



REPUBLIC OF KENYA



**West Kenya Sugar Company Limited v Odima (Appeal E010 of 2024)
[2025] KEELRC 355 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 355 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
APPEAL E010 OF 2024
DN NDERITU, J
FEBRUARY 13, 2025**

BETWEEN

WEST KENYA SUGAR COMPANY LIMITED APPELLANT

AND

NICK NYEGENYE ODIMA RESPONDENT

(Being an appeal from the judgment in Kakamega Chief Magistrate's Court ELRC Cause No. 75 of 2021 by Hon. J.R. Ndururi (SPM) dated and delivered on 14th March, 2024)

JUDGMENT

I. Introduction

1. In a judgment delivered on 14th March, 2024 the lower trial court entered judgment in favour of the respondent in the sum of Kshs1,301,029/= comprised of Kshs47,185 for one month's salary in lieu of notice, Kshs253,308 as compensation for unlawful termination; Kshs898,760 for salary underpayments; and Kshs101,776/= for unpaid house allowance. It was 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 12th April, 2024 raising the following grounds of appeal –
 1. That the learned trial magistrate erred in law and in fact in misinterpreting the ruling delivered by Hon.Mathews N. Nduma J. on 16th April, 2020 in Kisumu ELRC No. 258 of 2018 on the membership of the KUSPAW.
 2. That the learned magistrate erred in law and in fact failing to consider and appreciate the fact that the appellant did not underpay the respondent for the period from 1st May,2017 to



30th June, 2020 and that the respondent was entitled to recover that underpayment from the appellant.

3. That the learned magistrate erred in law and in fact in awarding the respondent payment of salary underpayments of the sum of Kshs898,760.00 which was included in the decretal sum.
 4. That the learned magistrate erred in law and in fact in misinterpreting clause 22 of the CBA for the provision of house allowance and awarding the respondent unpaid house allowance of the sum of kshs101,776 which was included in the decretal sum.
 5. That the learned magistrate erred in law and in fact in disregarding the evidence tendered by the Appellant and/or failing to consider the said evidence in its totality /as a whole.
 6. 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.
 7. That the learned magistrate erred in law and in fact in failing to consider the appellant's submissions which were duly filed.
 8. That the learned magistrate erred in law and fact in appreciating and considering the respondent's submissions only to the prejudice and detriment of the appellant.
 9. That the learned magistrate erred in law and in fact in failing to properly and exhaustively evaluate the evidence on record.
 10. That the learned magistrate erred in law and in fact in arriving at conclusions and inferences which are unsupported by evidence and/or based on no evidence.
 11. That in all the circumstances of the case, the learned magistrate failed to render justice to the appellant.
 12. 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 14th March, 2024 in Kakamega ELRC Cause No.75 of 2021 – Nick Nyegenye Odima 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 15th October, 2024 and the respondent's counsel, Ms. Onyango, filed on 11th 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 trial court erred in finding that the respondent was an employee; What was the nature of the relationship between the appellant and the respondent? Whether the respondent was unlawfully



