



**Technical University of Kenya (Formerly The Kenya Polytechnic University College) v  
Odeck (Civil Appeal 443 of 2018) [2024] KECA 525 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KECA 525 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPEAL 443 OF 2018  
MSA MAKHANDIA, P NYAMWEYA & JM MATIVO, JJA  
MAY 9, 2024**

**BETWEEN**

**TECHNICAL UNIVERSITY OF KENYA (FORMERLY THE KENYA  
POLYTECHNIC UNIVERSITY COLLEGE) ..... APPELLANT**

**AND**

**NARRY PHILOMENS ONAYA ODECK ..... RESPONDENT**

*(An appeal from the Judgment of the Employment and Labour Relations Court of Kenya at  
Nairobi (Monica Mbaru J.) delivered on 26th September 2017 in ELRC Cause No 604 of 2014)*

**JUDGMENT**

1. This appeal arises from a judgment and decree delivered on 26<sup>th</sup> September 2017 by the Employment and Labour Relations Court at Nairobi (Monica Mbaru J.) in ELRC Cause No. 604 of 2014 in which it was held that Narry Philemons Onaya Odeck (hereinafter “the Respondent”) was at the time of the termination of his employment a full time employee at the Technical University of Kenya (“the Appellant”) by operation of law. The learned Judge consequently awarded the Respondent a sum totalling Kshs 8,734,600/= made up of his salary and allowances for the remainder of 26 months of his 3-year contract, together with costs of the suit as follows:
  - a. Salary of Kshs 5,618,600.00/-
  - b. Responsibility allowance of Kshs 338,000.00/-
  - c. Travelling allowance of Kshs 36,000.00/-
  - d. Passage and baggage of Kshs 18,000.00/-
  - e. Car allowance of Kshs 468,000.00/-
  - f. Entertainment allowance of Kshs 234,000.00/-



- g. Housing allowance of Kshs 1,690,000.00/-
  - h. Utility allowance of Kshs 280,000.00/-
  - i. Furniture allowance of Kshs 52,000.00/-
2. The Respondent's claim in the trial Court, as stated in his Memorandum of claim dated 7<sup>th</sup> April 2014, was that he was offered employment by the Appellant on 14<sup>th</sup> April 2011 as its College Registrar and Secretary on contract for a period of three (3) years, upon the terms contained in the letter of offer of even date and the Appellant's Terms of Service dated 15<sup>th</sup> November 2010. He accordingly accepted the offer on 16<sup>th</sup> April 2011, and that the express terms of the contract of service between the Respondent and the Appellant were that the duration of the contract would be 3 years; the remuneration would be Kshs 216,000.00 per month; the Respondent would be entitled to responsibility, leave, traveling, passage, entertainment, housing, utility and furniture allowances and medical benefits; the contract would be subject to a probationary period specified in clause 9.2 of the terms of service being 6 months and the Appellant had discretion to extend the probationary period for further 6 months or waive the probation period altogether; the Appellant was to submit a report to the Chairman of the Council recommending confirmation, extension or termination of the Appointment of the Respondent required to at the end of the probationary period; and upon successful completion of the probationary period, the Respondent would be issued with a letter of confirmation of appointment .
3. In addition, where termination was recommended, the Chairman of the Council would constitute a committee to review the appointment and take a decision in accordance with clause 11 and 12 of the Terms of Service and the details of such termination would be reported to the next Council meeting following the termination. According to the Respondent, the implied terms of the contract of service were that before terminating the contract on the grounds of poor performance, the Appellant was to explain to the Respondent the reason for which the Appellant was considering termination, and the Respondent would be entitled to have another employee of his choice present during the explanation. Furthermore, that the Appellant would not employ the Respondent under a probationary contract for more than the aggregate period provided in section 42 (2) of the *Employment Act*, and would not terminate the contract wrongfully or unfairly. The Respondent averred that he commenced service on 8<sup>th</sup> June 2011 and was in the Appellant's employment for 10 months until 18<sup>th</sup> April 2012, outside the probation period.
4. The Respondent's case was that upon completion of the probationary period on 8<sup>th</sup> December 2011, he was not notified of any extension of the probation period or termination of contract. Therefore, in the circumstances, the contract was deemed to have been confirmed with effect from 9<sup>th</sup> December 2011 and he was entitled to serve under the confirmed contract of service and it could only be terminated in the manner set out under Clause 11.2 of the Terms of Service, by issuance of 6 months' notice.
5. The Respondent therefore claimed that with effect from 9<sup>th</sup> December 2011, the Appellant could only terminate the contract in accordance to Clause 12 of the Terms of Service which required termination to be preceded with:
- a. Three (3) written warnings after hearing the Respondent on the matter in which his work conduct was unsatisfactory and upon a determination on the matter by the university College Council Disciplinary committee;
  - b. An interdiction for good cause upon reference by the Principal, of the matter for which the cause related, to the Committee appointed by the University College Disciplinary Committee;



