



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT  
NAIROBI**

(ON Makau J on 18<sup>th</sup> March 2026)

**CAUSE NO. E330 OF 2022**

**FREDRICK OMONDI ABWAJO.....1<sup>ST</sup>  
CLAIMANT**

**MAITHYA MAINGI.....2<sup>ND</sup>  
CLAIMANT**

**-VERSUS-**

**MAJESTIC PRINTING WORKS LIMITED.....  
RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimants brought this suit assisted by the Secretary General of their trade union. By a statement of claim dated 22<sup>nd</sup> April 2022 they sought the following reliefs:-

***a) The Honourable court finds termination of 1<sup>st</sup>  
and 2<sup>nd</sup> Claimants as unfair/wrongful.***

**b) The Honourable court compel the Respondent to abide by the Conciliators recommendation without further delay as follows:-**

**i) Two months' salary in lieu of notice**

**Grederick Omondi Abwajo (1<sup>st</sup> Claimant**

**Kshs. 49,735 x 2 = Kshs. 99,470/=**

**Maithya Maingi (2<sup>nd</sup> Claimant) Kshs.**

**34,884.45 x 2 = Kshs. 69,768.90/=**

**Total Kshs. 169,238.90**

**ii) Wage increase (10%) arrears accrued from 2019/2021 party's Collective Bargaining Agreement up to the time of termination.**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant**

**Salary arrears 1<sup>st</sup> September 2019 - 30<sup>th</sup>**

**August 2020 - Kshs. 2,257 x 12 Months**

**= Kshs. 27,084.**

**1<sup>st</sup> September 2020 - 6<sup>th</sup> January 2021 -**

**Kshs. 2,370 x 4 Months = 9,480/= Total**

**Kshs. 36,564/=**

**Maithya Maingi (2<sup>nd</sup> Claimant)**

**Salary arrears 1<sup>st</sup> September 2019 - 30<sup>th</sup>**

**August 2020 - Kshs. 1,582 x 12 Months**

**= Kshs. 18,984.**

**Salary arrears 1<sup>st</sup> September 2020 - 6<sup>th</sup> January 2021 - Kshs. 1,661 x 4 Months = 6,664/= Total Kshs. 25,648/=**  
**Total Kshs. 62,212/=**

**iii) House allowance arrears accrued from 2019/2021 parties Collective Bargaining Agreement up to the time of termination.**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) - Kshs. 300 x 16 Months = Kshs. 4,800/=**  
**Maithya Maingi (2<sup>nd</sup> Claimant) - Kshs. 300 x 16 Months = Kshs. 4,800/=**  
**Total Kshs. 9,600/=**

**iv) Gratuity pay for years worked 15 day's pay each completed year worked**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) - Kshs. 49,735 x 18 years = Kshs. 895,230/=**

**Maithya Maingi (2<sup>nd</sup> Claimant) - Kshs. 34,884.45 x 15 years = Kshs. 523,236.75/=**

**Total Kshs. 1,418,466.75**

**v) Six month's salary compensation for unfair termination as recommended by the conciliator**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) -  
Kshs. 49,735 x 6 months = Kshs.  
298,470/=**

**Maithya Maingi (2<sup>nd</sup> Claimant) - Kshs.  
34,884.45 x 6 months= Kshs.  
209,306.70/=**

**Total Kshs. 507,776.7**

**vi) Leave days not taken**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) -  
10 months prorated (20) days Kshs.  
38,134**

**Maithya Maingi (2<sup>nd</sup> Claimant) (28 days)  
- Kshs. 34,884.45**

**Total Kshs. 73,018.45**

**vii) Leave travelling allowance**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) -  
10 months prorated Kshs. 4,209/=**

**Maithya Maingi (2<sup>nd</sup> Claimant) - Kshs.  
5,500/=**

**Total Kshs. 9,709/=**

**viii) Overtime**

**Fredrick Omondi Abwajo (1<sup>st</sup> Claimant) -  
Kshs. 3,232.65/=**

**Maithya Maingi (2<sup>nd</sup> Claimant) - Kshs.  
3,870/=**

**Total Kshs. 7,102.65/=**

- ix) Days worked up the date of termination  
Fredrick Omondi Abwajo (1<sup>st</sup> Claimant)  
six days salary - Kshs. 9,959/=**
- Maithya Maingi (2<sup>nd</sup> Claimant) six days  
salary- Kshs. 5,814.08/=**
- Total Kshs. 15,773.08/=**
- c) Any other benefit this Honourable court  
deems fit.**
- d) The Respondent to issue 1<sup>st</sup> and 2<sup>nd</sup>  
Claimants with certificate of service as  
provided for under Section 51 of the  
Employment Act, 2007.**
- e) Respondent to pay the costs of this suit.**

2. The Respondent was served with the pleading herein and entered appearance through the FKE on 13<sup>th</sup> July 2022 but never filed defence. By a notice of motion dated 20<sup>th</sup> November 2023, FKE sought leave to cease acting for the Respondent and it was granted on 23<sup>rd</sup> January 2024. On 25<sup>th</sup> March 2025, the court directed the matter to proceed by formal proof as no defence had been filed by then. On 2<sup>nd</sup> February 2026 the Claimant prosecuted their claim by adopting their pleadings and evidence and filed written submissions.