- terminated by the respondent; and Whether the respondent is(was) entitled to the reliefs sought and awarded.
7. The appellant invites the court to be guided by the principles in *Selle & Another v Associated Motor Boat Co. Ltd & others* (1968) E.A123 and *Peters V Sunday Post Limited*(1958)EA 424 and hence reconsider the evidence, re-evaluate it, and draw its own conclusion bearing in mind that it has neither seen nor heard the witnesses.
 8. The appellant abandoned grounds 1 to 4 stating the same were inadvertently placed in the memorandum of appeal.
 9. On the first stated issue, it is submitted that the respondent was engaged on contractual basis. It is submitted that Section 2 of the *Employment Act* (the Act) defines, an employee as a person employed for wages or salary while an employer is a person who has entered into a contract of service to employ any individual. Citing Article 13 of the ILO R 198 -Employment Relationship Recommendation 2006(198), it is submitted that the existence of an employment relationship must be determined by the nature of control over a worker who works for the benefit of another and the periodic remuneration for work performed.
 10. Citing *Omusamia v Upperhill Springs Restaurant* (cause 852 of 2017), it is submitted that a contract of employment is one in which an employee undertakes work for a limited or indeterminate period under the control of another person. It is submitted that a fixed-term contract is for a specific period and with a start and end date as per Section 10(3)(c) of the Act. It is submitted that the respondent's contract was not automatically renewable. It is submitted that the respondent's contract lapsed through effluxion of time. It is submitted that the respondent admitted that his contract was for a one-year term and there was no express provision that the same was to be renewed.
 11. Citing *George Onyango V The Board of Directors of Numerical Machining Limited & others* (2014) eKLR the court is urged to find that the respondent's contract was a one-year fixed term contract that could only have been renewed at the behest of the appellant and or with the consent of both parties.
 12. On the second issue, it is submitted that the respondent was not terminated as intimated in Sections 45 & 46 of the Act as his contract came to a natural end through effluxion of time.
 13. Citing *Joshua Asakhulu V West Kenya Sugar Company Limited* (2023) eKLR, the court is urged to find that he who alleges unlawful dismissal must lay the basis of the termination such as the date of the termination, evidence of the termination, and demonstrate unfairness thereof.
 14. It is submitted that under Section 47(5) of the Act the employee must meet the burden of proof and demonstrate that unfair termination occurred. Citing *Protus Wanjala Mutike v Anglo African Properties t/a Jambo Mutara Lodge Laikipia* (2021) eKLR, it is submitted that a case of unfair termination must be proved on a balance of probabilities.
 15. Further, citing a plethora of decisions – *Transparency International - Kenya v Omondi* (Civil Appeal 81 of 2018) [2023] KECA 174 (KLR) (17 February 2023) (Judgment), *Margaret Achieng V National Water & Pipeline Corporation* (2014) eKLR, & *Amatsi Water Services Company Limited V Francis Shire Chachi* (2018) eKLR, it is asserted that a fixed term contract expires on the date given for expiry and no legitimate expectation of renewal is due to an employee. It is submitted that the court cannot rewrite a contract between the parties but must seek to give meaning to the intentions of the parties on any issue(s) that may arise.
 16. It is submitted that the respondent was neither unfairly nor unlawfully terminated but rather his contract came to an end by effluxion of time.



17. Based on the foregoing, the court is urged to find that the respondent was not entitled to the reliefs awarded.
18. On the other hand, counsel for the respondent condensed her arguments into three issues – Whether the trial court erred in finding that the respondent was an employee and the nature of his employment; Whether the respondent was unlawfully terminated by the appellant; and, Whether the respondent is entitled to the reliefs sought.
19. On the first issue, it is submitted that the respondent’s employment with the appellant was not in contention until 30th June, 2020 when he was unlawfully terminated.
20. It is submitted that the respondent was employed on a six-month contract on 24th May, 2013(see CEXH-4) and continued to work without any other contract until 30th June, 2020 when the appellant’s gate was locked and employees were issued with a notice of non-renewal of their contracts. It is submitted that by dint of Section 37 of the Act the respondent’s employment automatically converted to permanent employment having worked for 7 years for the respondent without a contract. To buttress this assertion, the respondent relied on *Keen Kleeners Limited v Kenya Plantation Agricultural Workers Union KCA 352(KLR)* and *Liech v Sameer Agricultural & Livestock (K)Ltd(now)Devvyan Food Industries (K)Limited (cause 7 poof 2020) (2022) KEELRC 24(KLR) (5 May 2022)*.
21. On the second issue, it is submitted that the respondent was unfairly terminated as no notice of termination was issued or a proper reason for termination given. It is submitted that the appellant alleged that it was terminating the respondent’s contract through the notice dated 29th June, 2020 yet the contract of 24th May, 2013 had lapsed after six months and there was no other term contract issued.
22. It is submitted that the respondent’s contract was thus for an indefinite period but terminable upon lawful notice and for reasonable cause based on due process. It is submitted that the termination did not pass the substantive or procedural fairness tests under Section 45 of the Act as the termination notice issued on 29th June, 2020 and served on 30th June, 2020 required the respondent not to report to work on that very day of service.
23. It is submitted that the appellant having converted the respondent’s terms into permanent employment it was obligated to issue the respondent with a one-month notice, the reasons for the termination, a show cause letter, and a chance to be heard. It is submitted that the reason given for termination as a lapse of the contract was misinformed as the respondent was not on any term-contract at that time.
24. The court is urged to uphold the decision of the lower court and dismiss the appeal with costs.

