

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: MUSINGA (P), JOEL NGUGI & ODUNGA, JJ.A.)

CIVIL APPEAL NO 516 OF 2019

BETWEEN

EASY COACH.....APPELLANT

AND

SAMUEL CHEGE NJOGU.....RESPONDENT

*(Being an appeal from the Judgment of the Employment & Labour
Relations Court at Nairobi (**Wasilwa, J.**) delivered on 27th June 2018*

in

ELRC Cause No. 1133 of 2013)

JUDGMENT OF THE

COURT

1. Before this Court is an appeal from the judgment delivered by the Employment and Labour Relations Court at Nairobi (**Wasilwa, J.**) on 27th June 2018 in ELRC Cause No. 1133 of 2013.
2. The background to this appeal is that the appellant and the respondent enjoyed an employer-employee relationship. In

his Memorandum of Claim dated 17th July 2013, the
respondent

contended that he was employed by the appellant in April 2011 as a bus inspector, earning a gross monthly salary of Kshs. 14,071.53. He contended that he performed his duties diligently until 22nd March 2013 when his employment was terminated by the appellant. According to the respondent, the dismissal followed an incident relating to the operation of a bus travelling from Homabay to Nairobi. He averred that on 14th March 2013 he was suspended pending investigations and later summoned to a disciplinary hearing held on 18th March 2013.

3. The respondent contended that the process leading to his dismissal was unlawful because he was not accorded a fair hearing as required under the Employment Act, Cap 226 (**the Act**). He alleged that he was forced to admit wrongdoing during the disciplinary meeting, and that the appellant did not call the persons who had allegedly made accusations against him. The respondent further alleged that the appellant failed to pay his lawful employment benefits, including overtime pay, rest days, annual leave, salary for the month of March 2013, gratuity and notice pay. He therefore sought a

declaration that the termination of his employment was
unlawful and unfair and

prayed for payment of terminal dues amounting to Kshs. 238,798.95 together with costs, interest and issuance of a certificate of service.

4. In response, the appellant filed a Memorandum of Defence dated 28th March 2014, denying any wrongdoing and maintaining that the respondent was lawfully dismissed for gross misconduct. The appellant admitted employing the respondent as a bus inspector and stated that his duties included ensuring all buses complied with all traffic regulations and confirming that every passenger travelling on the company's buses had a valid ticket. The appellant pleaded that on the night of 11th March 2013, the respondent was on duty on bus registration number KBS 956T travelling from Homabay to Nairobi via Kisii. According to the appellant, while the bus was enroute, an extra passenger boarded the bus at Kisii without a ticket and was allowed to travel after paying Kshs. 800/= to the respondent. The passenger was allegedly seated on the staircase despite the bus being fully booked. The appellant stated that the matter was discovered by a senior inspector at Narok, who found the passenger on

board and recorded a statement from him.

5. The appellant further averred that investigations were conducted and the respondent was suspended pending disciplinary proceedings. The respondent later appeared before a disciplinary committee and was given an opportunity to be heard. Following the hearing, the committee concluded that the respondent had breached company regulations by allowing an excess passenger to board a bus and by receiving fare without issuing a ticket. The appellant therefore summarily dismissed the respondent on grounds of gross misconduct pursuant to section 44 of the Act. It was further pleaded that the respondent had been paid his terminal dues and that the dismissal was both substantively and procedurally fair.
6. At the trial, the respondent testified that he had worked for the appellant as a bus inspector from April 2011 until March 2013. He stated that on the material date he was assigned to bus registration number KBS 956T, travelling from Homabay to Nairobi. During the journey, he received a telephone call from the senior chief inspector instructing him to alight at Kisii. According to the respondent, when the bus stopped at

Kisii, several passengers boarded and the bus was inspected before it

proceeded with the journey. He denied having allowed any passenger to board without a ticket or receiving money from any passenger without issuing a receipt. The respondent testified that later he received a call from the appellant's senior chief inspector informing him that an excess passenger had been discovered in Narok. He stated that he was thereafter issued with a suspension letter pending investigations and was summoned to attend a disciplinary hearing on 18th March 2013. During the disciplinary proceedings he denied the allegations made against him but was nevertheless dismissed from employment on 22nd March 2013.

7. The respondent also testified that he was never shown any statement from the passenger who was allegedly travelling without a ticket or the one written by the appellant's chief inspector. He told the court that although the appellant relied on the allegation that a passenger had paid Kshs. 800/= and had not been issued with a ticket, he was not provided with the passenger's statement during the disciplinary process. As a result, he maintained that he had no opportunity to

challenge or verify the accusation made by the passenger.

