

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

ELRC APPEAL NO. E075 OF 2023

(Before D. K. N. Marete)

AHMED SHARIF ZEDI..... APPELLANT

VERSUS

JUNCTION FOREX BUREAU..... RESPONDENT

JUDGMENT

This matter was originated by way of a Memorandum of Appeal dated 24th April 2023 and arises from a Judgment delivered on 20th April, 2023 at Milimani Nairobi in Nairobi CMELRC Case No. E1754 of 2021.

The Memorandum of Appeal sets out the following grounds:

- 1. The Learned Magistrate erred in law and in fact by holding that the Appellant was employed by the Respondent for 2 years only.*
- 2. The Learned Magistrate erred in law and in fact by failing to appreciate and consider that the Appellant's testimony was that he was employed on 1/7/2017 and that his contract of employment was only reduced into writing on 1/1/2019.*
- 3. The Learned Magistrate erred in law and in fact by failing to appreciate the Respondent's own evidence that demonstrated that the Appellant was employed by the Respondent well before February 2019.*

4. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant worked for the Respondent for a period of 3 years and 5 months from 1/7/2017 to 7/12/2020 which translated to a total of 42 weeks.*
5. *The Learned Magistrate failed to appreciate that the Appellant used to work 12 hours a day spread over 6 days a week which translated to 24 working days a month.*
6. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was paid a gross salary of Kshs. 36,000 per month made up of Kshs. 32,000 basic pay and a fixed bonus of Kshs. 4,000.*
7. *The Learned Magistrate failed to appreciate that the Appellant was paid Kshs. 1,500 per working day which translated to a normal hourly rate of Kshs. 125 per hour calculated at the rate of 24 days a week and 12 hours day.*
8. *The Learned Magistrate contradicted himself by holding the Appellant absconded work while also holding that the Appellant was terminated because of gross negligent.*
9. *The Learned Magistrate erred in law by failing to appreciate that the reason for termination pleaded by the Respondent was absconding and or desertion of duty and not gross negligent.*
10. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Respondent did not prove absconding and or desertion of duty on the part of the Appellant.*
11. *The Learned Magistrate erred in law and in fact by holding that the Respondent had attempted or made efforts to reach the Appellant through phone calls to give an explanation as to why he absconded work.*
12. *The Learned Magistrate erred in law and in fact by ignoring the uncontroverted testimony of the Appellant who testified that no one had attempted to reach out to him after 7/12/2020.*

13. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was not given a disciplinary hearing prior to the termination.*
14. *The Learned Magistrate erred in law and in fact by holding that the Appellant failed to attend the disciplinary proceedings instituted against him.*
15. *The Learned Magistrate erred in law and in fact by failing to appreciate that no disciplinary hearing was ever instituted against the Appellant.*
16. *The Learned Magistrate erred in law and in fact by failing to appreciate the testimony of the Appellant who testified that he was terminated verbally on 7/12/2020 by one Mr. Abdulraba who told the Appellant verbally that he did not need him and was terminating his services.*
17. *The Learned Magistrate erred in law and in fact by failing to find that the Appellant was terminated unfairly without notice and by failing to award notice pay.*
18. *The Learned Magistrate erred in law and in fact by failing to award the Appellant the notice period.*
19. *The Learned Magistrate erred in law and in fact by failing to find that the Appellant was unfairly terminated for want of valid reason and unfair procedure.*
20. *The Learned Magistrate erred in law and in fact by failing to award the Appellant damages for unfair termination.*
21. *The Learned Magistrate erred in law and in fact by failing to award the Appellant the maximum 12 months of Kshs. 432,000 sought by the Appellant in line with Section 49 of the Employment Act.*
22. *The Learned Magistrate erred in law by failing to appreciate that the Appellant worked for the Respondent in a leave earning period of 6 months from 1/7/2017 to 31/12/2018 before his contract of employment was reduced into writing.*