III. Issues for Determination

25. 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

26. As the first appellate court, this court is obligated to 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* (supra).
27. 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 2013 on a six-month term contract. Upon the expiry of the contract, the respondent continued working and on 30th May, 2020, while he was recovering from an injury sustained at work, his supervisor Seth Mukweyi informed him that he was to proceed on compulsory leave until 31st August, 2020. Before August, the respondent was informed by a colleague of the notice dated 29th June, 2020 terminating his employment allegedly on non-renewal of the contract. The respondent was terminated effective 30th June, 2020 without notice or due process and without payment or settlement of his terminal dues. He stated that his last known basic monthly salary was Kshs28,500/= and house allowance of Ksh4,275/- exclusive of lunch and overtime allowances.
28. He further stated that the appellant and the Kenya Union of Sugar Plantation & Allied Workers(KUSPAW) had a Collective Bargaining Agreement (The CBA) registered on 14th February, 2019 (ELRC 258 of 2018) which allowed increment of all employees' salaries effective 1st May, 2017. He stated that he was thus underpaid and claimed for underpayment from May, 2017 until his termination alongside compensation for unlawful termination.
29. It is on the basis of the foregoing that the respondent prayed for the following reliefs in the lower trial court –
 - 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 allowance, leave allowance and overtime, all totaling to the sum of Kshs. /- as per paragraph 17 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.
30. In its memorandum of response to the claim, the appellant stated that the respondent was engaged on a six-month term contract in 2013 as a truck driver and in 2017 he was transferred to a lateral department on the same terms. It was pleaded that the respondent's contract lapsed after the notice issued on 29th June, 2020. The respondent denied terminating the respondent as alleged but rather asserted that the contract lapsed.



31. It was pleaded that in 2017 the respondent was issued with a show cause letter for leaving work early and arriving late and the respondent replied to the show-cause letter. It is denied that the respondent was ever sick as alleged.
32. The appellant called Duncan Obwawo (RW1), the human resources manager, as a witness during the trial. He adopted his filed statement and produced the filed documents as exhibits. He stated that the respondent was engaged on a fixed-term contract and that after it expired the respondent continued working on the same terms as those in the expired contract.
33. RW1 stated that while the appellant had issued a show-cause letter to the respondent in 2017, he was not terminated on grounds of misconduct. He maintained that the respondent was not entitled to the benefits of the CBA because the CBA was not effected.
34. RW1 produced the contract dated 24th May, 2013 asserting that the respondent was employed on a fixed-term contract. It was argued that a one-day notice to the respondent was sufficient. RW1 argued that the respondent had disciplinary issues relating to coming to work late but the termination was not based on misconduct. He argued that the CBA in place had not been effected and the respondent was thus not entitled to a salary increment.
35. Both parties called one witness during the trial. In his testimony in the lower trial court, the respondent stated that he was terminated when he was on leave.
36. In cross-examination, the respondent stated that although the notice of termination indicated that his contract would not be renewed he was not aware of the contract that was allegedly expiring on 30th June, 2020.
37. The law of the Republic 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.
38. The first duty for this court is 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, as per the records availed and produced during the trial by the respondent, he was paid on monthly basis as per the pay-slips. The evidence on record is that the respondent worked continuously from 2013 until he was terminated in 2020.
39. The appellant through RW1 confirmed that the respondent continued working for the appellant even after expiry of his contract on the same terms. As far as the records availed and produced by the appellant show, the respondent was on continuous employment. The evidence adduced indicates that the respondent was at first engaged on a six-month term as per the contract dated 24th May, 2013. Six months lapsed on or about 24th November, 2013. The respondent was not issued with another contract but continued working for the appellant.
40. In a letter dated 5th January, 2017 the respondent was transferred from the transport department to the mechanical engineering department, mills section. There was no indication that this was a new contract in the said letter other than that the respondent was to perform the duties of a truck-driver.
41. From 2013 to 2020 the respondent was in the appellant's employ for a total seven (7) years under a contract for unspecified period of time.