8. The appellant called **Abbas Hussein (Abbas)** as its first witness.

Abbas testified that he was a chief inspector employed by the appellant and had worked in that capacity for several years. He told the court that on the night in question he inspected bus registration number KBS 956T at Narok and discovered that the bus had an excess passenger, who claimed to have been seated on the staircase. Upon inquiry, the passenger informed him that he had boarded the bus at Kisii after paying Kshs. 800/= to a person dressed in the black uniform worn by the appellant's bus inspectors and that he had not been issued with a ticket. Abbas further testified that the passenger stated that the individual who had allowed him to board the bus was the inspector assigned to that bus. Abbas recorded a statement from the passenger and forwarded the information to the appellant's management for further action.

9. The appellant's second witness was **Patricia Lugalia**, a Human Resource officer employed by the appellant. She testified that the respondent had been employed as a bus inspector, and that the appellant received a report regarding an excess passenger who had boarded the bus without a

ticket. She confirmed that the

respondent was suspended pending investigations and was later invited to a disciplinary hearing conducted on 18th March 2013. She further testified that the disciplinary panel considered statements from the passenger and other witnesses, including the chief inspector, who discovered the incident. The respondent was given an opportunity to respond to the allegations and to defend himself during the proceedings. After considering the evidence, the disciplinary committee concluded that the respondent had allowed an excess passenger to board the bus and had received Kshs. 800/= without issuing a ticket or remitting the fare to the respondent. She testified that the committee, therefore, recommended the respondent's summary dismissal on grounds of gross misconduct. She further stated that the appellant computed the respondent's terminal benefits, including salary for days worked, outstanding leave days and invited him to collect the same.

10. In its judgment delivered on 27th June 2018, the trial court held that the appellant had failed to prove a valid and fair reason for dismissing the claimant. After reviewing the

evidence, the court found that the appellant relied largely on hearsay evidence.

According to the court, although the appellant alleged that the respondent had allowed an extra passenger to board the bus and collected Kshs. 800/= without issuing a ticket, the passenger who allegedly made the complaint was not called as a witness and his statement did not identify the respondent as the person who received the money. The court observed that the appellant relied on statements from witnesses who were not present and whose evidence was not tested. In those circumstances, the court concluded that there was no substantial evidence linking the respondent to the alleged misconduct and therefore the appellant lacked a valid reason to terminate his employment. The court therefore held that the dismissal was unfair and unjustified within the meaning of section 45 of the Act.

11. Consequently, the trial court entered judgment in favour of the respondent and awarded him one month's salary in lieu of notice amounting to Kshs. 14,071.53, unpaid leave for twenty-one days amounting to Kshs. 9,850, unpaid salary for the month of March 2013 amounting to Kshs. 6,071.53, and payment for four rest days in March 2013 amounting to Kshs.

1,876. The court further awarded the respondent twelve months' salary as compensation

for unfair termination calculated at Kshs. 168,858.36 (12 x 14,011.53), bringing the total monetary award to Kshs. 200,727.42. In addition to the monetary compensation, the court directed that the respondent be issued with a Certificate of Service and ordered the appellant to pay the costs of the suit together with interest at court rates from the date of the judgment.

12. Being aggrieved and dissatisfied with the decision of the trial court, the appellant lodged this appeal, contending that the learned judge erred both in law and in fact by, *inter alia*, failing to properly appreciate and evaluate the evidence presented by the appellant and thereby arriving at an erroneous decision awarding the respondent Kshs. 200,727.42 together with costs and interest; failing to consider the circumstances under which the termination occurred and the nature of the employment relationship which was founded on mutual trust as well as the provisions of section 44(3) of the Act and thereby wrongly concluded that there were no valid grounds for dismissal; applying the wrong standard of proof by effectively requiring proof beyond

reasonable doubt rather than the balance of

probabilities applicable in internal disciplinary processes and consequently found that the appellant lacked valid reasons to terminate the respondent's employment; disregarding corroborative evidence adduced by the appellant's witnesses and the written statement of the eye witness passenger and erroneously required the physical attendance of the passenger at the disciplinary hearing; awarding the respondent the maximum compensation of twelve months' salary without giving justification and without considering the respondent's failure to mitigate the loss arising from the termination as contemplated under section 49 of the Act; disregarding and failing to properly consider the evidence of the appellant's witnesses which demonstrated that the dismissal was justified; failing to find that the appellant had complied with the legal requirements governing termination under sections 41, 43 and 45 of the Act relating to procedural fairness and proof of valid reasons for termination; and failing to take into account the surrounding circumstances of the termination, including the respondent's contribution to the dismissal and the reciprocal duties owed by an employee to

the employer.