- c. A 6 months' suspension by the Principal on the recommendation of the University College Counsels Disciplinary Committee
  - d. A full hearing before the University College Council Disciplinary Committee on the matter of which his work conduct was unsatisfactory.
6. The events that subsequently unfolded were set out by the Respondent in his claim as follows. On 18<sup>th</sup> April 2012, the Appellant wrote to him notifying him to attend an Appointment Review Committee meeting on 25<sup>th</sup> April 2012 for consideration of confirmation of his appointment, and that there was no claim, evidence or discussion of the Respondent's ineptitude on any of the issues discussed during the meeting. However, that on 30<sup>th</sup> April 2012, the Appellant wrote to the Respondent indicating that his appointment would not be confirmed, and the letter purported to terminate the Respondent's service with immediate effect. The Respondent claimed that the termination was wrongful and unfair, for reasons that at the time of the inquiry by the Appointment Review Committee he had served beyond the probation period and his appointment was therefore deemed to have been confirmed by operation of the law; the inquiry by the Appointment Review Committee and subsequent termination were therefore unlawful, null and void as his employment could only consequently be terminated in the manner set out in Clause 12 of the Terms of Service; no reasons for the termination were given nor the claim of unsatisfactory performance substantiated; and the procedure adopted in the termination contravened the process set out in Clause 9 of the Terms of Service.
7. The Respondent further averred that reinstatement would not be an appropriate remedy since his relationship with the Appellant had deteriorated, and as a result he had suffered damage and injury as a result of the wrongful and unfair termination. The Respondent therefore claimed damages of Kshs 9,458,800.00/=, which he particularised as follows:
  - a. Salary for the remainder of the term of the contract of service being 26 months calculated at Kshs 216,000.00/- per month totalling Kshs 5,616,000.00/-.
  - b. Responsibility allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 13,000.00/- per month totalling Kshs 338,000.00/-.
  - c. Leave travel allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 12,000.00/- per month totalling = Kshs 312,000.00/-.
  - d. Passage and baggage allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 7,200.00/- per month and Kshs 10,800.00/- for 26 months totalling Kshs 468,000.00/-.
  - e. Car allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 18,000.00/- per month totalling Kshs 468,000.00/=.
  - f. Entertainment allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 9,000.00/- per month totalling Kshs 234,000.00/=.
  - g. Housing allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 65,000.00/- per month totalling Kshs 1,690,000.00/-.
  - h. Utility allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 10,800.00/- per month totalling Kshs 280,800.00/-
  - i. Furniture allowance for the remainder of the term of the contract of service being 26 months calculated at Kshs 2,000.00/- per month totalling Kshs 52,000.00/-



