

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS AT
KAKAMEGA
CAUSE NO. E022 OF 2025

PATRICK IKURA.....CLAIMANT

-VERSUS-

MASAI ROLLING MILLS LIMITED.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

JUDGMENT

I. INTRODUCTION

1. Through J.W Nafuye & Co Advocates, the claimant commenced this cause by way of a memorandum of claim dated 21st May 2025 seeking for the following reliefs –

a) The sum of Kshs 979,261.7/= as pleaded in paragraph 5 herein above.

Paragraph 5 broken down as follows –

(i) Certificate of service –Pursuant to section 51 of the Employment Act

(ii) A declaration that the contract of service of PATRICK IKURA assumed permanency and was deemed to be one where wages are paid monthly and that Section 35(1) (c) becomes applicable to his contract of service in terms of Section 37(1)of the Employment Act.

***(iii) 12 months compensation for unfair termination
(section 49(1)(c) of the Employment Act***

***(iv) One month in lieu of notice -Section 49 of the
Employment Act***

(v) Rest days(Kshs40,120 x 4 days x 72 – Kshs385,152/-

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(vi) Public holiday -Kshs40,120 x 6x 7=Kshs446,000/=

(vii) Prorate leave – 29/12x 21/30 x 40,120=

Khss67,869.70/=

(viii) Unpaid salary for January 2025(Kshs40,120/=)

b) Damages for unfair termination.

***c) An order compelling the respondent to issue the claimant
with a certificate of service under Section 51 of the
Employment Act, 2007.***

***d) Costs of this suit and interests at court rates from the date of
filing until payment in full.***

***e) Any other relief the Honourable court may deem just and fit
to grant.***

2. The memorandum of claim was accompanied with a verifying affidavit sworn by the claimant, a list of witnesses, the claimant's written statement, a list of documents, and copies of the listed documents attached.
3. The respondent neither entered appearance nor filed a response to the claim and, consequently, the matter proceeded undefended.

4. On 15th October 2025, when the matter came up in court for directions, the court scheduled the cause for formal proof on 18th November 2025, when the claimant testified as CW1 and closed his case.
5. Ms Nafuye, counsel for the claimant, filed written submissions dated 8th December 2025 in support of the claim.

II. THE CLAIMANT'S CASE

6. The claimant's case is expressed in the memorandum of claim, his witness statement, the documents filed, his oral testimony in court, and the written submissions by his counsel.
7. In the memorandum of claim, it is pleaded that the claimant was employed by the respondent as a supervisor earning a monthly salary of KShs40,120/=.
8. The claimant pleaded that he served the respondent diligently and faithfully until 29th January 2025, when the respondent issued him a dismissal letter, terminating his employment. The claimant contends that the termination was unlawful and unfair.
9. Consequently, the claimant seeks the issuance of a Certificate of Service pursuant to **Section 51 of the Employment Act(the Act)**; compensation for unfair termination; one month's salary in lieu of notice in the sum of Kshs40,120/= rest days allegedly worked at Kshs385,152/= public holidays worked amounting to Kshs146,000/= pro-rated leave pay of Kshs67,869.70 and, unpaid

salary for January 2025 amounting to Kshs40,120/= all totalling Kshs979,261.70/= together with costs and interest.

10. In his testimony in court, the claimant reiterated the contents of the foregoing pleadings and his written statement filed on 21st May 2025. He produced and adopted copies of the documents in bundle in the documents of even date which were marked as exhibits 1 to 3.

11. The claimant testified that he has worked for the respondent for 6 years and that vide the letter dated 22nd January 2025 was instructed to stay home for a week and he resumed work on 28th January 2025. He testified that on resumption he was informed that he was to pay for allegedly stolen property and was sent home. On 29th January 2025, he was called to collect his letter of dismissal of even date. He testified that he was not accorded a hearing before the dismissal and seeks payment of his terminal dues as set out above.

III. SUBMISSIONS

12. The claimant's counsel submitted on three issues – *Whether the claimant's employment was governed by the labour laws; Whether the claimant is entitled to the reliefs sought; and Who should pay costs and interest of the suit.*

13. On the first issue, counsel submitted that the claimant was employed by the respondent as a supervisor earning a monthly

salary of Kshs 40,120/= and served diligently until 29th January 2025, when he was terminated.