13. At the hearing of this appeal, learned counsel **Ms. Okello** held brief for **Mr. Ouma** for appellant, while **Ms. Jepchirchir** held brief **Mr. Kirwa** for the respondent. Both counsel elected to rely entirely on their respective client's written submissions without making any oral highlights.
14. In the appellant's written submissions dated 30th June 2020, it is contended that the learned trial judge erred in both law and fact by finding that the appellant did not have valid reasons to terminate the respondent's employment and by failing to properly evaluate the evidence presented before the court. The appellant submits that the respondent had been dismissed for acts of gross misconduct arising from an incident in which he allegedly allowed an excess passenger to travel on the bus without a ticket and failed to account for the fare collected. According to the appellant, evidence was presented during the disciplinary process including a written statement from the passenger indicating that he had paid Kshs. 800/= to board the bus and was seated on the staircase, as well as statements from other passengers and the inspector who discovered the irregularity at Narok. The

appellant contends that the trial court

wrongly disregarded these statements and improperly insisted on the physical attendance of the passenger at the disciplinary hearing. In the appellant's view, the court thereby failed to appreciate the evidentiary threshold under section 43(2) of the Act which provides that the reasons for termination are those matters that the employer genuinely believed to exist at the time of dismissal. It is therefore submitted that the trial court applied an incorrect standard of proof akin to the criminal standard of proof of beyond reasonable doubt rather than the civil standard applicable in employment disciplinary proceedings.

15. The appellant further submits that the termination was justified under the relevant provisions of the Act. It contends that the respondent's conduct amounted to gross misconduct within the meaning of sections 44(3) and 44(4)(c), (e) and (g) of the Act which permit summary dismissal where an employee willfully neglects his duties, disobeys lawful instructions, or is reasonably suspected of committing an offence detrimental to the employer's interests. According to the appellant, the respondent's actions exposed the company

to regulatory and operational risks because transport operators must comply strictly with licensing

and safety regulations including the prohibition against carrying excess passengers or passengers without tickets. The appellant maintains that it complied with the requirements of procedural fairness under section 41 of the Act and the Fair Administrative Action Act by notifying the respondent of the allegations, presenting him with the relevant statements and evidence, and affording him an opportunity to respond before the disciplinary committee. In those circumstances, the appellant contends that the trial court erred in concluding that the respondent's dismissal lacked a valid and fair reason.

16. The appellant also challenges the trial court's award of the maximum compensation equivalent to twelve months' salary for unfair termination. It is submitted that the court failed to consider the statutory factors set out in sections 49 (4) and 50 of the Act which require the court to take into account the circumstances of the termination, the employee's contribution to the dismissal, and the employee's length of service when determining appropriate remedies. The appellant points out that the respondent had only served for about two years and

had previously received warning letters, matters which, in its view,

demonstrated a contributory role in the termination. It is also contended that the respondent did not mitigate his losses and refused to collect his terminal dues when invited to do so. On that basis, the appellant contends that the trial court erred in awarding the maximum compensation without providing adequate justification or considering the respondent's conduct and employment record.

17. In support of its argument regarding the reciprocal duties in an employment relationship, the appellant relies on the decision of the Supreme Court of Canada in **Industrial Alliance Life Insurance Company v. Gilbert Cabiakman (indexed as: Cabiakman vs Industrial Alliance Life Insurance Co. 2004 SCC 55)** where the court explained that an employment contract imposes mutual obligations on both employer and employee. The employer must provide work and remuneration and ensure the employee's safety and dignity, while the employee must perform his duties with prudence, diligence, honesty and fidelity toward the employer. The appellant invokes this authority to emphasize that employees are under a duty of loyalty and diligence in

the performance of their duties and that breach of that duty
may

justify disciplinary action, including dismissal. It is therefore submitted that the respondent's conduct violated these reciprocal obligations and that the trial court failed to adequately consider this principle when assessing the lawfulness of the termination.

