



**Kipketer v Eldoret Shuttle Savings & Credit Co-operative Society
Limited (Employment and Labour Relations Appeal E004 of 2023)
[2025] KEELRC 313 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEELRC 313 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS APPEAL E004 OF 2023
MA ONYANGO, J
FEBRUARY 7, 2025**

BETWEEN

PARTICK KIPLIMO KIPKETER APPELLANT

AND

**ELDORET SHUTTLE SAVINGS & CREDIT CO-OPERATIVE SOCIETY
LIMITED RESPONDENT**

*(Being an appeal from the judgment and decree arising from Eldoret Chief Magistrate's Court,
ELRC Cause No. 85 of 2020 delivered by Honourable R. Odenyo, SPM on 27th January, 2023)*

JUDGMENT

1. The Appellant herein sued the Respondents at the lower court seeking the following remedies:
 - i. A declaration that the Claimant's services were unprocedurally, unlawfully and unfairly terminated and in the circumstances the Claimant is entitled to compensation of his terminal dues
 - ii. The sum of Kshs 778,591.94 being a remedy for unlawful termination, general damages;
 - iii. Exemplary damages
 - iv. Certificate of service
 - v. Cost of this suit and interests at court rates from time of filing the suit until payment in full
 - vi. Any other further and better relief the Honourable Court may deem just and fit to grant
2. The Respondent filed a Memorandum of Defence denying the averments in the claim. Upon hearing the parties the trial court found that the Appellant's dismissal was lawful and fair and dismissed the suit.



3. The Appellant (Claimant in the lower court) was aggrieved by the said judgment and filed the instant appeal vide the Memorandum of Appeal dated 20th February 2023 on the grounds that:
 - i. That the learned trial Magistrate erred in law and fact in failing to find that the appellant's termination from employment was unfair and unlawful as the right to be accorded a hearing prior to termination of employment in the presence of a fellow employee of the appellant's choice or a trade union representative was not observed by the respondent as provided for in section 4(1) of the [Employment Act](#) 2007.
 - ii. That the learned trial Magistrate erred in law and fact in failing to find that the respondent failed to comply with section 41(2) of the [Employment Act](#) 2007 as no evidence of issuance of postage, or service of the notice to show cause why dismissal should not be effected was given by the Respondent and no evidence of postage or service of any letter inviting the Appellant to a hearing prior to termination existed.
 - iii. That the learned trial magistrate erred in law and fact in failing to address the issues on both substantive and procedural fairness hence arriving at a wrong decision.
 - iv. That the learned trial Magistrate erred in law and fact in finding that the appellant had not discharged his onus of proof under section 47(5) of the [Employment Act](#) 2007 while the appellant had tendered evidence of the dismissal letter, explained that no investigation was ever conducted to ascertain the allegations placed against him and that the entire termination was a witch hunt.
 - v. That the learned trial Magistrate erred in law and fact in failing to find that the respondent had not discharged the onus of proof provided for an employer under section 47 of the [Employment Act](#) 2007.
 - vi. That the learned trial Magistrate erred in law and fact in failing to analyze the pleadings, the oral testimonies of the parties and the documentary evidence, statutes and failing to be guided by section 45 of the [Employment Act](#) 2007 in arriving at the decision rendered.
 - vii. That the learned trial Magistrate erred in law and fact in failing to award the reliefs sought in favor of the appellant and or quantifying the amount of compensation that was or would have been due to the appellant and in failing to comply with rule 28(2) of the Employment and Labour Relations Court (procedure) Rules 2016 in preparing the judgement.
4. Consequently, the Appellant seeks the following orders:
 - a. This appeal be allowed;
 - b. The Judgment of the lower court delivered on 27th January, 2023 be set aside and judgment be entered in favor of the Appellant as per his statement of claim.
 - c. The Respondent to pay costs in the lower court and in this particular appeal
 - d. This Honourable court makes such and further orders as it deems fit and just to meet the ends of justice
5. The appeal was disposed of by way of written submissions. The Appellant filed his written submissions on 22nd January 2024 while the Respondents filed its submissions on 19th January 2024.