42. In this court's considered view, the respondent was at first engaged on a fixed-term contract for six months. Thereafter, after the contract lapsed and no renewal was issued, he became a month-to-month employee. As per the records, he was obligated to report to work each day to the extent that when he failed to report to work on time or left work early the appellant issued the respondent with a show-cause letter in condemnation of his absence. His pay was monthly as evidenced by the pay-slips and he was paid a housing allowance, overtime, and lunch allowances.
43. The trial court found that the respondent's six-month term contract had lapsed but he continued to work without a contract for more than two months which automatically converted his employment to a month-to-month contract and the provisions of Section 37 of the Act became applicable.
44. The respondent worked for the appellant for a period of over 6 years after his contract expired on 24th November, 2013. The respondent was no longer engaged on a fixed term contract after the first contract expired and his engagement automatically converted from fixed term engagement to indefinite month to month employment by operation of the law.
45. The Court of Appeal in *Krystalline Salt Limited v Kwekwe Mwakele & 67 others* (supra) pronounced itself on a similar issue and observed as follows; "Under section 37 of the *Employment Act*, this court has the power to vary the terms and conditions of service of workers and declare that employees are employed on terms and conditions consistent with the said Act. In this case, the claimants worked continuously for days, which in the aggregate was more than a month, and as such under Section 37(1) (a) they had become protected by Section 35(1) (c) from arbitrary dismissal. Under Section 31(1) (c) an employee cannot be terminated without prior written notice of 28 days. In this case therefore, the respondent was barred from terminating the claimants employment without a prior written notice of 28 days...."
46. As correctly held by the lower trial court, the appellant did not issue the respondent with a contract with a fixed term contract up to 30th June, 2020. The respondent became a regular month to month employee protected from arbitral dismissal.
47. Therefore, the trial court arrived at the right finding that the respondent was entitled to a notice of 28 days as per Section 35(1) of the Act and procedural fairness before he was terminated. His termination was thus unlawful and unfair. The court finds no reason to interfere with that finding.

V. Reliefs Awarded

48. The lower trial court awarded the respondent as enumerated in the introductory part of this judgment.
49. In the submissions by its counsel the appellant abandoned the grounds 1 to 4. The abandoned grounds related to the respondent's reliance on the CBA with KUSPAW which provided for the salary increment for all employees including the respondent. 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 was availed by the appellant during the trial to that effect. This court argues 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*.
50. The lower trial court found that the respondent was underpaid as per the terms of the CBA which became effective on 1st May, 2017 and hence the same applied to him up to 30th June, 2020 when he was dismissed.
51. The trial court granted the respondent salary underpayment of Kshs898,760 and underpayment for house allowance of Kshs101,776/= for the period from 1st May, 2017 to 30th June, 2020. The trial



- court did not consider the aspect of limitation of actions in awarding salary and house allowance underpayments.
52. This court is of the considered view that limitation is an issue of jurisdiction that the trial lower court ought to have interrogated. Although this issue was not raised by either party during the trial or in the appeal the same is a germane and fundamental issue that this court must deal with to arrive at a just conclusion of this appeal. The court shall hence deal with the issue suo moto notwithstanding that it was not raised or argued by counsel for the parties.
 53. Notably, the outcome on this issue shall determine whether the trial court had jurisdiction to award underpayments as jurisdiction is everything – See the sentiments of Nyarangi J in *The Owners of Motor Vessel Lilian ‘S’ V Caltex Oil (K) LTD (1989) KLR 1*.
 54. The court has critically examined the above awards and finds that these reliefs on underpayment accrued to the respondent at the end of each month and were neither paid nor the breach remedied. The failure by the appellant to pay the salary as per the CBA constituted a continuing injury.
 55. Section 89 of the Act 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]
 56. A claim for the above reliefs for underpayment ought to have been filed in court within 12 months of termination. The court notes that the respondent was terminated on 30th June, 2020 and the cause was filed on 14th October, 2021 which is one year three months and 14 days hence outside the time limit of 12 months.
 57. This means that the claim for salary and house allowance underpayments ought to have been filed in court on or before 30th June, 2021, within the 12 months’ statutory limit for a continuing injury, provided for under Section 89 of the Act.
 58. For the foregoing reason, the court finds and holds that the trial court assumed jurisdiction that it did not have in awarding the two reliefs on salary and house allowance underpayments. That claim on the two items was statute-barred. Consequently, the award of Kshs898,760 for salary underpayment and Kshs101,776 for unpaid house allowance by the trial court are hereby set aside.
 59. Further, on the award of underpayment on house allowance, the court notes that respondent had not pleaded for underpayment for house allowance in his memorandum of claim dated 13th October, 2021. The trial court misdirected itself in awarding a claim that had not been pleaded by the respondent.
 60. On the award of pay in lieu of notice, the trial court found that the respondent was entitled to notice before termination and a reason for the termination. The court already affirmed the trial court’s finding that the respondent’s employment had converted into a term contract and he was thus entitled to a 28 days’ notice as per Section 35(1) of the Act. Likewise, the respondent was entitled to reason for termination and due process before termination. He was not accorded the foregoing rendering the termination unlawful and unfair.