18. On the whole, the appellant contends that the learned judge misapprehended the evidence, applied the wrong standard of proof, and failed to consider the statutory provisions governing termination and remedies under the Act. The appellant therefore prays that the appeal be allowed, that the judgment of the trial court be set aside in its entirety, and that the respondent's claim be dismissed with costs.
19. On his part, the respondent, vide his written submissions dated 17th January 2023, contends that the appeal is devoid of merit and that the judgment of the trial court was properly founded both in fact and in law. The respondent submits that the trial court carefully evaluated the evidence presented by both parties and correctly concluded that the dismissal was unfair because the appellant had failed to establish a valid reason for terminating his employment. He emphasizes that

the trial court

found that although the appellant relied on statements allegedly made by passengers, the key witness, Simon Mbajah, never testified and his written statement did not identify the respondent as the person who allegedly received the Kshs. 800/= fare. Consequently, the evidence relied upon by the appellant amounted to hearsay and did not sufficiently link the respondent to the alleged misconduct. The respondent, therefore, maintains that the trial court correctly held that there was no substantial evidence to justify the dismissal and properly relied on section 45(2) of the Act which provides that termination is unfair where the employer fails to prove that the reason for termination is valid, fair, and that the procedure followed was fair.

20. In support of the legal principles governing unfair termination, the respondent relies on the decision of this Court in **Pius Machafu Isindu v Lavington Security Guards Limited** [2017] eKLR, wherein the Court emphasized that the Act places heavy legal obligations on employers in matters of summary dismissal and unfair termination. In that decision, this Court is said to have held that an employer must prove

the reasons for termination under section 43, demonstrate
that the reasons are

valid and fair under section 45, and comply with the procedural safeguards provided under section 41 of the Act. The respondent relies on this authority for the argument that the appellant failed to meet these statutory requirements because it did not produce credible evidence linking him to the alleged misconduct and therefore the dismissal was rightly declared unfair by the trial court.

21. The respondent further submits that the trial court applied the correct evidentiary standard in determining whether the dismissal was justified. He contends that the burden of proving the reasons for termination rests on the employer pursuant to section 43 of the Act, while section 47(5) places the burden of justifying the dismissal on the employer once a claim for unfair termination is made. According to the respondent, the trial court evaluated the evidence on a balance of probabilities which is the proper standard in civil proceedings and not the alleged standard of proof in criminal proceedings which is beyond a reasonable doubt. The respondent maintains that the appellant failed to discharge its statutory burden because the witness statements relied

upon did not directly implicate him, and the alleged

passenger never identified him as the individual who allowed him to board the bus. In those circumstances, the respondent submits that the trial court was correct in concluding that the dismissal lacked a valid reason.

22. As regards the trial judge's award of twelve months' salary as compensation for unfair termination, the respondent contends that the award was justified under section 49(1)(c) of the Act which empowers the court to award an employee the equivalent of a number of months' wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal. The respondent contends that the trial judge exercised her discretion properly after finding that the reasons for dismissal were based on hearsay evidence and that he had not contributed to his own termination. In defending the trial judge's exercise of that discretion, the respondent relies on the decision of this Court in **Coffee Board of Kenya v Thika Coffee Mills Limited & 2 Others** [2014] eKLR, where the Court held that an appellate court should not interfere with the exercise of a trial judge's discretion unless it is

demonstrated that the judge misdirected himself, considered irrelevant matters, failed

to consider relevant factors, or reached a plainly wrong conclusion resulting in injustice. The respondent submits that no such misdirection has been demonstrated in the present appeal.

23. In the end, the respondent urges this Court to uphold the findings of the trial court, dismiss the appeal in its entirety, and affirm the award of compensation and other reliefs granted to him together with costs.
24. This being a first appeal, it is well settled that this Court is not bound to accept the findings of fact made by the trial court. A first appeal proceeds by way of a rehearing, and the duty of this Court is to reconsider the evidence on record, evaluate it independently, and draw its own conclusions. In doing so, however, the Court must bear in mind that it neither saw nor heard the witnesses testify and must therefore make due allowance for that limitation. See **Selle and Another v Associated Motor Boat Company Limited and others** [1968] EA 123 and **Williamson Diamonds Ltd. v. Brown** [1970] EA1.
25. We have considered the grounds of appeal and the written

submissions filed as well as the authorities cited. The issues
that

present themselves for determination are whether the trial court erred by holding that the appellant did not have a valid and fair reason to terminate the respondent's employment within the meaning of sections 43 and 45 of the Act; whether the respondent's disciplinary process met the requirements of procedural fairness under section 41 of the Act; and whether the trial court properly exercised its discretion in awarding the respondent twelve months' salary as compensation for unfair termination.

