



REPUBLIC OF KENYA



**West Kenya Sugar Company Limited v Dominiko (Appeal E003 of 2024)
[2025] KEELRC 357 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 357 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
APPEAL E003 OF 2024
DN NDERITU, J
FEBRUARY 13, 2025**

BETWEEN

WEST KENYA SUGAR COMPANY LIMITED APPELLANT

AND

JOHNSON MBOYA DOMINIKO RESPONDENT

(Being an appeal from the judgment in Kakamega Chief Magistrate's Court ELRC Cause No. 88 of 2021 by Hon. J.R. Ndururi (SPM) dated and delivered on 2nd February, 2024)

JUDGMENT

I. Introduction

1. In a judgment delivered on 2nd February, 2024 the lower trial court entered judgment in favour of the respondent in the sum of Kshs1,408,488.80 comprised of Kshs47,185 being one month's salary in lieu of notice, Kshs196,308 as compensation for unlawful termination; Kshs898,760 for salary underpayments, and Kshs264,235.80 for unpaid house allowance. It was also ordered that the respondent be issued with a certificate of service. He was also awarded costs of the cause.
2. Dissatisfied with the judgment, the appellant through O & M Law LLP Advocates commenced this appeal by way of a memorandum of appeal dated 29th February, 2024 raising the following grounds of appeal –
 1. That the Learned Magistrate, erred in law and in fact in failing to consider and appreciate the Loader Cane Haulage and Payment Reports produced by the Appellant during the Trial Court's hearing showcase separate and distinct records and accordingly erred in not concluding that the Respondent was paid what was duly owed to him.



2. That the Learned Magistrate erred in law failing to consider and appreciate Section 37 of the [Employment Act](#), 2007 by failing to appreciate that the provision does not apply given the nature of the Claimant's employment history.
 3. That the Learned Magistrate erred in law failing to consider and appreciate the application of Sections 43 and 45 of the [Employment Act](#), 2007 by failing to appreciate that the burden of proving that an unfair and/or unlawful termination of employment shall rest on the Respondent herein.
 4. That the Learned Magistrate, erred in law failing to consider and appreciate the application of Section 35 (6) (b) of the [Employment Act](#), 2007 by failing to appreciate that the section shall not apply where an employee is a member of a gratuity or service pay scheme established under a collective agreement.
 5. That the Learned Magistrate erred in law and in fact in finding that the reason why the Appellant opted to renew the Respondent's contract on 1st July, 2020, was after the realization of the ruling in Kisumu ELRC No.388 of 2008. herein was entitled to continue receiving the same salary until a new CBA was signed.
 6. That the Learned Magistrate erred in law and in fact in finding that the Respondent herein was being underpaid.
 7. That the Learned Magistrate erred in law and in fact in failing to appreciate the significance of the documentary evidence tendered in support of the Appellant's case.
 8. That the Learned Magistrate, erred in law and in fact in finding that the Appellant did not follow the due and fair procedure on termination.
 9. That the Learned Magistrate, erred in law and fact in finding that the Respondent herein is entitled to housing allowance.
 10. That the Learned Magistrate erred in law and in fact in failing to consider the Appellant's submissions.
 11. That the Learned Magistrate erred in law and in fact in, appreciating and considering the Respondent's submissions only to the prejudice and detriment of the Appellant.
 12. That the Learned Magistrate erred in law and in fact in misapprehending and disregarding the evidence on record and tendered by the Appellant and/or failing to consider the said evidence in totality.
 13. That the Learned Magistrate erred in law and in fact in failing to properly and exhaustively evaluate the evidence on record.
 14. That the Learned Magistrate erred in law and in fact in arriving at conclusions and inferences which are not supported by evidence and/or based on any documentation.
 15. Other grounds and reasons to be adduced at the hearing hereof.
3. The appellant is seeking the following reliefs –
1. That this appeal be allowed.