### **Facts of the case.**

3. The 1<sup>st</sup> Claimant was employed on 1<sup>st</sup> March 2002 and rose to become a supervisor in the Binding Department earning monthly basis salary of Kshs. 45,146.25 plus house allowance of Kshs. 5000. The second Claimant was employed on 1<sup>st</sup> April 2005 and rose to become Machine operator earning basic salary of Kshs. 31,639 plus house allowance of Kshs. 5000.
4. The Claimant's trade union had a Recognition Agreement with the Respondent and together they had concluded a CBA effective October 2020. On 24<sup>th</sup> December 2020 the Respondent held a meeting with all the employees to discuss payment of salary arrears backdated to October 2020. The Respondent did not honor his promise to pay the arrears before the Christmas break and the employees were disappointed as they went for the holiday without pay.
5. On 6<sup>th</sup> January 2021 and all the staff including the Claimants reported back from the Christmas break. However the Claimants were served with summary dismissal letters. The 1<sup>st</sup> Claimant was accused of physical assaulting the Human Resource officer and two Directors during the meeting of 24<sup>th</sup> December 2020. The 2<sup>nd</sup> Claimant was accused of arrogance, tampering with company property and threatening to cause harm during the said meeting.

6. Attempt to have the dismissal reduced to a normal termination was unsuccessful and the matter was escalated to the Ministry of Labour for conciliation. The parties were heard and the conciliator rendered his report recommending compensation to the Claimants but the Respondent rejected the recommendations, hence this suit.
7. The Claimants contended that their dismissal was unfair as there was no valid reason and the procedure under section 41 of the Employment Act was violated. Therefore they prayed for the reliefs sought in their suit.
8. In their written submissions dated 5<sup>th</sup> February 2026, they maintained that their summary dismissal was unfair as they were accorded their right to hearing before the dismissal. They further submitted that the Respondent did not prove the infractions committed by them warranting summary dismissal under section 44 of the Employment Act. Therefore they submitted that the dismissal was unfair since the Respondent did not prove the reason for their dismissal as required under section 43 of the Employment and it also failed to justify that grounds for the dismissal as required under section 47 (5) of the Act.

### **Issues for determination and Analysis**

9. Having considered the pleadings, evidence and submissions, the following issues fell for determination:-
- a) Whether the summary dismissal was unfair and unlawful.
  - b) Whether the reliefs sought are merited.

### **Unfair dismissal**

10. Section 45 (1) & (2) provides:-

***“(1). No employer shall terminate the employment of an employee unfairly.***

***“(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.”***

11. In this case the Claimants case was that they were dismissed for no valid reason and they were not accorded any hearing. The Respondent did not file defence denying the Claimants

case and it adduced no evidence to prove the reason for the summary dismissal of the Claimants and also to prove that it followed a fair procedure as contemplated under section 41 of the Employment Act.

12. Section 41 provides:-

***“(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.***

***(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”***

13. Section 43 of the Act provides:-

***“(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the***

***termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.***

***(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which cause the employer to terminate the services of the employee.”***

14. In the instant case, I easily find that the summary dismissal of the Claimants did not resonate with the legal principle emerging from section 41, 43 and 45 of the Employment Act, Consequently the dismissal was unfair and unlawful within the meaning of section 45 of the Act.

### **Reliefs**

15. Section 49 of the Act provides for payment of salary in lieu of notice and compensation for unfair termination. The Claimants prayed for the maximum compensation of 12 months salary considering their long service of 18 and 15 years respectively and that no evidence was adduced of prior warning letter or contribution to the dismissal through misconduct, I award them compensation of 6 months gross salary as prayed.
16. The claim for wage and house allowance arrears, gratuity, leave, leave travelling allowance, overtime, salary days

worked before termination are dismissed for lack of evidence. The Claimants never filed in court as exhibits documents marked A -P in the statement of claim. For the same reason especially without the CBA, I only award each Claimant one month salary in lieu of notice.

### **Conclusion**

17. I have found that the summary dismissal of the Claimants was unfair and unlawful within the meaning of Section 45 of the Employment Act. I further have found that the Claimants are entitled to 6 months gross salary as compensation plus one month salary in lieu of notice. Accordingly, I enter judgment for the Claimants as follows:-

#### **1<sup>st</sup> Claimant**

Notice.....Kshs. 49,735  
Compensation.....Kshs. 280,410  
Total.....Kshs. 330,145

#### **2<sup>nd</sup> Claimant**

Notice.....Kshs. 34,884.45  
Compensation.....Kshs. 209,306.70  
Total.....Kshs. 244,191.15

18. The award is subject to statutory deductions but in addition to costs and interest at court rate from the date of this Judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN OPEN  
COURT AT NAIROBI THIS 18<sup>TH</sup> DAY OF MARCH 2026.**

**ONESMUS MAKAU  
JUDGE**

**Appearance**

Namasaka for the Claimants

No appearance for the Respondent