Analysis and Determination

6. This being a first appeal I am required to consider the evidence adduced, evaluate it and draw my own conclusions, bearing in mind that I did not hear and see the witnesses who testified. See *Selle & Another Vs Associated Motor Boat Company Ltd & Others* [1968] EA 123.
7. The Claimant filed his Statement of Claim dated 16th July 2020 seeking to be compensated for the alleged unfair and unlawful termination of his employment. He averred that he was employed by the Respondent on the 12th June, 2015 as an Overall Fleet supervisor on a one year contract which contract was extended on several occasions in different positions. He averred that on 21st January, 2019 he was offered a two year contract as a General Manager earning a Basic salary of Kshs. 23,370/= per month among other allowances. According to the Claimant, he was summarily dismissed from employment vide a termination letter dated 19th March, 2020 on allegations that he had engaged in fraudulent activities.
8. It was the Claimant's case that on the 13th January 2020, he was served with a suspension letter on allegations that he was involved in fraudulent activities to the detriment of the Respondent which accusations he responded to vide his letter dated 14th January, 2020 denying the allegations.
9. The Claimant contended that he was thereafter called to the office on the 14th March, 2020 to explain himself but to his shock, he later learnt that the same was a disciplinary hearing. He averred that the hearing was full of biasness, conflicts of interest and not properly constituted.
10. According to the Claimant, he was terminated later on the 19th March, 2020 on the earlier tabled accusations. He appealed against his termination vide his letter dated 8th April, 2020 wherein he pointed out the irregularities of the purported hearing but the same was never heard.
11. The Claimant disputed the termination of his employment on the basis that he did not in any way engage in the allegations made against him. He further alleged that he was not accorded a fair and proper hearing and as such, his termination was unlawful and procedurally defective as it violated the provisions of Sections 41(1), 44(4), 45(2) and 43 of the *Employment Act*.
12. The Claimant sought the following reliefs:
 - i. Declaration that the claimant's termination from employment was unlawful, unprocedural and unfair;
 - ii. Cost of this suit and Interests on at court rates from time of filing suit until payment in full and the terminal dues as calculated below:
 - a. One month in lieu of notice..... Kshs.31,567.09/=
 - b. 12 months Compensation for unlawful termination.....Kshs.378,805.17/=
 - c. Underpayment.....Kshs.57,115.10/=
 - d. Leave prorate.....Kshs.4,803.68/=
 - e. Loss of expected Income (before end of contract on 31/1/2021)
13. The Respondent on its part filed a Memorandum of Defence dated 13th August 2020 denying the averments made in the Statement of Claim. The Respondent denied that the Claimant was unfairly terminated from service on 19th March, 2020 and averred that the dismissal was fair, procedural and necessary in the circumstances and that all the charges leveled against the Claimant were proved to the



- required standards. It was also contended that the Claimant was invited to a hearing on 14th March 2020 but he failed to give a satisfactory answer to the charges levelled against him hence the dismissal.
14. The Respondent contended that the Claimant admitted to fraudulently misappropriating the Respondent's funds to the tune of Kshs 135,541/= and even expressed willingness to settle but has not settled to date.
 15. The Respondent particularized the Claimant's fraudulent activities to be:
 - a. Adjustment of invoices for stationary to reflect supply of more receipt books yet few were supplied
 - b. Receiving members' entry fee in cash and not banking as required
 - c. Releasing vehicles from the system for members who are loan defaulters
 - d. Transfer of Sacco screen from the office to another staff's house without management's knowledge
 - e. Deceiving the management that he had submitted books of accounts for 2018 to the auditor on time yet he had not done hence delaying the AGM
 - f. Issuing Road User's Licence and unable to account for the proceeds
 - g. Allowing a Btrack company to install gadgets in Sacco vehicles without management approval
 - h. Breaching the express conditions of his employment contract
 16. It was the Respondent's case that due to the fraudulent activities of the Claimant, it was untenable to have him continue working with the Respondent and as a result, the Claimant was summarily dismissed on account of gross misconduct.