23. *The Learned Magistrate erred in law by failing to appreciate that the Respondent did not prove that the Claimant was granted leave during the aforesaid 6 months worked from 1/7/2017 to 31/12/2018.*
24. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was entitled to a total of 10.5 days of leave calculated at the rate of 1³/₄ days of leave for each of the aforesaid 6 months worked from 1/7/2017 to 31/12/2018.*
25. *The Learned Magistrate erred in law and in fact by failing to award the Appellant Kshs. 15,750 being the accrued leave days for the aforesaid 10.5 days of leave at the rate of Kshs. 1,500 per day.*
26. *The Learned Magistrate erred in law and in fact by holding that the contract of employment produced by the Respondent stipulated the hours of work.*
27. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant used to work beyond the normal working hours.*
28. *The Learned Magistrate erred in law and in fact by failing to appreciate the uncontroverted evidence that the Appellant used to work for 12 hours a day spread over 6 days a week which translated a total of 72 hours per week.*
29. *The Learned Magistrate erred in law by failing to appreciate that the Appellant was required to work for not more than 52 hours per week and not the said 72 hours a week.*
30. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant worked overtime of 20 hours per week during the 42 weeks of employment which translates to a total of 840 hours.*
31. *The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was entitled to compensation for overtime worked at the rate of 1¹/₂ times*

the normal hourly rate for each hour of overtime worked in excess which translates to an hourly rate of Kshs. 187.5 per hour.

32. The Learned Magistrate erred in law by failing to appreciate that the Appellant was entitled to Kshs. 157,500 for the aforesaid 840 hours of overtime calculated at the aforesaid rate of Kshs. 187.5 per hour.

33. The Learned Magistrate erred in law and in fact by deducting the fixed bonus of Kshs. 4,000 from the applicable house allowance of Kshs. 4,800 per month and awarding the Appellant only Kshs. 800 per month.

34. The Learned Magistrate erred in law and in fact by awarding house allowance for only 24 months instead of the 42 months worked by the Appellant.

35. The Learned Magistrate erred in and in fact by failing to award the Appellant house allowance of Kshs. 201,600 for the 42 months worked at the rate of Kshs. 4,800 per month.

36. The Learned Magistrate erred in law and in fact by calculating the accrued salary based on basic pay of Kshs. 32,000 per month instead of the gross pay of Kshs. 36,000 per month.

37. The Learned Magistrate erred in law and in fact by calculating the Appellant working days based on 31 days a month instead of the actual 24 working days a month that the Appellant used to work.

38. The Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant was paid a daily wage of Kshs. 1,500 per day based on 24 working days per month.

39. The Learned Magistrate erred in law and in fact by failing to award the Appellant Kshs. 10,500 for the accrued salary for December 2020 calculated at the rate of Kshs. 1,500 per day.

40. *The Learned Magistrate erred in law and in fact by failing to appreciate that it was the Respondent who terminated the employment and not the Appellant.*
41. *The Learned Magistrate erred in Law and in fact in holding that the Appellant was expected to issue Notice to the Respondent in the circumstances of this case.*
42. *The Learned Magistrate erred in law and in fact by awarding the Respondent notice pay of Kshs. 32,000.*

The Appellant prays for orders thus:

- a. *Allow the appeal*
- b. *Substitute the order declaring the dismissal of the Appellant as fair and unlawful with an order declaring the aforesaid dismissal as unfair and unlawful.*
- c. *Substitute the orders awarding the Appellant Ksh. 19,200 House Allowance and Ksh. 7,225.81 with the following orders;*
 - i. *An order awarding the Appellant Kshs. 36,000 as notice pay*
 - ii. *An order awarding the Appellant Kshs. 432,000 for unfair termination,*
 - iii. *An order awarding the Appellant Kshs. 15,750 for accrued leave days,*
 - iv. *An order awarding the Appellant Kshs. 157,500 for overtime,*
 - v. *An order awarding the Appellant Kshs. 201,600 for house allowance*
 - vi. *An order awarding the Appellant Kshs. 10,500 for 7 days' salary in December 2020.*

- d) *Substitute the order awarding the Appellant Ksh. 32,000 net pay with an order dismissing the same.*
- e) *Substitute the order awarding the Appellant cost of the suit and the counter-claim with an order awarding the Appellant costs of the counter-claim.*
- f) *Award the Appellant costs of this Appeal.*

The Appellant's case is that he was employed by the Respondent as a teller on 1st July 2017 at a gross salary of Kshs. 36,000 per month comprising basic pay of Kshs. 32,000 and a fixed monthly bonus of Kshs. 4,000. The employment contract was not reduced into writing at the commencement of employment. It was only formalised in writing on 1st January 2019 for a 2-year fixed term contract expiring on 31st December, 2020. The Appellant however maintained that the written contract of 2019 did not displace the reality that the employment relationship had been in existence since July 2017 and that his total period of service was 3 years, 5 months and 7 days from 1st July, 2017 to 7th December, 2020.