2. That the judgement by the Hon. J. R. Ndururi (SPM) dated and delivered on 2nd february, 2024 in Kakamega ELRC Cause No. 88 of 2021 – Johnson Mboya Dominiko vs West Kenya Sugar Company Limited be set aside.
 3. That the costs of this appeal and those of the lower court be awarded to the appellant.
 4. Such further or other reliefs as this Honourable court may deem just and fit to grant in the circumstances of this Appeal.
4. The respondent opposed the appeal through Onyango Otunga & Company Advocates.
 5. By consent, the appeal was canvassed by way of written submissions. Counsel for the appellant, Mr. Otieno filed written submissions on 5th November, 2024 and the respondent's counsel, Ms. Onyango, filed on 20th November, 2024.

ii. Submissions By Counsel

6. On the one hand, counsel for the appellant condensed the grounds of appeal into three issues – Whether the respondent was unfairly/unlawfully terminated from his employment; Whether the Magistrate erred in law and in fact in applying section 37 of the *Employment Act*; and, Whether the respondent is entitled to the relief(s) sought in his memorandum of claim.
7. The appellant invites the court to be guided by the principles in *Barnabas Biwott v Thomas Kipkorir Bundotich* (2018) eKLR & others; and *Kingoo & 2 others V Ntenge* (2022) eKLR and reconsider the evidence, re-evaluate it, and draw its own conclusion bearing in mind that it has neither seen nor heard the witnesses.
8. On the first issue, it is submitted that the respondent was engaged first through an initial contract on 1st July, 2016 for a fixed term contract of twelve months. It is submitted that the contract expired on 30th June, 2017. It is further submitted that the respondent's assertion that he was employed in 2014 is false and misleading.
9. It is submitted that on expiry of the initial contract, the respondent's contract was renewed on 1st July, 2017 for a further period of 12 months ending 30th June, 2018. It is submitted that upon expiry of the second contract, the respondent was never issued with a new contract but he continued to work until 25th June, 2019 when he was issued with a new contract which was to lapse after 12 months ending on 30th June, 2020.
10. It is submitted that on 29th June, 2020 the respondent was issued with a notice on the lapse of his contract with a notice of non-renewal effective 30th June, 2020. It is submitted thus that the respondent's contract lapsed by effluxion of time and he was not terminated.
11. The court is urged to be guided by the holdings in *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR) and *Amatsi Water Services Company Limited v Francis Shire Chachi* (2018) eKLR and find that the respondent had no legitimate expectation for renewal of his fixed-term contract. It is submitted that the respondent was thus not unfairly or unlawfully terminated as his contract lapsed by effluxion of time.
12. On the second issue, it is submitted that the trial magistrate erred in holding that the respondent's employment had been converted into permanent or month to month service under the provisions of Section 37 of the *Employment Act* (the Act) as his employment was a fixed-term contract and not casual employment.



13. Citing *Local Ocean Conservation (LOC) Kenya Ltd (2022) eKLR*, the court urged to find that during the period when the respondent worked without a contract, his employment did not convert to casual employment but simply into a contract of service by implication and thus his contract had been renewed until 30th June 2020 on a fixed term basis. The court is urged to find that the respondent is not entitled to the reliefs awarded.
14. On the other hand, counsel for the respondent condensed the arguments in opposition of the appeal into two issues – Whether the respondent was unfairly/unlawfully terminated; and, Whether the respondent was underpaid according to the Collective Bargaining Agreement.
15. On the first issue, it is submitted that the respondent was issued with three contracts in the years 2016, 2017, and 2019 (see REX1 to 3), and he expected further renewal of the same. It is submitted that although the respondent issued notice of non-renewal the legitimate expectation had allegedly crystallized as the respondent had been engaged by the respondent for four years and hence he expected renewal of his contract. It is submitted that under clause 8 of the contracts (see REX2 & 3) assured renewal based on performance and the respondent, without any disciplinary issue, expected his contract to be renewed.
16. It is submitted that the respondent’s contract had always been signed beyond the expiry periods in that the first contract commencing on 1st July, 2016 had been signed on 7th September, 2016; the second contract commencing on 15th July, 2017 was signed on 17th August, 2017, and that of 25th June, 2019 was signed on 22nd August, 2019. It is submitted that he legitimately expected that the last contract was to be renewed as was the norm.
17. It is submitted that between 1st July, 2018 and 24th June, 2019 the respondent had worked without a contract and thus the legitimate expectation had crystallized. It is submitted that the appellant issued another contract on 22nd August, 2019 past the expiry date to circumvent the law.
18. It is submitted that the respondent had converted to a permanent employee and was thus entitled to 30 days’ notice instead he was issued with a one-day notice. To buttress this argument, the respondent’s counsel cited *Keen Kleeners Limited v Kenya Plantation and Agricultural Workers Union KCA 352(KLR)*.
19. Further, citing the *Kenyatta University v Maina (Civil Appeal 261 of 2020) [2022] KECA 1201 (KLR)*, the court is urged to find that the issuance of consecutive contracts to an employee over a prolonged period of time was an act of subversion of the law meant to stop an employee from becoming permanent and pensionable and the same is termed unfair labour practice in violation of Article 41 of *the Constitution*.
20. The court is urged to find that the respondent’s termination was thus unfair and unlawful and hence he was entitled to the reliefs as awarded by the lower trial court. The court is further urged to uphold the decision of the lower court and dismiss the appeal with costs.