The Evidence adduced

17. At trial the Appellant testified as CW1. He stated that he was employed by the Respondent in June 2015 on contractual basis and that his last contract commenced on 21st January 2019 and was to lapse on 31st January 2021. According to the Appellant, he was terminated from employment in March 2020 before the expiry of his contract. He stated that he was issued with a suspension letter dated 13th January 2020 on allegations that he had defrauded the Respondent. He was terminated from employment 2 months later vide the termination letter dated 19th March 2020. He appealed the decision to terminate his employment to the management but his appeal has never been heard to date.
18. The Appellant denied committing any fraud against the Respondent and sought to be compensated for the unfair termination. In addition, he prayed for his terminal dues on underpayment and leave dues owed.
19. The Respondent called Barnabas Cheruiyot, its Chairman who testified as RW1. He confirmed that the Appellant was an employee of the Respondent and contended that the Appellant's services were terminated in January 2020 on account of malpractices.
20. In his testimony, RW1 stated that the Appellant released vehicles from the system for members who were loan defaulters, did not account for Kshs 1,500 from members who wanted to opt out of the licensed route, did not keep proper books of accounts and that some vehicles were allowed to join the Sacco without paying the requisite entry fees. RW1 averred that the Appellant's termination from employment was lawful and maintained that he was paid all his terminal dues.



21. On cross examination, RW1 when referred to the Respondent's Exhibit 11 on the list of motor vehicles released, stated that although the Claimant's signature did not appear on the list, only the Claimant had access to the portal. RW1 stated that the Claimant went on leave but alleged that he could have removed some documents as he was in charge of all records of employees. He also maintained that the Claimant appealed against the decision to terminate him from employment.
22. After hearing the parties, the trial court delivered its judgment on 27th January 2023, dismissing the suit, which judgment is now the subject of this appeal.

The Appeal

23. When the Appeal herein came up for directions on 7th November 2023, parties agreed to have the appeal disposed of by way of written submissions and the court directed the parties to file written submissions on the appeal. The Appellant's submissions were filed on 22nd January 2024 while the Respondent's submissions were filed on 19th January 2024.

The Appellant's Submissions

24. Counsel for the Appellant, Mr. Kibii in his submissions framed the issues for determination to be:
 - i. Whether termination of the Appellant's employment was unfair and/or fair.
 - ii. Whether the appellant was entitled to the reliefs and remedies sought.
 - iii. Who should bear the costs of the claim.
25. On the first issue, the Appellant submitted that the Respondent in terminating the Appellant's employment, did not comply with the mandatory procedural requirements of Section 41 and 43 of the Employment Act on procedural fairness and fair reason. While citing the Court of Appeal decision in Janet Nyandiko -Vs- Kenya Commercial Bank Limited [2017] eKLR, the Appellant submitted that the mandatory procedure of terminating an employee's employment as enumerated in the decision was not invoked by the Respondent in the termination of the Appellant's employment.
26. According to the Appellant, he was not summoned for any disciplinary hearing and did not attend any hearing. The Appellant submitted that the law demands that in a disciplinary hearing process, one is issued with a show cause letter highlighting the allegations levelled against him before being summoned for disciplinary hearing. The Appellant submitted that he was neither issued with a show cause letter nor invited to any disciplinary hearing to defend himself. That as such, the Respondent did not comply with the mandatory provisions of Section 41 of the Employment Act on procedural fairness.
27. On whether the Appellant was terminated for a fair reason, it was his submission that he was dismissed on allegations of fraud. That from the evidence on record, no investigations were conducted to verify the veracity of the said allegations. It is the Appellant's submission that from the suspension letter, the listed acts of misconduct were allegations which had to be proved but no investigations were ever carried out. The Appellant thus submitted that the reasons given for his dismissal were not valid.
28. Regard the second issue whether the trial court erred in law and in fact in failing to award the Appellant the reliefs he sought in his Statement of claim, the Appellant submitted that having demonstrated that he was unfairly and unprocedurally terminated, he was entitled to the reliefs sought.
29. In the end, this court was urged to find merit in the appeal and grant the prayers sought.