The Appellant in his Witness Statement that on 7th December 2020, testified that at around 1500 to 1600 hours, the duty manager Mr. Walid Rafique informed him that he would be having an online WhatsApp call with himself, the accountant Mr. Shamoan, and Mr. Abdulraba, the boss who was in Canada at the time. During that call, Mr. Abdulraba accused him of theft and on offering a defence, the said Abdulraba angrily told him that he no longer needed him and was terminating his services. He had no option but to accept, as a replacement had already been brought in. He thereafter balanced the currencies with Mr. Rafique and was found with a shortfall of Kshs. 86,000, which he acknowledged in writing — not as an admission of deliberate wrongdoing, but because the confusion of being summoned so abruptly had caused him to make an error.

The Appellant further testified that a few days later, around the 10th or 11th December, 2020, he was called by Mr. Rafique to come and sign a letter of termination and collect his terminal dues. He went there with his cousin Abdallah Awadh. However, upon arrival, he was met by one, Madam Ann Rama, a director of the Respondent, who accused him of theft, threatened to call the police unless he paid back the Kshs. 86,000 and even attempted to lock him in the Respondent's kitchen. He was only released after he threatened to call his lawyer. No termination letter was signed or served on that occasion. He thereafter waited to be formally called but was never contacted. He was not served with any written termination letter, nor invited for any disciplinary hearing and was not reached by anyone physically or by telephone following the events of 7th December, 2020.

The Appellant received a call from the Respondent's general manager, a Mr. Hashim in March, 2021 requesting him to send an apology. He sent an email apology on 29th March, 2021 requesting to be reinstated. No response to that email was ever received.

In his Written Submissions at trial, dated 20th December 2022, the Appellant submitted that there was no dispute that his employment was terminated, pointing specifically to the Respondent's letter dated 18th January, 2021 at page 112 of the Respondent's bundle, which referred to him as a former employee and instructed the collection of Kshs. 86,000 from him. The Appellant submitted that once termination is established and the employee denies the reasons advanced for it, the burden shifts to the employer to prove the reason or reasons for termination, and under section 45 to demonstrate that the termination was fair both in substance and procedure. This is the precise provision of section 43(1) of the Employment Act, 2007.

In further buttressing his case , the Appellant sought to rely on the authority of **Muthaiga Country Club v Kudheiha Workers [2017] eKLR** where the Court of Appeal held that the grievants, having denied through their witness the reasons given for their summary dismissal, discharged their obligation under section 47(5) of the Act by laying the basis for their claim, thereby bringing into play section 43(1) and placing the burden upon the employer to prove the alleged reasons and justify the grounds for termination.

On the allegation that he facilitated an unauthorised transfer of Kshs. 600,000, the Appellant submitted in those trial submissions that the documents at page 101 of the record of appeal clearly displayed three separate transactions of Kshs. 196,000, Kshs. 198,000 and Kshs. 199,000 to three different persons, each of which was below the Kshs. 200,000 threshold requiring managerial approval. The Respondent's own witness conceded this during cross-examination. No valid reason for termination was therefore established.

On procedure, the Appellant submitted in his Supplementary Written Submissions at trial dated 20th January 2023 that the Respondent's own witness conceded in cross-examination that no calls, emails, letters or notices were made or issued inviting the Appellant back to work or to appear for a disciplinary hearing. He relied on the authority of **Evans Ochieng Oluoch v Njimia Pharmaceutical Limited [2016] eKLR** for the proposition that an employer seeking to rely on desertion or absconding must at the very least issue a reasonable notice informing the employee that termination of employment is being considered. This is amplified by the authority of **New World Stainless Steel Limited v Cosmas Mbalu Munyasy [2021] eKLR**, in which the court held that absconding or deserting duty is not the same as absenteeism and that in absconding, the employee has formed the intention not to

return to work — an intention the Respondent could not demonstrate here since the Appellant repeatedly wrote seeking reinstatement.