iii. Issues For Determination

21. The court has perused the record of appeal, including the proceedings in the lower trial court, the memorandum of appeal, and the submissions by counsel for both parties as summarized above. The following issues commend themselves to the court for determination –
 - a. What was the nature, terms, and conditions of the employment relationship between the appellant and the respondent?



- b. Was the respondent terminated or how did the employment relationship, if any, terminate?
- c. If the respondent was terminated, was the termination unfair and unlawful?
- d. Did the lower trial court arrive at the correct decision in regard to the above issues and the reliefs awarded?
- e. What are the appropriate orders for this court to make in regard to the above issues and on costs?

Iv. The Employment & Termination

22. As the first appellate court, this court is obligated to re-evaluate the evidence on record and arrive at its own conclusions but bearing in mind that it neither heard nor recorded the evidence during the trial – see *Selle V & Another V Associated Motor Boat Co. Ltd & Others* (1968) E.A 123
23. As per his pleadings and evidence in the lower trial court, the respondent’s case is that he was engaged by the respondent as a truck driver in 2014 and issued with contracts until 29th June, 2020 when his employment allegedly terminated through non-renewal of the contract. He states that he was terminated effective 30th June, 2020 without notice or due process. He stated that his last known monthly salary was Kshs28,500/=, exclusive of lunch and overtime allowances.
24. He further stated that the appellant and the Kenya Union Of Sugar Plantation and Allied Workers(KUSPAW) were in a Collective Bargaining Agreement (The CBA) registered on 14th February, 2019(ELRC 258 of 2018) which allowed all included employees’ salaries to be increased from 1st May, 2017. He states that the increment was not effected and thus he was underpaid. He claimed for underpayment from May, 2017 until termination alongside compensation for unlawful termination.
25. It is on the basis of the foregoing that the respondent prayed for the following reliefs –
 - i. Declaration that the claimant was terminated unfairly and unlawfully by the respondent.
 - ii. Claim for compensation, that is payment in lieu of notice, unlawful and unfair termination, salary underpayments, overtime, lunch, leave allowance and overtime, all totaling to the sum of Kshs.- as per paragraph 18 above.
 - iii. Compensation for leave days earned but not taken during the pendency of employment.
 - iv. Certificate of service
 - v. Costs of the suit.
 - vi. Interest on (a) above
 - vii. Any other further relief that the court may deem just and fit to grant.
26. The appellant called Duncan Obwawo (RW1), the human resources manager, as a witness. He adopted his filed statement and produced the filed documents as exhibits. He stated that the respondent was engaged on a fixed-term contract that expired upon the issuance of a notice of non-renewal dated 29th June, 2020.
27. RW1 maintained that the respondent was not entitled to the benefits of the CBA because the CBA was not effected. However, he did not avail any evidence to show that an appeal allegedly filed on the same had stopped the implementation of the CBA.