The Respondents' Submissions

30. Counsel for the Respondent, in his submissions dated 19th January 2024 identified the issues for determination to be:
 - i. Whether the termination was unprocedural, unlawful and unfair
 - ii. Whether the Claimant is entitled to terminal dues as claimed.
 - iii. Whether exemplary damages could have been awarded in the circumstances
31. On the first issue, the Respondent submitted that the Appellant was terminated from employment on a fair reason and due process was followed. With regard to the requirement for fair reason, it was submitted that the Appellant's employment was terminated on the reasons that the Appellant's conduct and capacity in operations of his duties had fallen below the requirements of the Respondent. It was submitted that the Appellant was accused of fraudulent transactions that led to the Respondent losing monies, an allegation he willingly confirmed to be true and even proposed to repay the monies. The Respondent thus submitted that the reasons advanced for termination were valid, and fair as it was no longer tenable to have the Claimant work for the Respondent. In support of this position, the Respondent cited the Court of Appeal decision in the case of *National Bank of Kenya v Anthony Njue John* [2019] eKLR and the case of *Mbagga Wetangula v Co-operative Bank of Kenya* [2017] eKLR.
32. On the allegation by the Appellant that due process was not followed in his dismissal from employment, the Respondent contended that the Claimant was informed of the allegations against him and asked to provide proof of monies that the company was losing because of his dishonest and fraudulent conduct. The Respondent further submitted that after the Claimant was issued with a show cause letter, he was invited to a disciplinary hearing which he attended on 12th January 2022 and had the opportunity to defend himself. That he was thereafter suspended to pave way for investigations. It is the Respondent's submission that on 14th March 2020, another disciplinary hearing was conducted where the Claimant attended and defended himself.
33. While citing the unreported case in ELRC Cause 162 of 2012-*Sophia Wambui Muthoni v Muramati Sacco Society Limited*, the Respondent argued that even if there were minor flaws in the procedure, the same were negligible and would not affect the procedural properness of the termination.
34. The Respondent maintained that the Appellant attended the two disciplinary hearings and did not express any dissatisfaction or raise any objection.
35. On the second issue whether the Appellant was entitled to the terminal dues he claimed in his Statement of Claim, the Respondent submitted that the Appellant was justly and fairly dismissed from employment and is therefore not entitled to the prayers for payment in lieu of notice and loss of expected income. On the prayer for underpayment and leave, the Respondent submitted that the Appellant had not tendered any proof to warrant the grant of these prayers.
36. Lastly, as to whether exemplary damages can be awarded in the circumstances, the Respondent maintained that the termination of the Appellant was fair, lawful and procedural and that there was nothing arbitrary or unconstitutional in the Respondent's action to warrant award of exemplary damages.
37. Consequently, the court was urged to dismiss the appeal with costs.



Analysis and Determination

38. Upon analyzing the Memorandum of Appeal, the Record of Appeal and the rival submissions of the parties herein, I find that the issues that fall for this court's determination in the appeal are:

- i. Whether the Appellant was terminated from employment fairly and procedurally
- ii. Whether the Appellant is entitled to the reliefs sought

39. Termination of employment by the employer is unfair if there is no valid reason and fair procedure is not followed. The legal burden of proof in unfair termination lies with the employee, while the evidential burden of justifying the termination lies with the employer. Section 45 (1) & (2) of the Employment Act provides that: -

- “(1) No employer shall terminate the employment of an employee unfairly.
- (2) A termination of employment by an employer is unfair if the employer fails to prove:
- a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.”

40. The Appellant was suspended from employment vide a suspension letter dated 13th January 2020 which captured the reasons for the suspension. It reads as follows:

13/01/2020

Patrick Kipketer

Dear Patrick

Re: Suspension from office

In our Management meeting held on 11th January 2020, it was decided that you be suspended from office effective from 14th January 2020. This follows the fact that you have totally ignored management directives to respond to letters written to you requiring you to clarify some issues pertaining to the Sacco office operations. Further it was noted with concern the following fraudulent activities that you were involved in among other allegations.

- i) Adjustment of invoices for stationary to reflect supply of more receipt books yet few were supplied
- ii) Receiving members entry fee in cash and not banking as required
- iii) Releasing vehicles from the system for members who are loan defaulters



- iv) Transfer of Sacco screen from the office to another staff's house without management's knowledge
- v) Deceiving management that you had submitted books of accounts for 2018 to the auditor on time yet that had not been done thus delaying the AGM
- vi) Issuing of RSL and not able to account from the proceeds for the same

You are required to hand over to Ezra by Wednesday 15th January 2020 and to keep off the Sacco premises until your case is had and determined. You might only appear in office if called upon by an investigating committee to clarify some issues of the allegations. You are required to cooperate on this matter.