61. The respondent was not issued with any notice by the appellant and he was thus entitled to pay in lieu of notice. Clause 9(b) of the CBA (page 38 of the Record of appeal) provides that –

“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”.

62. The respondent worked for the appellant for over seven (7) years but pleaded for a 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 Kshs47,185/= as notice pay. As at the time of dismissal, the respondent’s basic salary was Kshs28,500/- as per the pay-slip for June, 2020 (See page 13 of the record of appeal). The respondent was thus entitled to the notice in the sum of Kshs28,500/- being his last known monthly gross pay.

63. The memo of claim was not amended on the notice pay equivalent to one month’s salary 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/=.

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

24th May, 2013 to 30th June, 2017.....Ksh114,000/=

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

1st July,2018 to 30th June,2019.....Kshs47,185/=

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

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

“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*.”

66. 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.’



67. 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 same but applied various salaries, and that formulae is outside the provisions of Section 49(1)(c) of the Act.
68. The respondent claimed Kshs617,520/- as 12 months' salary compensation at gross pay of Kshs51,460/- (Kshs47,185 and Kshs4,275 house allowance). At the time of the respondent's dismissal, he was earning a basic salary of Kshs. 28,500/- plus Kshs4,275 in house allowance totaling Kshs32,775 gross salary. The trial court ought to have calculated the compensation based on the respondent's last gross salary of Kshs32,775/= as provided for in Section 49(1)(c) of the Act.
69. Some of the factors to be considered 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; (c) the employee's length of service with the employer; (d) 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; (e) the opportunities available to the employee for securing comparable or suitable employment with another employer; (f) any conduct of the employee which to any extent caused or contributed to the termination; and (g) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination."
70. On the circumstances leading to the respondent's termination, the appellant alleged that the respondent's fixed contract had lapsed which is not the case. The respondent's dismissal was purely based on the appellant's decision to allegedly not extend his contract and hence the respondent did not contribute to his dismissal. As to the length of the respondent's length of service, the respondent served the appellant for seven years prior to his dismissal on a one-day notice.
71. The respondent wished to continue in the appellant's employ but he was unfairly terminated. Having found that the dismissal was unlawful, the respondent was entitled to compensation based on Section 49 of the Act. Evidently, the trial court's computation was not based on the applicable provisions of the law.
72. Compensation is intended to remedy the loss or damage that an employee suffers upon unfair and unlawful termination in the loss of the income or earnings that should have been due and payable to him were it not for the termination. It is not an avenue to unjust enrichment.
73. The court finds that the award of the maximum compensation equivalent to 12 months' gross salary of the respondent's last gross pay (Kshs32,755 x 12 = Kshs393,060/= is appropriate and substitutes the same for the award of Kshs253,308/= made by the lower trial court.
74. The other awards on overtime, lunch allowance, leave allowance, and compensation for leave days earned but not taken did not have specific particulars on the period that they related to. The trial court arrived at the right finding that the respondent had failed to prove the said claims on a balance of probabilities. This court has no reason to interfere with that finding.
75. The trial court rightly ordered the award of a certificate of service to the respondent. The issuance of the same is unconditional under Section 51 of the Act.
76. The trial court awarded costs to the respondent and this court shall not interfere that order. However, the amount awarded herein shall earn interest from the date of the judgment of the lower court till payment in full.



VI. Costs

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

VII. Orders

78. 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 Kshs101,776/= for unpaid house allowance be and is hereby set aside.
- b. In substitution for the judgment of Kshs1,301,029/=, a judgment be and is hereby entered in favour of the respondent in the sum of Kshs421,560/= 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 (Kshs32,755/= x12).....Kshs393,060/=
- Total.....Kshs421,560/=
- c. 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.
 - d. The award of costs to the respondent by the lower trial court shall remain.
 - e. 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

