

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 1392 OF 2018**

BETWEEN

FREDRICK ADINDA CLAIMANT

VERSUS

MEGVEL CARTONS LTDRESPONDENT

Rika J

Julius Juma & Company Advocates for the Claimant

Akolo Wanyanga Company Advocates for the Respondent

JUDGMENT

1. The Claimant filed his Statement of Claim dated 19th September 2018.
2. He avers that he was employed by the Respondent in the year 2009, as a stores assistant.
3. His contract was terminated unlawfully on or about 17th October 2015. His gross monthly salary at the time, was Kshs. 28, 267.
4. He was not paid salary for 17 days worked in October 2015.

5. He was orally suspended on 17th October 2015. He was told that he was being investigated.
6. He was not involved in any investigations, and was not advised on the outcome.
7. Suspension was indefinite and there was no disciplinary process, leading to termination decision. He was not issued a letter of termination.
8. He never took annual leave.
9. His prayers are: -
 - a. Declaration that termination was unlawful.
 - b. Equivalent of 12 months' salary in compensation for unfair and unlawful termination at Kshs. 341, 112.
 - c. Notice at Kshs. 28,426.
 - d. Salary for 17 days worked in October 2015 at Kshs. 16,108.
 - e. Annual leave at Kshs. 170,556.
 - f. Costs.
 - g. Interest.

- h. Any other suitable order.
10. The Respondent filed its Statement of Response, dated 6th March 2019.
 11. It is conceded that the Claimant was employed by the Respondent. His contract however, was never terminated by the Respondent.
 12. He absconded in November 2015. He gave no reason for his absence. He went away without notice, and never returned to work.
 13. He requested for leave on 5th November 2015. He was to report back on 6th November 2015. He cannot deny that he was at work in the month of November 2015.
 14. He was paid his full salary for October 2015.
 15. He was running a bar at Mlolongo, and when he reported to work, he would be half asleep, which affected his output.
 16. He was paid his annual leave dues, as and when they became due.
 17. The Respondent urges the Court to dismiss the Claim with costs.
 18. The Claimant gave evidence and closed his case on 3rd February 2026, during the E&RC Nairobi station service week. The Respondent did not

call any witness, and closed its case on the same date, 3rd February 2026.

19. Parties confirmed filing and exchange of submissions at the last mention before the Court on 10th March 2026.
20. The Claimant relied on his witness statement and documents [1-4] in his evidence-in-chief. He restated that he worked for the Respondent for 7 years, and was unfairly dismissed, and denied substantive and procedural justice. He was denied terminal benefits. There was no time to take annual leave. He never signed any annual leave form. He was asked by the Director to step aside, and allow the Respondent to carry out certain investigations. He was not told what was being investigated. He was not involved in any investigations. By the time he filed his Claim, there was no outcome of the investigations communicated to him.
21. Cross-examined, he stated that he was asked to step aside on 17th October 2015. He filed the Claim in 2018. He was not told why he should stay away. He went away initially for 2 weeks. The period was extended indefinitely. He did not fill a leave application form. He had a bar at mlolongo throughout his service years. It had nothing to do with his work.
22. Redirected, he told the Court that the letters exhibited by the Respondent, addressed to its bank, dated 26th October 2015 and 14th November 2015 requiring the bank to pay listed Employees' salaries, was not evidence that the Claimant was in employment on the given dates.

His salary was about Kshs. 28,000, not Kshs. 6,187 and Kshs. 3,000 respectively, indicated on the lists.

The Court Finds: -

23. There is not contestation on the Claimant's employment by the Respondent, in 2009. His designation and monthly salary are not contested.
24. The issues are whether: his contract was terminated unfairly, unlawfully or at all by the Respondent; whether he absconded; and whether he merits the prayers sought.
25. The Claimant testified that he was asked to step aside by the Director on 17th October 2015, to allow the Respondent investigate unspecified allegations against him.
26. The request was by word of mouth. The Claimant stepped aside for 2 weeks. The period was extended indefinitely. He was not involved in any investigations. He was not told what was being investigated. He was not told of any outcome. He was not issued any letter of termination. He considered his contract to have been terminated through the oral suspension.
27. The Respondent denies suspending the Claimant or terminating his contract. Its position is that he absconded. Letters to the Cooperative Bank forwarding Employee lists for purpose of salary payments, were

filed by the Respondent. The lists included the Claimant's name, in the payroll of October and November 2015, while he claims that his contract was terminated on 17th October 2015.