Dr. Daniel Otanga

Chairman Eldoret Shuttle SACCO Ltd.

Copy to:

Vice Chairman

Honorary Secretary

Treasurer

41. The reasons for dismissal of the Appellant as can be deduced from the suspension letter was that the Appellant had defrauded the Respondent. From the Respondent's bundle of documents at page 59 of the Record of Appeal, RW1 in his testimony before the trial court on cross examination stated that only the Claimant had access to the portal which showed the list of motor vehicles that were released without paying any dues.
42. Section 43(2) of the *Employment Act* defines reasons for termination to be matters the employer at the time of termination genuinely believed to exist, and which caused the employer to terminate the employee.
43. In the case of *British Leyland UK Ltd v Swift* (1981) I.R.L.R. 91 Lord Denning observed;

“The correct test is; was it reasonable for the employer to dismiss him? If no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness, within which an employer might reasonably take one view; another quite reasonably takes a different view. One would quite reasonably dismiss the man. The other quite reasonably keeps him on. Both views may be quite reasonable. If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair even though some other employers may not have dismissed him.”
44. In the instant case, RW1's evidence which remained uncontroverted was that the Appellant was in control of the dockets where malpractices were alleged to have occurred. It is clear that there is direct evidence connecting the Appellant with the alleged offence of defrauding the Respondent. Accordingly, I find that the Respondent proved sufficient and proper grounds upon which it generally believed that the Appellant was involved in the offence of fraud.
45. The second limb is whether due process was followed by the Respondent before the termination of the Appellant's employment. Section 41 of the *Employment Act* provides that: -



1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”
46. In this case, the Respondent averred that the Appellant was taken through a disciplinary hearing before he was summarily dismissed from employment. RW1 in his testimony stated that although there was no formal letter inviting the Appellant to the disciplinary hearing, he attended the hearing in response to the invitation by the Committee. The Appellant on the other hand denied attending any disciplinary hearing before he was summarily dismissed.
47. At paragraph 6 and 7 of the Statement of Claim the Appellant pleaded as follows:
- “6. The Claimant avers that on the 13th of January, 2020, he was served with a suspension letter suspending him from office on allegations of being involved in fraudulent activities to the detriment of the Respondent. The Claimant diligently responded to the same vide his letter dated 14th January, 2020 denying all the allegations in the said suspension letter.
 7. The Claimant avers that he was called to the office on the 14th of March, 2020 to explain himself but to his shock later learnt that the same was a disciplinary hearing. He avers that the said hearing if at all it was full of biasness, conflict of interest and not properly constituted. He further avers that the same was marred with biasness and ill motive since he was not given an opportunity to call a witness.”
48. The same averments are contained in the Appellant’s witness statement at paragraph 5 of page 14 of the Record of Appeal where the Appellant states:
- On the 13th January, 2020, I was served with a suspension letter suspending me from office on allegations of being involved in fraudulent activities to the detriment of the Respondent. I responded to the same vide a letter dated 14th January, 2020, denying all the allegations in the said suspension letter. I was however called to the Respondent’s office on the 14th March, 2020 to explain myself but to my shock later learnt that the same was a disciplinary hearing. The hearing if at all it was full of biasness, conflict of interest and not properly constituted.
49. In the minutes of the management meetings held on 14th March 2020 at page 80 of the Record of Appeal under MIN 3/14/03/20; DISCIPLINARY CASES, it is evident that the Appellant was in attendance. At page 82 it is stated that:
- When Mr. Patrick was being interviewed regarding his case some receipts and delivery note was noted to be having different serial numbers and it was treated as fraud and alteration of figures leading to fraud.



It was also noted that Patrick had not paid some members their Insurance rebate and interest on members deposits totaling to Kshs. 35,595 which he said he will refund back on 16th March 2020. The break down as follows:

1. insurance rebate Kshs. 6,642
2. Interest on member deposits Kshs. 28,953

On other allegations is that he discharged some vehicles from the system and they still owe the Sacco some loan and entrance money. And one of the vehicles was KBW277C with Kshs. 374,505 as at 13th March 2020 which can't be traced.

He also used the Sacco money in Tagore office without the management approval.