14. Counsel submitted that prior to the dismissal, the claimant had been placed on seven days' unpaid leave pending investigations, effective from 20th January 2025, following allegations that luggage handed to him by junior employees while offloading a container went missing after he allegedly failed to inform the foreman. The claimant complied with the directive and reported back to work on 28th January 2025 but he was issued with a letter of dismissal the day that followed.
15. It is submitted that the termination was procedurally and substantively unfair as the respondent failed to comply with the provisions of the **Employment Act (the Act)** particularly **Sections 41, 43, & 45**, which require an employer to notify an employee of the allegations against them, accord them a fair hearing and, establish valid reasons for termination.
16. Counsel argues that the letter placing the claimant on unpaid leave did not amount to a notice to show cause, and the claimant was not invited to respond to any allegations or charges or attend a disciplinary hearing before the dismissal.
17. Counsel cited ***Postal Corporation of Kenya v Tanui [2019] KECA 489 (KLR)*** wherein the Court held that an employer must notify the employee of the allegations, allow representation,

and give the employee a genuine opportunity to respond before termination.

18. On the reliefs sought, counsel submitted that the claimant is entitled to the remedies sought for the unfair termination. It is submitted that the claimant is entitled to compensation equivalent to 12 months' gross salary for unfair termination under **Section 49(1)(c) of the Act**.
19. On the prayer for one month's salary in lieu of notice amounting to Kshs 40,120/= counsel submitted that the claimant is entitled to the same on the ground that the respondent terminated him without notice as provided for under **Section 49(1)(a) of the Act**.
20. Counsel further submitted that the claimant worked on rest days without compensation, contrary to **Section 27 of the Act**. The claimant therefore claims Kshs385,152/= for rest days worked. Counsel argues that the respondent failed to produce work schedules or employment records to rebut the claim as required under **Section 10(7) of the Act**.
21. Counsel further urges that the claimant also worked on public holidays and submitted that the claimant did not take his accrued leave yet the respondent did not produce leave records to rebut that claim.
22. Further, counsel submitted that the claimant was entitled to unpaid salary for January 2025 amounting to Kshs40,120/= arguing that

the respondent unlawfully placed him on unpaid leave despite the fact that he had worked during that period.

23. Counsel therefore submits that the claimant has proved his entitlement to the claims totalling KShs979,261.70 and urges the Court to award the same together with costs of the suit and interest at court rates.

IV. ISSUES FOR DETERMINATION

24. The court has carefully and dutifully gone through the pleadings filed, the documentary and oral evidence tendered by the claimant and, the written submissions by his counsel. The following issues commend themselves to the court for determination –

- a) Whether the claimant was an employee of the respondent and the duration of the employment.*
- b) Whether the Claimant was unfairly terminated.*
- c) Whether the Claimant is entitled to the reliefs sought.*
- d) Costs.*

V. EMPLOYMENT

25. Although undefended, it is trite that the claimant had to establish and prove all the facts of the claim on a balance of probabilities. The claimant had to establish an employment relationship between him and the respondent as a preliminary issue before establishing the alleged unfair termination. Only then can the claimant be protected and entitled to the rights under the **Act** and other laws governing employment and labour relations.

26. The claimant adduced the letters of 20th and 29th January 2025 as proof that he had been engaged by the respondent. The said letters were on the respondent's letterhead issued by its human resources manager and thus proved that the claimant was indeed an employee of the respondent.
27. While it was not pleaded, the claimant in his testimony in court stated that he had been engaged by the respondent for six years. There is no evidence availed on when the employment relationship commenced and the claimant even in his written statement, did not indicate that date. The claimant only indicated and pleaded the date when his engagement with the respondent terminated.
28. The other document adduced by the claimant was his National identity card, which is not prove of when his employment commenced.
29. Under **Sections 106, 107 & 108 of the Evidence Act**, he who alleges a fact must prove that fact. The claimant had the burden of proving the date on which his employment with the respondent commenced and ended. The claimant failed to plead and prove the crucial particulars of the commencement of his employment. On a balance of probabilities, the court finds and holds that while the claimant proved that he was employed by the respondent, he failed to prove the commencement and the period of his engagement.

VI. DISMISSAL

30. The basic tenet of the law of evidence does not change and holds

true as encapsulated in **Section 107 of the Evidence Act** – that he who alleges must prove. The claimant alleged that he was unlawfully and unfairly dismissed without notice. He stated that he was placed on a seven-day unpaid leave pending investigations, effective 20th January 2025, following allegations that a luggage item handed to him by junior employees while off-loading a container went missing. It was alleged that he failed to inform the foreman about the luggage, which was eventually lost. He stated that he complied with the directive, stayed home, and reported back to work on 28th January 2025. He was then issued with a letter of dismissal on 29th January 2025.

31. The letter dated 20th January 2025 stated as follows –

MASAI.