On the preliminary objections raised before this Court, the Appellant submitted in his Further Submissions of 6th August, 2025 that the appeal was filed on 17th May, 2023, within 30 days of the judgment. This is as demonstrated by the Memorandum of Appeal dated 25th April, 2023 and the payment receipt FSBV-0081464 of 17th May, 2023. The date of 26th May, 2023 shown in the CTS portal is the administrative registration date and not the filing date. On the certified decree objection, the Appellant submitted that the original decree was included at pages 186 to 187 of the Record of Appeal, which satisfies the requirement of Order 42 Rule 13(4) of the Civil Procedure Rules and that any deficiency in certification is a procedural matter that does not go to jurisdiction as enunciated in the authority **Yunes Nyambeki Nyakwara v Shem Thomason Machoka & 2 Others [2016] KEHC 1897 (KLR)**.

The Respondent raised two preliminary objections to the competence of the appeal. First, it submitted that the appeal was filed out of time, pointing to the CTS portal registration date of 26th May, 2023 which is 36 days from the judgment of 20th April, 2023. This exceeded the 30-day period under section 79G of the Civil Procedure Act, Chapter 21, Laws of Kenya. The Respondent relied on **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others [2014] eKLR** for the proposition that an appeal filed out of time without leave is a nullity. Secondly, the Respondent submitted that the appeal is incompetent for failure to include a certified copy of the decree in the Record of Appeal as required by Order 42 Rule 2, and sought to rely on the authority of **Trans Mara Sugar Co Ltd v James Omondi Obudho [2020] eKLR** and **Kimaiyo v Cheruiyot [2023] KEHC**

25824 (KLR) in such support. They submitted that both defects are incurable and prayed that the appeal be struck out.

On the merits, the Respondent through its witness Anna Ngiana Rama, a director of the Respondent, adopted her Witness Statement of 10th June 2022 and the bundle of documents at exhibits 1 to 6. They testified that the Appellant's work was wanting, having been occasioned by gross misconduct and negligence which was particularised and substantiated through the DTB Western Union Sub-agent Procedures which he severally breached, emails in which he admitted those breaches, warning letters at pages 104 to 107 of the Respondent's bundle, an apology letter at page 108 and the handwritten note at page 109.

On cross-examination, she confirmed that the gross salary was Kshs. 32,000 basic pay plus a Kshs. 4,000 allowance totalling Kshs. 36,000 monthly. She confirmed that the letter dated 18th January 2021 referred to the Appellant as a former employee and instructed collection of Kshs. 86,000 from him. Critically, she confirmed that no letter was issued inviting the Appellant to a disciplinary hearing, that no disciplinary hearing was conducted, and that the Respondent did not call the Appellant to resume work.

In its Written Submissions at trial, the Respondent submitted that the Appellant deserted duty from 8th December 2020 and never returned despite the Respondent making multiple phone calls and filing a police report under OB No. 24/8/12/2020, and engaging a private investigator from 18th January 2021 to trace the Appellant. It submitted that the Appellant's apology email of 29th March 2021 in which he admitted violating company rules and acknowledged the outstanding sum of Kshs. 86,000 confirmed that he had absconded to avoid the disciplinary process. On this, the Respondent sought to rely on the authority of **Julius Kyalo Malonza v Ruth Osolo t/a Eraeva Catering Services [2021] eKLR**. The

Respondent maintained that since the Claimant deserted work and frustrated the disciplinary process, he was not entitled to any of the reliefs claimed and that the Counter-Claim for Kshs. 86,000 had been admitted and proved. The Respondent further sought to rely on the authority of **Hassanath Wanjiku v Vanela House of Coffees [2018] eKLR** to back the proposition that an employee who is a member of NSSF is not entitled to service pay under section 35(6) of the Employment Act.

The issues for determination are:

1. Whether there is a competent appeal before this Court.
2. Whether the Learned Magistrate erred in finding that the Appellant was employed for 2 years only.
3. Whether the Learned Magistrate erred in finding that the Appellant deserted duty and whether the termination was unfair.
4. Whether the Appellant is entitled to the reliefs sought.
5. Who bears the costs of this appeal.