28. RW1 asserted that the respondent was employed on a fixed-term contract which lapsed. He stated that he was not aware whether the respondent had any legitimate expectation that his contract could be renewed. However, he stated that the appellant had neither promised nor implied that it was to renew the contract.
29. The law in Kenya recognizes several forms of employment based on the period, nature, terms, and conditions of the engagement. The court in *Krystalline Salt Limited v Kwekwe Mwakele & 67 others* [2017] eKLR pointed out that the Act recognizes four major types of employment – contract for a specified period of time; contract for an unspecified period of time, contract for a specific piece of work or piece-work at a specific piece-rate, and casual employment.
30. Foremost, this court has to determine, based on the evidence on record and the law applicable, the nature and classification of the employment relationship between the appellant and the respondent. As far as the court understands the dispute between the parties and the evidence availed during the trial, the respondent was a truck driver and he was paid a monthly salary as per the pay-slips adduced in evidence.
31. The appellant through RW1 confirmed that the respondent worked for the appellant. He stated that the first contract commenced on 1st July, 2016 and was signed on 7th September, 2016; the second contract commenced on 15th July, 2017 and was signed on 17th August, 2017; and that of 25th June, 2019 was signed on 22nd August, 2019. The respondent stated that for the period from 1st July, 2018 to 24th June, 2019 the respondent worked without a contract. The respondent argued that in the period he worked without a contract, his terms of service converted to permanent terms and that he had a legitimate expectation that his contract was to be renewed. The respondent argued that the appellant issued another contract on 22nd August, 2019 past the expiry date to circumvent the law on the respondent’s already converted contract from a fixed-term contract to permanent employment.
32. The documentary evidence availed and produced by the appellant show that the respondent worked for the appellant for three years 11 months and 29 days. Citing *Kenyatta University v Maina (Civil Appeal 261 of 2020)* [2022] KECA 1201 (KLR) the respondent argued that the minute the appellant failed to issue him with a contract between 1st July, 2018 and 24th June, 2019 and only issued one later on 22nd August, 2019 he had a legitimate expectation that his contract had converted to permanent employment.
33. The court has considered the decision by the Court of Appeal in *Kenyatta University v Maina (Civil Appeal 261 of 2020)* [2022] KECA 1201 (KLR), where the court in finding that an employer who engaged an employee for more than three months on consecutive contracts to avoid the application of Section 37 of the Act violated Article 41 of *the constitution*. The court had this to say –

“The contention that the respondent had signed a fixed term contract of 3 months flies in the face of the situation obtaining between the appellant and the respondent. The signing of contracts of 3 months which were renewed on expiry is a roundabout way of avoiding the provisions of the law on casual employment.

In our view, an employer cannot have an employee under the guise of being a casual on the reasoning that it has peak and off-peak sessions. To subject an employee to such a treatment is unfair because being laid off during off-peak season does not guarantee the employee permanency and neither can the employee look for employment elsewhere during the off-peak season. We are in agreement with the conclusion of Wasilwa, J when she concluded:



“This is the position in the instant Petition where there is no contention that the Petitioner served the Respondent continuously for months on end, which cumulatively comes to over many years.

And that:

“It is my finding that the nature of the employment relationship between the petitioner and respondent is therefore not casual or temporary but permanent and pensionable and which I hereby declare as per section 37(1) of the [Employment Act, 2007](#).”

34. In my considered view, after the lapse of the second contract on 15th July, 2018 he continued to work for the appellant without any contract for more than one year until 22nd August, 2019 when he was issued with a new fixed-term contract. In the intervening period between July, 2018 to August, 2019 the respondent’s terms of service converted to a month-to-month contract. While the respondent was not a casual employee as to bring him under the provisions of Section 37 of the Act, there is no other way to legally describe the relationship.
35. The respondent was not a casual employee after his contract lapsed but a permanent employee and as envisaged by the Court of Appeal in *Kenyatta University v Maina*(supra). It was unfair labour practice and unlawful for the appellant to have issued a fixed-term contract to the respondent after he had worked without a contract for over one year. It is evidently clear that the intention on the part of the appellant was malicious and a cunning attempt to avoid compensating the respondent in case of termination.
36. The court finds that the trial magistrate arrived at the right finding that the respondent’s contract had been converted into permanent employment during the period that he was not issued with a contract. The appellant tried to circumvent the law to deny the respondent the benefit of a proper notice and fair procedure before dismissal. The court finds no reason to interfere with that finding.

V. Reliefs

37. The lower trial court awarded the respondent as enumerated in the introductory part of this judgment.
38. The respondent relied on the CBA with KUSPAW that provided for salary increment for all employees including himself.
39. The trial court found that the CBA applied to the respondent. The appellant had pleaded that the CBA had not been effected and that an appeal had been filed on its implementation. No evidence to that effect was availed by the appellant. This court agrees with the trial court that the respondent was entitled to the application of the terms of the CBA as affirmed by the court in *Kisumu ELRC No. 258 of 2018*.
40. The trial court found that the respondent was underpaid as per the terms of the CBA which became effective on 1st May, 2017 up to 30th June, 2020 when he was dismissed.
41. The lower trial court granted the respondent salary underpayment of Kshs898,760 and unpaid house allowance of Kshs264,235.80 for the period from 1st May, 2017 to 30th June, 2020. The trial court did not consider the aspect of limitation of action in awarding the underpayments in salary and house allowance.
42. This court is of the considered view that this is an issue of jurisdiction that the trial lower court ought to have interrogated. Although the issue was not raised by either party during the trial and or in the



appeal the same is so fundamental that this court must deal with the same to arrive at the right and fair conclusion of this appeal. Whether the respondent brought the claim for the said underpayments within the statute time limit is a matter of the law that this court has jurisdiction to pronounce itself suo moto.