26. As regards the first issue, section 43 of the Act places the burden on an employer to prove the reasons for the termination of a contract and stipulates that failure to do so renders the termination unfair. Section 45 further requires the employer to demonstrate that the reason for termination was valid and fair and related to the employee's conduct, capacity, compatibility or the operational requirements of the employer. Indeed, this Court in **Pius Machafu Isindu v Lavington Security Guards Limited** (supra) addressed itself to the provisions of section 43 and 45 of the Act and held thus:

“There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on

employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must
prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45);
prove that the grounds are justified (section 47 (5),
amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the Evidence Act and the Civil Procedure Act/Rules...” [Emphasis added]

27. In the present matter, the appellant asserted that the respondent allowed an excess passenger to board a bus and received fare without issuing a ticket. The evidence relied upon consisted mainly of statements allegedly recorded from the passenger, one Simon Mbajah, and from the appellant's inspector who discovered the passenger at Narok. However, the passenger himself was not called to testify and, according to the respondent, his written statement did not clearly identify him as the person who received the alleged payment. In those circumstances, the trial court found that the

appellant's case rested largely on hearsay evidence and that there was no direct evidence linking the respondent to the alleged misconduct.

28. It is trite law that in employment disputes the standard of proof is on a balance of probabilities and pursuant to the provisions of section 43(2) of the Act, the question is whether the employer had a reasonable and genuine belief based on the material available at the time that the employee committed the misconduct in question. This Court addressed this evidentiary threshold in **Kenya Revenue Authority v Reuwel Waithaka Gitahi & 2 others** [2019] KECA 300 (KLR) where it held that an employer is not required to prove misconduct beyond reasonable doubt, but must demonstrate that the reasons for termination were supported by evidence that would lead a reasonable employer to believe that the employee was culpable.
29. Having noted as above, we must hasten to point out that even under the said standard, there must be credible material connecting the employee to the alleged wrongdoing. In this case, we fully associate ourselves with the learned judge's finding that the absence of testimony from the passenger and the lack of clear identification of the respondent in the passenger's statement significantly weakened the evidentiary

basis of his dismissal. Therefore, the trial court was right in concluding that the

appellant had failed to establish a valid and fair reason for the termination of the respondent. This ground of appeal therefore fails.

30. As regards the issue whether the respondent was accorded procedural fairness in accordance with section 41 of the Act, it is a requirement under the said provision that before terminating employment on grounds of misconduct, an employer must explain the reasons for the contemplated termination to the employee in the presence of another employee or shop floor representative of the employee's choice and to give the employee an opportunity to respond to the allegations. This Court in **Postal Corporation of Kenya v Tanui** [2019] KECA 489 (KLR) affirmed that procedural fairness entails notifying the employee of the specific allegations, providing access to the evidence relied upon, and giving the employee a fair opportunity to respond before a decision is made.

31. In the present matter, Patricia Lugalia, the appellant's Human Resource officer, testified that the respondent was supplied with copies of the statements recorded from the passenger

and from Abbas during the disciplinary proceedings. The respondent,

however, disputed that account and maintained that although he attended the disciplinary hearing, he was neither furnished with the passenger's statement nor that of the chief inspector, and the passenger was not called to testify, thereby denying him the opportunity to challenge or verify the allegations made against him.

32. Procedural fairness in employment disputes requires more than the mere holding of a disciplinary hearing. The employee must be informed of the allegations, given access to the evidence relied upon, and afforded a meaningful opportunity to challenge that evidence, including confronting the accusations forming the basis of the intended termination. Indeed, in **Kenfreight (E.A.) Limited v Benson K. Nguti** [2016] KECA 688 (KLR), this Court was categorical that:

“Apart from issuing proper notice according to the contract (or payment in lieu of notice as provided), an employer is duty-bound to explain to an employee in the presence of another employee or a union official, in a language the employee understands, the reason or reasons for which the employer is considering termination of the contract. In addition, an employee is entitled to be heard and his representations, if any, considered by an employer before the decision to terminate his contract of service is taken.”

