November 2025, with the witness as Mohammed Kuno, who stated he was the 2nd respondent and a director of the 1st respondent. The witness adopted as his evidence in chief his witness statement dated 26th May 2021 and produced the respondents' documents under the list dated 18th September 2024. The witness was cross-examined by counsel for the claimant, Mr. Ojienda and re-examined by their counsel Mr. Masese.

The Claimant's case in summary

6. The Claimant's case is that he was employed by the Respondents on or about on 24th May 2019 as a general manager at a monthly basic salary of Kshs.150,000/-, which employment commenced on 6th June 2019. On 4th September 2020 the Claimant was served with a termination letter dated 4th September 2020 informing him that his employment was being terminated, and instructing him to proceed for his annual leave effective from 7th September 2020, which leave would run concurrently with the termination notice. The 1st Respondent, in the termination letter aforesaid, confirmed that the Claimant would receive his monthly salary through his bank account during the notice period. However, despite several follow ups through emails and phone calls with the 2nd Respondent to have his terminal dues as agreed in the notice paid, the 2nd Respondent refused to make the payment. In fact, the 2nd Respondent ended up blocking his calls making it difficult to communicate with him.

7. It is the Claimant avers that the 1st and 2nd Respondents jointly and severally are in breach of Section 18 (5) of the Employment Act; that they failed to comply with the substantive and procedural legal requirements to be met by the employer during termination of employment; and that they failed to remit the Claimant's terminal dues following the termination of employment.

Respondents' case in brief

8. The Respondent admits that the Claimant was its employee, having been employed vide a contract of employment on 24th May 2019. Some terms of the contract of employment were that: the Claimant would receive a gross monthly salary of Kshs.130,000 subject to statutory deductions; the contract of employment could be terminated by either party giving three

(3)month's written notice or by payment of three (3) month's salary in lieu of notice; and the 1st Respondent could summarily terminate the Claimant's employment for violations of the provisions of Section 44 of the Employment Act and for gross misconduct.

9. It is admitted by the Respondents that the Claimant's employment was terminated by a letter dated 4th September 2020, through which he was given three (3) months' notice of termination pursuant to Clause 3 of the Contract of Employment. The 1st Respondent states that it paid to the Claimant all his terminal dues during the notice period and further gave the Claimant all his leave days in accordance with the law. As such, the Claimant's contract was lawfully terminated.

10. The 1st Respondent denies entering into a Contract of Employment with the Claimant. He states that the Claimant was an employee of the 1st Respondent, a limited liability company, hence argues that the claim against him personally should be struck out.

11. Without prejudice to the foregoing the Respondents state that the Claimant engaged in gross misconduct by selling the 1st Respondents goods and services to a third party without following the laid down procedures thereby causing the 1st Respondent to suffer losses. This entitled the 1st Respondent to summarily dismiss the Claimant. Further, the Respondents state that due to the adverse effects of the Covid-19 Pandemic's on the hospitality industry, the 1st Respondent has remained shut since September 2020 and as such it had to scale down its operations as its revenues were cut out by the Pandemic. This justified the termination of the Claimant's employment.

DETERMINATION

12. The court issued directions on the filing of written submissions after the close of the respondent's case. Only the claimant filed.

13. The court having heard the parties discerned the issues for determination in the claim were –

a. Whether the termination of the services of the claimant was fair.

b. Whether the claimant was entitled to relief sought

Whether the termination of the services of the claimant was fair.

14. The claimant amended the claim with leave of the court to seek compensation for the termination. The court finds that, having been allowed by the court, the issue of whether it was proper is water under the bridge. It was proved on a balance of probabilities that the termination through with the notice of 3 months was unfair for lack of a valid reason (section 41 and 45 of the Employment Act) and non-compliance with section 41 of the Employment Act, which the court holds to be mandatory. In National Bank of Kenya v Samuel Nguru Mutonya /2019] eKLR, the Court of Appeal quoting with approval the decision in the case of Janet Nyandikov Kenya Commercial Bank Limited [2017] eKLR stated as follows regarding the need by the employer to comply with section 41 of the Employment Act when terminating the services of an employee:- *'Section 41 of the Act, enjoins the employer in mandatory terms, before terminating the employment of an employee on grounds of misconduct, poor performance or physical incapacity to explain to the employee in a language that the employee understands the reasons for which the employer is considering to terminate the employee's employment with them. The employer is also enjoined to ensure that the employee receives the said reasons in the presence of a fellow employee or a shop floor union representative of own choice; and to hear and consider any representations which the*

employee may advance in response to allegations leveled against him by the employer."The reason of change of management given by the respondent when the business continued was to operate as the ground of termination was not valid under section 45 of the Employment Act – ‘45(2)A termination of employment by an employer is unfair if the employer fails to prove— (a)that the reason for the termination is valid;(b)that the reason for the termination is a fair reason—(i)related to the employees conduct, capacity or compatibility; or (ii)based on the operational requirements of the employer; and (c)that the employment was terminated in accordance with fair procedure.’”

15. In the upshot, the termination is held as unfair.

Whether the Claimant is entitled to Reliefs sought

16. The claimant sought for the following reliefs –

- a) 1 month pay in lieu of notice Kshs. 150,000/-
- b) Salary balance from June to November 2020 totalling Kshs. 355,295/-
- c) 12 months compensation for unlawful termination Kshs. 180,000/-
- d) Interest in (a) above
- e) The costs of this suit.

17. On the prayer for 1 month pay in lieu of notice Kshs. 150,000/-- The court held the termination was unlawful. The claimant is entitled to 1 month notice payment in lieu of procedural fairness. On the salary the claimant pleaded Kshs. 150000 which was disputed by the respondent. The respondent relied on the contract of employment which stated the salary was Kshs. 130000 consolidated. The respondent denied having issued payslip to the

employee. The letter of contract indicated Kshs. 130000. The document produced as a payslip was a photocopy and vehemently denied by the 1st Respondent's witness. The said document was further dated 10th December 2020, which was post-termination of the contract. The claimant served a short period of time, and the probability of a salary increment was minimal, taking into account it was the COVID period, and further, he received notice of termination in September 2020. The court found that the contract is superior to secondary evidence of payslip on salary payment. The salary is held as Kshs. 130,000. Notice pay is awarded for Kshs. 130,000.

18. Prayer for balance from June to November 2020 totalling Kshs. 355,295/-- During cross-examination the respondent proved payment of monies to the claimant for the period from 4th September to December totalling Kshs. 335,000 thus balance of Kshs. 65,000 . The court awarded the unpaid salary as proved at the trial of Kshs. 65,000.
19. Prayer for 12 months compensation for unlawful termination - The court applied factors under section 49(4) of the Employment Act. The claimant was employed on 24th May 2019, and the termination was effective on 5th December 2020. The claimant did not contribute to the termination. The employer issued 3 months notice as per the contract in compliance with contract terms. There was no reason given to the court why the claimant cannot secure another similar opportunity in the market. The court applying the foregoing factors, held an award of 3 months' salary is fair. Thus Kshs. 130000x3= Kshs. 390,000.

Conclusion

20. In conclusion, the claim is allowed. Judgment is entered for the claimant against the respondents as follows-

- a. Notice payment of 1month salary of Kshs. 130,000.
- b. Compensation for unfair termination equivalent to 3 months' salary, thus Ksh 390,000.
- c. Salary arrears of Kshs. 65,000.
- d. Interest on the above(a,b and c) from date of filing suit.
- e. costs of the suit

21. It is so ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: Otieno

Claimant: Ojienda

Respondent: Masese