MASAI

ROLLING MILLS (illegible text)

PATRICK IKURA

20/01/2025

ID NO. *****

POSITION: SUPERVISOR

Dear Patrick

RE: Unpaid leave of Absence pending investigation

This letter is to inform you that you are being placed on unpaid leave of absence for seven (7) days, effective immediately, pending the completion of an investigation into the recent loss of a luggage item from the company store.

We have confirmed that the luggage was handed to you by the junior employees who were offloading the container, and as a supervisor, you were charged with the responsibility of informing the foreman about the luggage. For further instructions. Unfortunately, you failed to inform the foreman, and the luggage went missing. This leave is necessary to ensure fair and unbiased investigation into this matter.

We understand this may be an unexpected situation, and we will keep you updated on progress of the investigation as appropriate.

Please do not hesitate to contact the HR if you have any questions.

Sincerely,

Moses Kisakui

Human Resource Manager

Masai Rolling Mills Ltd

ACCEPTANCE: I accept the foregoing and append my signature below, having understood the content and implication of this letter as a further commitment to abide by the laid company rules and regulations.

*NAME: Patrick IKURA ID NO.***** SIGN*

.....DATE 20/1/2025

FOREMAN NAME.....ID

NO.....SIGN.....DATE

32. The above letter is a suspension of the claimant to pave the way for investigations into the alleged loss of luggage under the claimant's supervision.

33. The claimant pleaded that on 29th January 2025, he was issued with a letter of dismissal. The said letter is reproduced below –

MASAI.

MASAI

ROLLING MILLS (illegible text)

PATRICK IKURA

29/01/2025

ID NO.*****

POSITION: SUPERVISOR

Dear Patrick,

RE: Dismissal for Misplacement of Company Property

This letter constitutes formal notification of your dismissal from Masai Rolling Mills Ltd, effective immediately.

This decision follows a thorough investigation into the recent incident involving the misplacement of company luggage from the company store. Our investigation has concluded that you are directly responsible for the following.

- You confirmed that the luggage was handed to you by the off-loaders who were offloading the container, but failed to follow the inventory procedure.***

- ***You took a photo of the luggage but failed to forward the same or inform the relevant authorities about the luggage.***

You left the store open and unattended. You failed to properly secure the company store by locking it with a padlock as it has always been the norm.

Your actions constitute a serious breach of your responsibilities as a supervisor and a violation of company policy regarding the handling and security of company property.

We have offered you the opportunity to provide your side of the story during the investigation, and we have carefully considered your explanations, however, your actions demonstrate a serious lack of judgement and disregard for company policies.

The dismissal is not taken lightly, however, we cannot tolerate actions that jeopardize the integrity and security of company assets.

We understand that this is a difficult time , we will provide you with the salary for the days worked. You can collect your personal belongings from your workstation on 30th January 2025 at 10.00 am.

We wish you all the best in your future endeavours.

Sincerely

Moses Kisakui
Human Resource Manager
Masai Rolling Mills Ltd

ACCEPTANCE: I accept the foregoing and append my signature below, having understood the content and implication of this letter as a further commitment to abide by the laid company rules and regulations.

NAME:IDNO.** SIGN....DATE.....***

FOREMAN NAME....ID

NO.....SIGN...DATE...30/01/(illegible)

34. After the claimant had proceeded on leave pending investigations, there is no evidence that a warning, show cause letter, or a notice was issued to inform him of the alleged gross misconduct after the investigations were concluded. The letter of dismissal alleges that the claimant was given an opportunity to give his side of the story before he was dismissed. There was no evidence in the form of minutes that the respondent invited the claimant to appear for a disciplinary hearing on the alleged misconduct. Yet, procedural fairness is mandatory even where an employer contemplates summary dismissal for gross misconduct under ***Section 44 of the Act***.
35. **Rules of natural justice** apply in disciplinary hearings in that no one may be condemned unheard; an employee has a right to all

information and particulars of charges before the hearing and, an employee has a right to test the evidence by way of cross-examination. An employer has to establish a *prima facie* case against an employee for such a hearing to meet the minimum threshold of a fair hearing as envisaged under **Articles 47 & 50 of the Constitution** and the various provisions of the **Fair Administrative Action Act**.

36. The court is of the view and holds that the claimant was not afforded and accorded a fair and reasonable opportunity to be heard and to present his defence and he was thus not heard within the meaning and context of the provisions of the law and more so **Sections 41, 43, 44, & 45 of the Act** and thus, his dismissal was wrongful, unfair and, unlawful.

VII.RELIEFS

37. Having held that the dismissal of the claimant by the respondent was wrongful, unfair, and unlawful, the court shall now consider each of the reliefs sought as set out in the introductory part of this judgment.