28. To help the Court resolve the conflict in these positions, the Respondent ought to have availed evidence, which it did not.
29. There was no witness called by the Respondent to exhibit the documents filed by the Respondent, and to explain them to the Court.
30. The Claimant states that his salary was about Kshs. 28,000. The lists indicate payment of Kshs. 6,187 and Kshs. 3,000 respectively, to the Claimant. The Court needed to be told why not the full salary of about Kshs. 28,000?
31. The sums allegedly paid to the Claimant in October and November could have been for other post-employment obligations. Without evidence from the Respondent, such payments cannot be evidence of the Claimant's employment status.
32. Even assuming the Respondent is correct in its bare pleadings, that the Claimant absconded, what effort did the Respondent make to recall the Claimant, and at the very least, charge him with the offence of absconding?

33. The Court would therefore uphold the Claimant's position. His suspension without recall, and eventual stoppage of monthly salary, was an act of termination.
34. **Termination was unfair and unlawful, under Sections 41, 43 and 45 of the Employment Act.**
35. The Claimant worked for 7 years. He did not contribute to, or cause the circumstances leading to termination. There is no evidence that he was paid any benefits, after 7 years of service.
36. **His prayer for equivalent of 12 months' salary in compensation for unfair termination, at Kshs. 341,112 is reasonable and allowed as prayed. He merits notice.** There is no evidence that he was paid salary for 17 days worked in October 2015, and the prayer is allowed at Kshs. 16,108.
37. The prayer for annual leave pay, at Kshs. 170,556, although supported by the Claimant's contract of employment, is declined. The Court of Appeal in **Bins [Nairobi] Services Limited v. Hardard Macharia Kariamburi [2025] KECA 1726 [KLR]**, held that annual leave days not utilized within 18 months from the date of accrual, are to be forfeited rather than compensated, pursuant to Section 28[4] of the Employment Act.
38. The Court would have allowed the prayer for annual leave, in the absence of the binding decision from the Court of Appeal above, on the ground that the Claimant's contract entitled him to a minimum of 21

days of annual leave after completion of 1 year, and the contract did not have provision for forfeiture of annual leave.

39. Section 28 of the Employment Act does not provide for forfeiture of annual leave entitlement. Normally where annual leave is not utilized, it is to be compensated, rather than forfeited. There is no reason why silence in Section 28 [4] of the Employment Act, on what should happen if annual leave is not taken within 18 months of accrual, should result in forfeiture and not compensation.
40. Terms and conditions of service under the Employment Act are minimalist. They present the lowest threshold of rights and protections, that the Employee must have. Annual leave of 21 days is minimalist. It cannot be reduced or lost. It can only be enhanced.
41. If accumulated, it cannot be lost. It can only be compensated. If an Employer does not wish to bear the financial burden of paying annual leave in arrears, it is open to such an Employer to instruct the Employee to proceed on leave. After all it is the statutory responsibility of the Employer to regulate the hours of work; to regulate time; set schedules based on operational needs; and manage the annual leave records.
42. For reasons given above, the Court is not in a position to acceded to the prayer for accumulated annual leave days.
43. **Costs to the Claimant.**

44. Interest allowed on the salary for 17 days, at Kshs 16,108, at court rate, from the date of default, 17th October 2015, till payment is made in full.
45. Interest allowed on notice and compensation, at court rate, from the date of Judgment, till payment is made in full.
46. Costs to the Claimant.

IT IS ORDERED: -

- a. *It is declared that the Claimant's contract was terminated by the Respondent, and termination was unfair and unlawful.*
- b. *The Respondent shall pay to the Claimant equivalent of 12 months gross salary in compensation for unfair termination at Kshs. 341,112; notice at Kshs. 28,426; and salary for 17 days worked in October 2015 at Kshs 16,108- total Kshs. 414,072.*
- c. *Interest on the sum of Kshs. 16,108 granted at court rate, from the date of default, 17th October 2015, till payment is made in full.*
- d. *Interest on compensation at Kshs. 341,112 and notice at Kshs. 28,426, granted at court rate, from the date of Judgment, till payment is made in full.*
- e. *Cost to the Claimant.*

Dated, signed and delivered electronically at Nairobi, under Rule 68[5] of the E&LRC [Procedure] Rules, 2024, this 30th day of April 2026.

James Rika
Judge