The 1st issue for determination is whether there is a competent appeal before this Court. The Respondent raised two objections. On timeliness, the Appellant has produced a Memorandum of Appeal dated 24th April 2023 and a receipt confirming payment on 17th May 2023 under receipt FSBV-0081464. The Respondent seeks to rely on the CTS system date of 26th May 2023 to supplant this position. There is a settled distinction between the date of lodging a document at the registry and the date of its administrative registration in the court's electronic system. A party ought not to be penalised for delays attributable to administrative nuances like registry processing. On the evidence, the appeal was filed on 17th May 2023, which falls within 30 days of 20th April 2023. This objection therefore fails.

On the certified decree objection, this Court adopts the reasoning in **Yunes Nyambeki Nyakwara v Shem Thomason Machoka & 2 Others [2016] KEHC 1897 (KLR)** that the requirement of certification is procedural in nature and that failure to produce a certified copy does not go to jurisdiction provided the court can identify the orders appealed against. The original decree is included at pages 186 to 187 of the Record of Appeal. This Court has been able to identify the exact orders under appeal. No prejudice to the Respondent has been demonstrated. Under Article 159(2)(d) of the Constitution, this Court is enjoined to administer substantive justice without undue regard to procedural technicalities. This objection also fails as there is a competent appeal before this Court.

The 2nd issue for determination is whether the trial court erred in finding that the Appellant was employed for only two (2) years. The standard of review on a first appeal is that the court is entitled to re-evaluate the evidence on the record and draw its own conclusions, while remaining conscious that it lacked the advantage of observing the demeanour of witnesses at trial. Interference is warranted only where the trial court misdirected itself in law, misapprehended the facts, took irrelevant considerations into account, failed to consider relevant matters, or reached a decision that is plainly wrong as was observed in **Selle and Another v Associated Motor Boat Co. Ltd [1968] EA, 123**.

As for the period of employment, the Appellant maintained through and through that he commenced employment in July, 2017 and that the written contract of January 2019 was merely a formalisation of an existing relationship. The Respondent produced the written contract dated 1st January, 2019. The Appellant admitted in cross-examination before the trial court that he had no documentary proof of employment before 2019. He produced no

NSSF statements, payslips or any other contemporaneous record(s) establishing a July 2017 commencement date. The Respondent's letter of 18th January 2021 referring to the Appellant as a former employee and the payslips showing a consolidated salary of Kshs. 36,000 are consistent with either commencement date and do not establish the earlier date on their own. Where a party bears the burden of proving a factual claim and fails to produce documentary evidence in such support, the court is entitled to rely on the only written evidence of the employment relationship before it, which in this case is the contract of 1st January, 2019. The trial court cannot be said to have plainly erred. This ground fails.

The 3rd issue for determination is whether the trial court erred in finding that the Appellant deserted duty and whether the termination was unfair. The evidence drawn from the trial strongly favours the Appellant. The Respondent's witness, one, Anna Ngiana Rama admitted under cross-examination that no letter was ever issued inviting the Appellant to a disciplinary hearing, that no disciplinary hearing was ever held. Moreover, the Respondent did not invite the Appellant to resume work. These are not inferences drawn by this Court. They are direct admissions by the Respondent's only witness, recorded in the proceedings which form part of the Record of Appeal.

The Appellant's Supplementary Written Submissions at trial correctly identified the governing legal framework. The Court of Appeal in **Muthaiga Country Club v Kudheihia Workers [2017] eKLR** held that once an employee lays the basis for a claim of termination and denies through evidence the reasons advanced by the employer, the burden shifts to the employer under section 43(1) of the Employment Act, 2007 to prove the reason or reasons for the termination and to justify them. The Respondent in this case did not produce a termination letter, did not demonstrate a completed disciplinary process and did not produce

any written communication inviting the Appellant to respond to any charge. The authority of **Evans Ochieng Oluoch v Njimia Pharmaceutical Limited [2016] eKLR** is directly applicable: an employer relying on desertion or absconding to justify a termination must show that efforts were made to get in touch with the employee and must at the very least issue a reasonable notice informing the employee that termination is being considered. No such notice was ever issued.