8. The Appellant opposed the claim in a reply to the statement of claim dated 5<sup>th</sup> May 2014. The Appellant's case was that the Respondent's claim related to termination of a probationary contract governed by section 41 of the Employment Act, and admitted that the Respondent commenced working on 8<sup>th</sup> June 2011 until 3<sup>rd</sup> May 2012, when he acknowledged receipt of the letter of termination and not 18<sup>th</sup> April 2012 as alleged in his claim. It was the Appellant's assertion that the Respondent was neither notified of any extension of his probationary period or termination of contract after the completion of the first 6 months of his employment, and that the termination of his employment was subsequently recommended in accordance to Clause 9.2.2 of the Terms of Service.
9. Further, that the recommendation by the Appellant led to the constitution of a Committee to review the appointment of the Respondent, and that the said committee was not constituted immediately upon the expiry of 6 months for the reason that the Appellant was transiting into a full-fledged university, but was constituted before the expiry of the next 6 months allowable by the law in the framework of probationary employment. The Appellant averred that the lapse of time between the expiry of the probation period and the move to set up the committee was 3 months, which it stated was commendable considering the administrative and restructuring challenges faced by the Appellant.
10. The Appellant therefore denied that the contract was deemed confirmed with effect from 9<sup>th</sup> December 2011. Furthermore, that for public institutions, actions such as confirmations and terminations of employment must be properly documented by the institution, an entry made in the concerned employee's staff personal file, and a copy supplied to the employee with confirmation documents. The Appellant further denied that the Respondent's employment could only be terminated by a notice of 6 months as his employment fell under the purview of a probationary contract, and he had not yet graduated to confirmed employment. On the process, the Appellant denied that the Respondent's termination was wrongful and unfair, and averred that it followed due process as enshrined in the Terms of service governing the parties.
11. In particular, that the Appellant invited the Respondent to the Appointment Review Committee meeting by a letter dated 18<sup>th</sup> April 2012 and given notice of the areas he was to address the committee on; the Appointment Review Committee meeting was called to enable the Principal make a decision on the confirmation of the appointment of senior members of staff including the Respondent, who were required to give an account of their achievements since appointment; the panel in the Committee did not engage the staff in any discussions; the Committee members' sentiments were that the Respondent's presentation was persuasive albeit not reality and made the recommendation for termination; it was not incumbent on the Committee members to give their reasoning for such finding to the Respondent; and that the recommendation was made at the sole discretion of the committee members.
12. It was the Appellant's position that the termination was a natural consequence of the outcome of the Appointment Review Committee meeting, and the termination with immediate effect was proper under Clause 11.1 of the Terms of Service, which gave the options of termination by either party giving the other 3 months' notice or payment in lieu of equivalent to the basic salary. The Appellant was therefore within its right to choose the latter option, and the Respondent accepted three months' salary and leave allowance in lieu of notice totalling to Kshs 918,425/=. Therefore, the Appellant paid out what was legally owed to the Respondent, and his fresh demands were mischievous and malicious, and an attempt to unjustly enrich himself. The Appellant denied knowledge of the damage, injury and damages pleaded and itemized in the claim.
13. Lastly, the Appellant averred that the Respondent was not entitled to reinstatement as the reason for his termination was poor performance, and despite his very senior position, the Respondent



was constantly involved in altercations with junior staff reporting to him thus creating an extremely uncondusive environment to work in. Therefore, the Respondent was not entitled to any special damages in lieu of reinstatement as he would not have been reinstated in the first place. In addition, that the Respondent did not appeal against the decision of the Committee at the earliest opportunity or make any form of complaint to his superiors but proceeded to submit himself for clearance, and on 7<sup>th</sup> May 2012 handed over his office in an official, peaceful and cordial manner.

14. At the hearing, the Respondent testified and reiterated his claim, while the Appellant called its Legal Officer, one Ruth Kirwa as its sole a witness. The trial Judge (Monica Mbaru J.) after considering the pleadings, evidence and submissions found that the Appellant sought to review the Respondent's employment for purposes of confirmation 8 months into his employment, and that its inaction and lapses could not be visited upon the Respondent and could only apply to protect the claimant's rights in the employment relationship under section 42 of the [Employment Act](#). Therefore, the failure by the Appellant to have systems in place so as to have the Respondent's employment reviewed in time and before the probation period lapsed cannot be visited upon the Respondent, where there existed a written contract of service spelling out the terms and conditions of his employment, which the Appellant was under a duty as the employer to observe. In addition, that the Appellant noted that it did not extend the probationary period for the claimant because of transitional matters which had to be addressed, and the right to extend the probation period was therefore available and was never utilised.
15. The trial Judge noted that whereas an employer has the right to terminate the employment of an employee during the probation period on short notice or upon payment in lieu thereof, the probation period cannot be for more than 6 months or for a period as agreed by the parties, and where the employer finds the need to have the probation period extended beyond the agreed period, this must be done with the agreement of the employee, and cannot go beyond the legal maximum of 12 months, which legal requirements are set out in mandatory terms. Therefore, the probationary terms of the Respondent's contract of service lapsed after 6 months, and by operation of the law and in accordance with section 42 of the [Employment Act](#), the Respondent successfully completed his probation period and thus his employment was confirmed. Consequently, that after the lapse of 6 months, the Appellant as the employer had no right to review such contract of service retrospectively, and the Respondent could only be terminated from such employment in accordance with sections 35, 40, and 44 of the [Employment Act](#), or by mutual agreement of the parties.
16. Lastly, that even where the Appellant's intention was to challenge the Respondent's performance and capability, due regard had to be given to the mandatory provisions of section 41 of the [Employment Act](#), and the assertion by the Appellant of poor performance had procedural and substantive requirements and safeguards in law which required to be followed, including notice of matters to be addressed at such a hearing, and the presence of another employee, which is meant to ensure justice to the employee. The learned trial Judge accordingly held that the Appellant failed to follow the mandatory provisions of the law in terminating the employment of the claimant on 18<sup>th</sup> April, 2012 in a summary manner; that there were no substantive reasons to justify such action; the reasons assigned to be probationary provisions were not valid, reasonable and contrary to the contract of service and the applicable law; and amounted to unfair termination of employment to the damage of the Respondent.
17. In conclusion, the learned trial Judge found that the remedies thus under section 49(1) may be awarded in singular or multiple terms, and each case must be looked at on its own merits and particularly the pleaded orders. That in the present case, the Respondent asserted his rights to the full benefits of his 3 years' contract that was prematurely terminated at no fault of his own, and taking the benefits into account would place the Respondent not at an advantage but remedy the unfair termination of his employment. The trial Judge accordingly entered judgment for the Respondent in the terms stated at