38. Prayer (a) is for a certificate of service under **Section 51 of the Act**. The issuance of the same is unconditional and the court hereby orders that a certificate of service be issued to the claimant within 30 days of this judgment.

39. Prayer (b) is for a declaration that the contract of service of PATRICK IKURA assumed permanency and be deemed to be one

where wages are paid monthly, and that **Section 35(1) (c) of the Act** becomes applicable to his contract of service in terms of **Section 37(1) of the Act**. The court has found that while the claimant proved that he had been engaged by the respondent, he failed to prove that he had indeed been engaged for six years. However, from the contents of the letter of dismissal the court is able to deduce, and it is so held, that the claimant was a permanent employee of the respondent but for unspecified period of time.

40. Prayer (c) is for compensation under **Section 49 of the Act**. The claimant has pleaded for the maximum compensation of 12 months' gross salary. While there was no pay-slip to show the salary the claimant was paid, he pleaded that his gross monthly salary was Kshs40,120/=. This was not disputed by the respondent. **Section 49(4) of the Act** provides some of the factors that this court ought to consider in determining the appropriate award in compensation for unfair and unlawful dismissal or termination. The claimant testified that he was dismissed after he was sent on unpaid leave to pave the way for investigations.
41. The court found and held above that due process was not followed before the dismissal. Compensation is essentially not aimed at punishing an employer but it is intended to compensate an employee for the loss of salary or earnings bar the dismissal or termination. The court takes the view that this is not an

appropriate case for the award of the maximum 12 months' gross salary in compensation, in that the claimant failed to prove his length of engagement with the respondent. The court considers compensation equivalent to six months' gross salary to be fair compensation in the entire circumstances. The same is calculated at Kshs40,120/= *6= Kshs240,720/=.

42. Prayer (d) is for one month's salary payment in *lieu* of notice. The court has found that the dismissal was wrongful, unfair, and unlawful. Under Section **35(1) (c) of the Act**, an employee should not be terminated without prior written notice of at least 28 days. The claimant is awarded Kshs40,120/= being one month's salary in lieu of notice as claimed.
43. Prayer (e) is for rest days. The court has found in the preceding part of this judgement that the claimant did not prove the duration of his engagement with the respondent, and thus, the court cannot determine the rest days the claimant was entitled to. The court holds that the claimant failed to prove this claim.
44. Prayer (f) is for public holidays. The court holds that the prayer was not specifically pleaded and proved in that there was no proof of which holidays the claimant alleges he worked through, in which year and on which date. The prayer fails.
45. Prayer (g) is for prorated leave $(29/12 \times 21/30 \times 40,120 =$ Kshs67,869.70/=. The leave claim was ambiguous as to what duration it related to. The claimant asserted that he did not take

leave during the entire engagement. This was done by counsel in the submissions. Submissions are not pleadings and the claimant ought to have pleaded this in his claim and supported the same in his testimony. The court has found that the duration of the claimant's engagement was not ascertained and hereby holds that the claimant failed to specifically plead and prove the claim for leave pay.

46. Prayer (h) is for the unpaid salary for January 2025. The claimant was sent on unpaid leave on 20th January 2025 and resumed on 28th January 2025. He was dismissed on 29th January 2025. The claimant thus remained in employment for the month of January 2025 and he was entitled to the full salary of Kshs40,120/=.
47. Prayer (i) is for damages for unfair termination. General damages are not payable for wrongful termination and are only payable where the employee proves a violation of some other rights under the *Act*, such as discrimination or a proven violation of constitutional rights. The claimant has not proved any such violation. The award of compensation above is sufficient in this case and thus this prayer fails.

VIII. COSTS

48. Costs to the claimant.

IX. DISPOSAL/ORDERS

49. The court issues the following orders –

(a) A declaration be and is hereby issued that the dismissal of

the claimant by the respondent was wrongful, unfair, and unlawful.

(b) The claimant is awarded a total of Kshs320,960/= together with interest thereon from the date of this judgment till payment in full. The said sum is made up as follows –

- (i) Compensation for wrongful and unlawful dismissal.....Kshs240,720/=*
- (ii) One month's gross salary in lieu of notice.....Kshs40,120/=*
- (iii) Unpaid salary for January 2025.....Kshs40,120/=*
- Total..... Kshs320,960/=*

**The award is subject to statutory deductions.*

(c) Certificate of service shall be issued by the respondent to the claimant and the same be delivered to his counsel on record within 30 days of this judgment.

(d) Costs to the claimant.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT
KAKAMEGA THIS 7TH DAY OF MAY 2026.**

.....
DAVID NDERITU
JUDGE