43. Notably, the outcome on this issue shall determine whether the trial court had jurisdiction to award the underpayments as jurisdiction is everything – See Nyarangi J in *The Owners of Motor Vessel Lilian ‘S’ V Caltex Oil (K) LTD (1989) KLR 1*.
44. After a critical examination of the above awards the court finds and holds that the reliefs on salary underpayment and unpaid house allowance accrued to the respondent at the end of each month and were thereafter not paid or the breach remedied. The failure by the appellant to pay the salary as per the CBA constituted a continuing injury.
 45. Section 89 of the Act which provides that –

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”. [Emphasis added]
 46. A claim for the above reliefs ought to be filed in court within 12 months of termination or upon cessation of the injury. The court notes that the respondent was terminated on 30th June, 2020 and this cause was filed on 23rd December, 2021, which is one year five months, and 23 days and hence outside the time limit of 12 months.
 47. Therefore, the claim for salary underpayment and unpaid house allowance ought to have been brought to court on or before 30th June, 2021, within the 12 months statutory limit for a claim of continuing injury as provided for in Section 89 of the Act. The respondent did not comply with this law
 48. For that reason, the court finds that the trial court assumed jurisdiction that it did not have in awarding the two reliefs on salary and house allowance underpayments. The lower trial court ought to have downed its tools and not pronounce itself on the said two items that were statute-barred. Consequently, the award of Kshs898,760 for salary underpayment and Kshs264,235.80 for unpaid house allowance by the lower trial court are hereby set aside.
 49. Further, on the award of unpaid house allowance, the respondent had not pleaded for house allowance in his undated memorandum of claim filed on 23rd December, 2021. The trial court misdirected itself in awarding a claim that was not pleaded by the respondent.
 50. On the award of pay in lieu of notice, the trial court found that the respondent was entitled to a notice and a reason for termination of his employment. The court has affirmed the trial court’s finding that the respondent’s employment had converted into a permanent terms and he was entitled to a 28 days’ notice as per Section 35(1) of the Act; the reason for termination, and due process before termination. He was not accorded this rendering his termination unlawful and unfair.
 51. The respondent was not issued with a notice by the appellant and thus he was entitled to pay in lieu of notice. As per Clause 9(b) of the CBA (page 50 of the Record of appeal) –

“if an employee has been in the employment of the company for a minimum of five (5) continuous years, and the employee’s services are to be terminated, employee shall be served



with a written notice of two (2) months or be paid the equivalent of two (2) months' salary//wages in lieu of notice. The reverse shall be applicable where the employee wishes to terminate his service to the company”.

52. The respondent worked for the appellant for over three (3) years but pleaded for one-month salary in lieu of notice instead of two month's salary in lieu of notice as per the CBA. The trial court awarded him Kshs47,185 as notice pay. At his dismissal, the respondent's consolidated basic salary was Kshs. 28,500/- as per the pay-slip for June, 2020 (See page 22 of the record of appeal). The claim for salary underpayment was statute-barred and thus the respondent was entitled to the notice pay equivalent to the monthly basic salary of Kshs28,500/-.

53. The claim was not amended on the notice pay for one month claimed and thus the trial court could only award one month's basic salary as notice pay. From the foregoing, the trial court erred in awarding notice pay in the amount of Kshs47,185/= and thus the same is substituted with an award of Kshs28,500/=.

54. On the award of compensation for unfair termination, the trial court awarded compensation for one month for each year worked as follows –

Year 2016 to 30th June, 2017.....Kshs28,000/=

1st July to 30th June, 2017.....Kshs28,500/=

1st July,2017 to 30th June,2018.....Kshs44,938/=

1st July,2018 to 30th June, 2029.....Kshs47,185/=

1st July,2019 to 30th June, 2020.....Kshs47,185/=

Total.....Kshs196,308/=

55. The Supreme Court in *Kenfreight (E.A) Limited v Benson K. Nguti* [2016] eKLR commenting on the award of compensation under Section 49 of the Act pronounced itself in the following terms –

“On an award of damages, the Act limits the award a court can make to a maximum of 12 months' salary. In as much as the trial Court therefore does have discretion in the quantum of damages to award for unfair or wrongful termination of employment, it must be guided by the principles and parameters set under sub-section 4 of the *Employment Act*.”