the commencement of this judgment. The Appellant being aggrieved by the decision filed the instant appeal, raising seven grounds of appeal in its Memorandum of Appeal dated 20<sup>th</sup> July 2018 and lodged on 6<sup>th</sup> December 2019, namely:

1. The learned Judge erred in fact and in law in declaring that the Respondent was a full time employee of the Appellant at the time of termination of his employment
  2. The learned Judge erred in law and in fact in failing to appreciate the reasons given by the Appellant for late reviewing of the Respondent's probation terms to confirm or terminate the employment contract.
  3. The learned Judge erred in law and in fact to hold that the Respondent's termination was unfair.
  4. The learned Judge erred in law and fact in holding that the Respondent was entitled to the salary for the remainder of his contract term (26 months) contrary to the provisions of the Employment Act.
  5. The learned Judge erred in law and in fact by holding that the Appellant was to extend the probation period despite the Appellant stating that it lacked the capacity to constitute a committee to review the appointment of the Respondent due to the transitional issues.
  6. The learned Judge erred in law and fact in holding that Respondent was entitled to the allowances for the remainder of the contract term.
  7. The learned Judge erred in law and in fact by failing to take into account the fact that the Respondent managed to secure another employment at his home County as a member of a board.
18. We heard the Appeal on this Court's virtual platform on 19<sup>th</sup> December 2023., Mr. Okinyo, learned counsel, was present for the Appellant, while there was no appearance by the Respondent and/or his counsel on record, despite having been duly served with a hearing notice. There were also no submissions filed on behalf of the Respondent on record. Mr. Okinyo proceeded to highlight his written submissions dated 16<sup>th</sup> April 2019.
19. In commencing determination of the appeal, the duty of this Court as reiterated in *Selle & Another vs Associated Motor Boats Co. Ltd & others* (1968) EA 123 is to reconsider the evidence, evaluate it and draw its own conclusions of fact and law. It will only depart from the findings by the trial Court only were they are not based on evidence on record; where the Court is shown to have acted on wrong principles of law as held in *Jabane vs Olenja* (1968) KLR 661; or where its discretion was exercised injudiciously as was held in *Mbogo & Another vs Shah* (1968) EA 93.
20. Mr. Okinyo submitted on two issues. The first issue was the legal effect of the termination of the Respondent's employment after the expiry of the six month probationary period, and Mr. Okinyo submitted that the Terms of Service which were binding upon the parties stipulated that upon successful completion of the probationary period, the staff would be issued with a letter of confirmation in appointment, however that such a letter was not produced by the Respondent to negate the Appellant's position that he was still serving his term on probationary basis. It was counsel's position that under Clause 9.2.2 the Principal was mandated to submit a report to the Chairman of the Council recommending confirmation, extension or termination, which report was to be prepared by a committee which the Principal requested for from the Chairman of the Council, and this negated the position held by the learned trial Judge that the right to extend the probation period was available and was never utilized. In addition, since the termination of the Respondent's employment took place



before the lapse of 12 months prescribed by the law, and in the absence of the letter confirming his appointment, the only logical presumption was that the Respondent was terminated while still in the probationary period.

