



IN THE CHIEF MAGISTRATE'S COURT AT NAKURU

ELRC NO. E362 OF 2024

[A. P. NDEGE; SPM]

JOHN

MWANGI

KIONGO.....

CLAIMANT

VERSUS

KANU

STREET

TRAVELLERS

SACCO

LTD.....RESPONDENT

JUDGMENT

1. Vide a Memorandum of Claim dated 20/11/2024, the Claimant prays for: -

- a. A declaration that the summary dismissal of the Claimant was unlawful, unprocedural and unjustified,
- b. Compensation for unfair termination being 12 months' salary (as per section 49 (1) (b) Of the Employment Act)

- c. Underpayments
 - d. Housing allowance
 - e. 1 month pay in lieu of notice plus 1-month house allowance
 - f. Costs of the suit and interest at Court rates until payment in full.
2. The matter proceeded to full hearing where the Claimant testified in his case and relied on the documents which he filed herein. The Respondent called its Chairman, **FRANCIS KIMANI**, as its only witness herein who also relied on his statement and the documents filed herein.
3. At the close of the hearing parties filed and exchanged their written submissions. Whereas the claimant insists that he was throughout employed by the Respondent as a stage attendant, the Respondent's case and evidence is that it hired the Claimant for a period of three months via a Fixed Term contract which expired in the year 2019 and that the Claimant subsequently elected to continue to operate at the stage as a volunteer who could be paid directly by the drivers.

4. A letter produced by the Claimant dated 27/08/2024, however suspended the Claimant from duties due to allegation of misbehavior. That letter is however not evidence of employment, as the Claimant could have still been suspended from operating at the stage had he been a volunteer. Otherwise the documents submitted by the Claimant, mainly the NSSF records and NHIF statement, prove that the Claimant's employment could have ended in mid-2020. They thus buttress the Respondent's case that the Claimant herein is no longer its employee. Otherwise the burden was on the Claimant to adduce evidence to prove that he was dismissed from employment.

5. I thus find no proof that the Claimant was terminated from employment by the Respondent herein. The evidence availed herein is that the Claimant was suspended, and therefore the Claimant's allegation of summary dismissal, as correctly submitted by the learned counsel for the Respondent, is unsupported by evidence. His claim for unfair or wrongful termination has not been substantiated and is hereby dismissed for lack of proof.

6. Since the claimant has failed to prove termination, unlawful, unfair or otherwise, I find his claim for compensation not merited and the same is hereby dismissed. As for his claim for underpayments, I again do agree that the Claimant failed to demonstrate the applicable wage he earned and most importantly, failed to discharge the burden of proof under his underpayment claim. The same is therefore also dismissed. All his other claims are also hereby dismissed for want of proof. The upshot is that the Claimant's suit is hereby dismissed in its entirety with costs the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS __24th

___DAY OF __February__2026

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

APPEARANCE:

**...Bartenge h/b Okiro..... PRESENT FOR
THE CLAIMANT**

**...n/a..... PRESENT FOR THE
RESPONDENT**

...Wanyoike.....- C/A