56. Further, Section 49(1) (c)of the Act provides that –

‘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—

.....

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.’

57. The trial court while awarding compensation did not apply the last gross salary that the respondent was earning at the time of his dismissal in calculating the compensation but used various salaries as paid from time to time. That is contrary to the provisions of Section 49(1) (c) of the Act.



58. The respondent claimed Kshs651,156/- as compensation equivalent to 12 months' salary based on gross pay of Kshs54,263/-. As at the time of the respondent's dismissal, he was earning a consolidated salary of Kshs. 28,500/- which was inclusive of house allowance as per the various contracts issued to him (See pages 108, 110 &112 of the record of appeal). The lunch allowance and overtime in the last pay slip were not provided for in the various contracts. The lower trial court ought to have calculated the compensation based on the respondent's last gross salary of Kshs28,500/- as per Section 49(1)(c) of the Act.
59. Some of the factors for consideration under Section 49 of the Act are –
- “(a) the wishes of the employee;
 - (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; (e) the employee's length of service with the employer;
 - (f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;
 - (g) the opportunities available to the employee for securing comparable or suitable employment with another employer;
 - (k) any conduct of the employee which to any extent caused or contributed to the termination; and
 - (l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified Termination.”
60. In regard to the circumstances leading to the respondent's termination, the appellant alleged that the respondent's fixed contract lapsed. This court has found that the respondent's contract had converted to month to month or permanent employment as opposed to a fixed-term contract and thus the respondent was entitled to due process before termination. The termination was purely based on the appellant's decision to allegedly not renew the contract and the termination was therefore not at the fault of the respondent. The respondent had served for three years and 11 months prior to his termination on a one-day notice.
61. The respondent wished to continue in the appellant's employ but he was unfairly terminated as above. The respondent was therefore entitled to compensation based on Section 49 of the Act. The lower trial court's computation was not based on the applicable provisions of the law and hence was wrong.
62. The court is fully cognizant that compensation is intended to remedy the loss or damage that an employee suffers upon unfair and unlawful termination determinable in the loss of the income or earnings that should have been due and payable to him/her were it not for the termination; it is not intended for unfair enrichment.
63. The court finds and holds that an award of the maximum compensation equivalent to 12 months' gross pay being $Kshs28,500 \times 12 = Kshs342,000/=$ is appropriate in the circumstances. The court therefore substitutes the award of Kshs196,308/= by the lower trial court with Kshs342,000/=.
64. The other awards on overtime, lunch allowance, leave allowance, and compensation for leave days earned but not taken during the pendency of employment, failed for lack of specific particulars on the period for which the respondent wished to be compensated. The lower trial court arrived at the right finding that the respondent had failed to prove the said claims on a balance of probabilities. The court has no reason(s) to interfere with that finding.



65. The trial court rightly ordered the award of a certificate of service to the respondent. The issuance of the same is unconditional, and thus the court upholds the trial court's finding.
66. The trial court awarded costs to the respondent for the claim without interest. Award of costs and interest is discretionary and thus this court shall not interfere with the trial court's award as it finds no reason(s) to do so.

Vi. Costs

67. The award of costs by the lower court shall remain. However, the court orders that each party shall meet own costs for this appeal.

Vii. Orders

68. Flowing from the foregoing, the court makes the following orders–
- a. The appeal shall succeed to the extent that the award of Kshs898,760/= for salary underpayment and Kshs264,235.80 for unpaid house allowance be and is hereby set aside.
In substitution for the judgment of Kshs1,408,488.80 a judgment be and is hereby entered in favour of the respondent in the sum of Kshs370,500/= subject to statutory deductions.
The said sum is made of-
 - i. One month's salary in lieu of notice.....Kshs28,500/=
 - ii. Compensation for unfair termination (Kshs28,500 x 12 months....Kshs342,000/=Total.....Kshs370,500/=
 - b. Certificate of service be issued by the appellant to the respondent and the same be delivered to his counsel on record within 30 days of this judgment.
 - c. The award of costs to the respondent by the lower trial court shall remain.
 - d. Each party shall meet own costs for this appeal.

DELIVERED VIRTUALLY, DATED, AND SIGNED AT KAKAMEGA THIS 13TH DAY OF FEBRUARY, 2025.

DAVID NDERITU

JUDGE