21. On the finding of unlawful and unfair termination, Mr. Okinya submitted that the Respondent had been in employment for only 10 months and as such his prayer for unfair termination fell below the statutory requirement for a claim of unfair termination as such he was not entitled to be compensated. The decision in the case of Kenfreight (E.A) Limited vs Bensin K. Nguti [2016] eKLR that under section 45 (3) of the Employment Act only an employee who had been in continuous employment for a period not less than thirteen months immediately before the date of termination has the right to complain that he had been unfairly terminated was cited for this proposition.
22. The probationary period agreed to by the parties was provided in Clause 9.2 of the Respondent's Terms of Service which was as follows:
  1. There shall be a probationary period of 6 months. Provided that the Council. may, at its discretion, extend the probationary period for further 6 months or wave the probationary period altogether.
  2. At the end of the stipulated probationary period, the principal shall submit a report to the Chairman of Council recommending confirmation, extension or termination. Upon successful completion of the probationary period the staff shall be issued with a letter of Confirmation in Appointment.
  3. Where termination is recommended the Chairman of Council shall constitute a Committee to review the appointment of the staff and take appropriate decision in accordance with sections 11 and 12 below. Details of such termination shall be reported to the next Council meeting following such termination.
23. Sections 11 of the Terms of Service provided for termination of appointment during probation, which was by either party giving three months' notice or pay in lieu of notice, and termination of appointment after confirmation, which was by resignation by giving six months' notice or pay in lieu of notice. Section 12 provided for the process in the event of unsatisfactory work, in terms of warning, interdiction, suspension, disciplinary procedure and termination. It is not in dispute that the Respondent was appointed as the Appellant's College Registrar and Secretary for a term of three years by a letter dated 14<sup>th</sup> April 2011. The six- month probationary period was therefore to end on 14<sup>th</sup> October 2011, unless extended. The Appellant did not extend the probationary period in October 2011, and relies on its internal challenges to explain the letter dated 18<sup>th</sup> April 2012, written one year later, in which it states that "as provided in your terms of service, you have been under probation and are now due for confirmation in appointment. In this regard, the Council has constituted an Appointment Review Committee to consider you for confirmation in appointment."
24. The said letter was evidently in breach of the Terms of Service which required the probationary period to be six months unless expressly extended or waived. We cannot also construe the letter of 18<sup>th</sup> April 2012 as constituting an implied extension of the probationary period for the reason that the Employment Act specifically requires as follows in section 42(2) and (3):
  2. A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.
  3. No employer shall employ an employee under a probationary contract for more than the aggregate period provided under subsection (2).



25. As is also evident from the provisions of section 42(3), an employee cannot be on probation for more than twelve months, as the Respondent was in this particular case. The legal effect therefore was that there was constructive and automatic confirmation of the Respondent once the initial six months of probation expired without express extension, confirmation or termination and definitely as at the time of the letter dated 18<sup>th</sup> April 2012, since the law prohibits probation for a period of more than twelve months. Legally, an employee has a legitimate expectation that the employer will communicate the status of the employment before the end of the probationary period, and if the employer fails to do so, it is estopped by its representation and conduct from alleging that the probation period still subsists.

26. Any termination of the Respondent's employment therefore had to be in accordance with the procedures set out in Clause 12 of the Terms of Service.

Our reading of Clause 11 was that it only applied in cases where the employee was the one terminating the employment after confirmation by way of resignation. The procedure followed by the Appellant in terminating the Respondents employment was therefore in breach of contract, and also unfair as the safeguards provided in Clause 12 of the Terms of Service and section 45 of the *Employment Act* were not observed. The trial Judge therefore did not err in the findings made to this effect.

27. The second issue that Mr. Okinya addressed was the legality of the award to the Respondent of the salary and allowances for the remainder of the contract term of 26 months. The counsel submitted that Clause 11.1 of the Terms of Service enumerated that during probation service may be terminated by either party by giving the other three (3) months' notice or by payment of a sum of money equivalent to the basic salary, and that it was not in dispute that upon termination of the Respondent, the Appellant proceeded to pay him the three months' pay, and in addition, his leave allowance for the period he had served. The counsel faulted the learned trial Judge for not only ignoring the said payments but also section 49 (4) of the *Employment Act* which called upon her to give effect to the employee's wishes in determining the appropriate relief, and stated that it was clear from the pay that the Respondent's right further claims against the Appellant had been extinguished. Reliance was placed on the decision in the case of *Coastal Bottlers limited vs Kimathi Mithika* [2018] eKLR to submit that having paid the Respondent his dues which were never contested, they fully discharged its obligation under the contract.