33. In the circumstances herein, the trial court accepted the respondent's contention and found that the disciplinary process relied on evidence that had not been disclosed to him and whose makers were not present for questioning. Such a process undermines the employee's ability to effectively challenge the allegations. We reiterate that procedural fairness requires not merely the holding of a hearing but also affording meaningful opportunity to the employee to know and confront the case against him.
34. The appellant has urged this Court to find that the trial court applied an incorrect evidentiary standard by insisting on the physical attendance of the passenger and by disregarding the written statements relied upon during the disciplinary process. While it is true that internal disciplinary proceedings are not subject to the strict rules of evidence that govern criminal trials, it remains the case that the material relied upon by an employer must be sufficiently credible to justify disciplinary action. In the present case, the alleged passenger's statement did not, in our view, clearly identify the respondent as the person who received the fare and the

passenger himself was neither called before the

disciplinary committee nor before the trial court. In those circumstances, the appellant's case rested largely on inference rather than on clear and reliable evidence linking the respondent to the alleged misconduct. The trial court was therefore entitled to conclude that the appellant had failed to meet the evidentiary threshold required under sections 43 and 45 of the Act.

35. The final issue concerns the remedies awarded by the trial court, particularly the grant of twelve months' salary as compensation for unfair termination. Section 49(1)(c) of the Act empowers a court to award compensation not exceeding twelve months' salary depending on the circumstances of the case. In determining the appropriate amount, the court is required by section 49(4) to consider a range of factors including the employee's length of service, the circumstances leading to the termination, the employee's contribution to the dismissal, and the practicability of reinstatement. This Court will not interfere with an award of damages unless the same was inordinately high or low or the judge proceeded on wrong principles. See **International Planned Parenthood**

Federation vs Pamela Ebot Arrey Effiom [2016] eKLR.

However, this Court has in

several decisions cautioned against the routine award of the maximum compensatory damages for wrongful or unfair termination in the absence of a sound factual and legal basis. It did so in **CMC Aviation Limited vs Mohammed Noor** [2015] eKLR, stating:

"The trial court did not state why it opted to give the remedy provided under section 49 (1) (c) that is, twelve months gross salary, and not the other remedies under section 49 (1) (a) or (b). The court should have been guided by the provisions of section 49 (4) but the trial judge said nothing about the reasons that led him to exercise his discretion in the manner he did."

36. Further, in **Ol Pejeta Ranching Limited vs David Wanjau Muhoro** [2017] eKLR, this Court held thus:

"The trial judge did not at all attempt to justify or explain why the respondent was entitled to the maximum award. Yes, the trial Judge may have been exercising discretion in making the award. However, such exercise should not be capricious or whimsical. It should be exercised on some sound judicial principles. We would have expected the Judge to exercise such discretion based on the aforesaid parameters. In the absence of any reasons justifying the maximum award, we are inclined to believe that the trial Judge in considering the award took into account irrelevant considerations and or failed to take into account relevant considerations, which act then invites our intervention".

37. In the present case, the respondent was employed in April 2011 and his services were terminated on 22nd March 2013, meaning that he served the appellant for a period of about two years. That relatively short duration of service was a material factor which the trial court was required to take into account under section 49(4) of the Act in determining the appropriate level of compensation. However, the learned judge proceeded to award the maximum statutory compensation of twelve months' salary without offering any explanation as to why such an award was justified or demonstrating how the relevant statutory factors guided the exercise of that discretion. As this Court observed in **CMC Aviation Limited v Mohammed Noor** and reiterated in **OI Pejeta Ranching Limited v David Wanjau Muhoro**, the maximum award under section 49(1)(c) should not be granted as a matter of course and must be supported by sound judicial reasoning anchored in the considerations set out in section 49(4). Given the respondent's relatively short period of service and the absence of aggravating circumstances warranting the maximum award, we are satisfied that the trial

court did not properly exercise its discretion.

38. In the circumstances, an award equivalent to three months' salary would, in our view, constitute fair and reasonable compensation for the unfair termination. We, therefore, interfere with the award to the extent that the award of twelve months' salary is set aside and substituted with an award of three months' gross salary; Kshs. 14,071.53 x 3 =Kshs. 42,214.59. The appeal succeeds only to that extent and is otherwise dismissed. Given the circumstances of this appeal, we direct that each party bears its own costs.

Dated and delivered at Nairobi this 13th day of March 2026.

D. K. MUSINGA (PRESIDENT)

.....
JUDGE OF APPEAL

JOEL NGUGI

.....
JUDGE OF APPEAL

G. V. ODUNGA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.