The Respondent's characterisation of the Appellant as having deserted duty is further undermined by the Appellant's own conduct. He wrote begging to be reinstated on 29th March 2021. An employee who has formed an intention not to return to work does not write seeking reinstatement. As was held in the authority of **New World Stainless Steel Limited v Cosmas Mbalu Munyasy [2021] eKLR**, absconding or deserting duty is distinct from mere absenteeism; absconding imports a formed intention never to return. The Appellant clearly had no such intention. The Respondent simply chose not to respond to his reinstatement request and not to complete any disciplinary process, yet seeks to use the Appellant's absence — an absence which followed an on-call verbal dismissal by the Respondent's own principal — as proof of desertion. That position is not sustainable on the evidence adduced at trial.

On the substantive grounds, the allegation that the Appellant facilitated an unauthorised transfer of Kshs. 600,000 was squarely undermined by the Respondent's own witness who conceded in cross-examination that the three individual transactions were each below the Kshs. 200,000 threshold requiring approval and that the amounts were paid to three different persons. The shortfall of Kshs. 86,000 was acknowledged by the Appellant, but it was never the subject of a disciplinary process at which he could have made representations. This Court

finds that the termination of the Appellant's employment was both substantively and procedurally unfair.

On the 4th issue for determination: entitlement to the reliefs sought, this court has the following to say. The Appellant entitlement is assessable on the basis of the proven employment commencing 1st January, 2019 and the agreed gross salary of Kshs. 36,000 per month. On notice pay, the Appellant is entitled to one month's salary in lieu of notice at Kshs. 32,000. On compensation for unfair termination, this Court is guided by section 49 of the Employment Act, 2007 and the factors set out therein. The Appellant was the author of part of his difficulties — he had accumulated multiple warning letters for prior breaches, admitted to the Kshs. 86,000 shortfall, and did not offer to pay it at the time. His own conduct contributed materially to the deterioration of the employment relationship. Awarding the maximum 12 months would not do justice in the circumstances to the Respondent. This Court awards 6 months' compensation at Kshs. 32,000 per month.

On overtime, the Appellant failed to produce any documentary evidence in the form of attendance records, rosters or time sheets establishing the specific hours worked in excess of the statutory maximum, and the employment contract expressly excluded overtime pay. This claim fails for want of proof. On house allowance, the trial court's finding is affirmed; the Kshs. 4,000 monthly allowance satisfies the statutory housing requirement.

On the 7 days' salary in December 2020, the claim is allowed at the trial court's computation. On accrued leave, no reliable evidence was produced of leave entitlements or leave taken outside the contract period and the claim fails. On the Counter-Claim, the Appellant admitted the Kshs. 86,000 shortfall in his handwritten note and in his email apology; the Counter-Claim is therefore proved and allowed.

Having considered the Record of Appeal, the Supplementary Record of Appeal, the evidence adduced at trial, the submissions of the parties and the applicable law, this appeal is partially allowed. The finding of the trial court on the period of employment is affirmed. The finding that the Appellant's employment ended by reason of desertion is set aside and a finding of unfair and procedurally defective termination is substituted thereof.

I am therefore inclined to partially allow the appeal and order relief as follows;

- (i) A declaration be is hereby issued that the termination of the Appellant's employment by the Respondent was unfair and procedurally defective.
- (ii) The Appellant is awarded relief as follows:
- (iii) One (1) month's salary in lieu of notice.....Kshs.
32,000.00
- (iv) Six (6) months salary as ccompensation for unfair termination of employment (6 months).....Kshs. 192,000.00
- (v) Seven (7) days salary for days worked in December, 2020.....Kshs.
7,225.81
- (vi) House allowance as awarded by the trial court.....Kshs.
19,200.00
- Total of Award.....Kshs. 250,425.81**
- (vii) The Respondent's Counter Claim for Kshs. 86,000.00 is allowed as admitted and proved.
- (viii) The amount of Counter Claim shall be set off against the total of award above in order (ii), leaving a net sum payable as to the Appellant as Kshs. 164,425.81.
- (ix) The claims for overtime, accrued leave and the expanded house allowance claim are dismissed.

(x) Interest on the net award shall run at court rates from the date of this judgment until payment in full.

(xi) Each party shall bear their costs of this appeal.

Delivered, dated and signed this **17th** day of **April** 2026.

D. K. Njagi Marete
JUDGE

Appearances:

1. Mr. Masila instructed by Antony Masila Advocates for the Appellant
2. Mr. Vincent Olala instructed by Litoro & Omwebu Advocates for the Respondent.