28. Therefore, that the award of the salary for the remainder of the contract terms of 26 months was contrary to the law and the terms of service binding the parties, and the counsel asserted that the same was punishing the Appellant as opposed to offsetting the financial loss resulting from its alleged wrongful act. Lastly, Mr. Okinya urged that the learned trial Judge did not discharge her obligations of justifying why she awarded the Respondent 26 months' salary and relied on the decisions to this effect in *Oi Pejeta Ranching Limited vs David Wanjau Muhoro* [2017] eKLR and *Chai Trading Company Limited vs Joseph Kimathi Ikiamba* [2018] eKLR.

29. Having found that the employment was constructively confirmed, and his termination was unlawful, and unfair, the provisions of Clause 9.2.1 of the Terms of Service were not applicable. The Appellant has relied on the said provisions to urge that it paid the Respondent 3 months' pay in lieu of notice as the termination was made during probationary period. The applicable law as regards remedies due to the Respondent therefore was section 49 of the *Employment Act* which provides as follows:

(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—



- a. the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;
  - b. where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or
  - c. 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.
30. It is notable that section 49 (1)(a) codifies the general position in common law that the normal measure of damages where there is breach of unemployment contract is the wages and benefits that the employee would have earned if due notice had indeed been given. Section 49 (1)(c) serves to provide relief for any consequential loss that an employee may suffer as a result of the breach of contract. There is therefore no basis both under the *Employment Act* or under common law for the award of the salary and allowances for the remainder of the term of 3-year contract of employment by the trial Judge, and we are accordingly persuaded by the Appellant's arguments on this point.
31. Having taken into account that the Appellant did pay the Respondent three months' pay in lieu of notice, we are of the view that compensation of six month's gross pay and allowances would be reasonable in the circumstances. In this respect, allowances constitute part of the consideration for services rendered by an employee, and should be taken into account in the payment of dues upon termination as specifically provided for in section 17 (3) and 40 of the *Employment Act*. It is notable in this respect that the definition of "remuneration" in the *Employment Act* is the 'total value of all payments in money or in kind, made or owing to an employee arising from employment of that employee', and that section 49(1) refers to salary and wages. Black's Law Dictionary, Ninth Edition defines wages at page 1716 to mean "every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay bonuses and the reasonable value of board, lodging payments in kind, tips and any similar advantage received from the employer". Allowances therefore fall within the definition of wages.
32. We accordingly partially allow the appeal, only to the extent of setting aside the order in the judgment that awarded the Respondent the following sums for the remainder of the 26 months of his 3-year contract:
- a. Salary of Kshs 5,618,600.00/-
  - b. Responsibility allowance of Kshs 338,000.00/-
  - c. Travelling allowance of Kshs 36,000.00/-
  - d. Passage and baggage of Kshs 18,000.00/-
  - e. Car allowance of Kshs 468,000.00/-
  - f. Entertainment allowance of Kshs 234,000.00/-
  - g. Housing allowance of Kshs 1,690,000.00/-
  - h. Utility allowance of Kshs 280,000.00/-



- i. Furniture allowance of Kshs 52,000.00/-
33. We substitute the said order with an order awarding the Respondent a total sum of Kshs 2,032,400/= as compensation, being his gross wages for 6 months made up as follows:
- a. Salary of Kshs 1,296,600.00/-
  - b. Responsibility allowance of Kshs 78,000.00/-
  - c. Leave travelling allowance of Kshs 6,000.00/-
  - d. Passage and baggage allowance of Kshs 9,000.00/-
  - e. Car allowance of Kshs 108,000.00/-
  - f. Entertainment allowance of Kshs 54,000.00/-
  - g. Housing allowance of Kshs 390,000.00/-
  - h. Utility allowance of Kshs 64,800.00/-
  - i. Furniture allowance of Kshs 26,000.00/-
34. In light of the non-participation of the Respondent, we shall not make any order as to the costs of the appeal.
35. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF MAY 2024**

**ASIKE--MAKHANDIA**

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**JUDGE OF APPEAL**

**P. NYAMWEYA**

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**JUDGE OF APPEAL**

**J. MATIVO**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

SIGNED

**DEPUTY REGISTRAR**