50. From the foregoing it is clear that the Appellant was invited to the disciplinary hearing and was heard. What the Respondent failed to do was issue a letter inviting him to the meeting and informing him of his right to be accompanied by a colleague or shop floor union official of his choice. The Appellant's averment that he was never subjected to a hearing is therefore not supported by the evidence on record. I thus find that the Respondent substantially complied with the disciplinary procedure in the *Employment Act*.
51. From the foregoing, I find that the termination of the Appellant's employment was substantially fair both substantively and procedurally, even though he was not informed of his right to be accompanied by a colleague of shop floor union official.

Whether the Appellant is entitled to the reliefs sought

52. The Appellant sought the following reliefs before the trial court; a declaration that his termination from employment was unlawful, unprocedural and unfair; one-month salary in lieu of notice; 12 months' compensation for unlawful termination; underpayment; leave prorate and loss of expected income. The trial court having held that there was procedural and substantive fairness in the termination of the Appellant from employment found that the Appellant did not deserve any of the reliefs sought.
53. This court has found that the termination of the Appellant's employment was substantially fair, but was not informed of his right to be accompanied by a colleague of shop floor union official of his choice. He is awarded compensation of one (1) months' salary.
54. The Claimant prayed for a Declaration that the Claimant's termination from employment was unlawful, unprocedural and unfair.
I have already addressed this prayer above.
55. One month salary in lieu of notice

The Claimant was not dismissed from employment. He was terminated with notice. The termination letter is reproduced below:

Eldoret Shuttle Savngs and Credit Co-operative Society LTD.

Patrick Kipketer

(Manager)

Dear Patrick

RE: Termination of Contract



Following Management Board meeting held on March 2020 to which you were invited to clarify on issues of alleged fraud in our office, the board listened to your submissions and noted that you were indeed involved in fraud practices and gross misconduct. On the account of your submissions and evidence documents submitted therein, the management board was convinced-that indeed you were involved in fraudulent activities and resolved that your contract be terminated with immediate effect.

As per our terms of engagement, you will be paid Ksh 29,000 arrears and a one month salary in lieu of notice, but Sacco reserves the right if you owe any loan it shall be recovered from it. Kindly pay all outstanding amount owed to Sacco. Kindly pay all outstanding amounts above owed to Sacco of Ksh.135,541 calculated as shown below

Members insurance rebate Ksh. 6,642

Members Deposits Ksh. 28,953

Staff Normal Loan Ksh. 99,946

Total Ksh. 135,541

Appreciate your contribution towards service delivery to our Sacco.

Yours sincerely,

Signed

Daniel Otango, (PhD)

Chairman Eldoret Shuttle Sacco

56. The Claimant is not entitled to pay in lieu of notice as the same was paid to him and he utilized the same to clear his outstanding liabilities as is evident from his letter dated 30th March 2020 at page 73 of record of appeal as reproduced below:

Patrick K. Kipketer,

PO Box 758-30100

Eldoret

30th March 2020

The Chairman

Eldoret Shuttle Sacco

PO Box 129-30100

Eldoret

Dr. Daniel Otanga

RE: Termination of Contract

I am in receipt of your letter dated 19th March 2020 for the termination of my contract.

I wish to state that it is unfortunate that despite the evidence I presented to the committee, the committee didn't take into consideration any of my evidence and seemingly had a predetermined ruling.

On the issue of outstanding debt of Ksh.135,541, I wish the sum be recorded as follows;

- i. Payment in arrears Ksh.52,000/=



- ii. One month salary in lieu Ksh.29,390/=
 - iii. My savings Ksh.60,000/=
- Total Ksh.141,390/=
- Outstanding debt Ksh.135,541/=
- Balance Ksh.5,849/=

Kindly notify me when the above has been effected and the balance is ready for collection.

Yours

Signed

Patrick Kipketer

57. Underpayment

On the claim for underpayment, the Appellant did not lead any evidence to prove that he was underpaid as General Manager. I decline to make any awards under this head

58. Leave prorata

The Appellant sought payment of unpaid leave allowance. This claim was not proved and the same is dismissed.

59. Loss of expected income

The Appellant sought for salary for the remaining 10 months before end of the contract. Section 49 of the *Employment Act*, 2007, caps compensation for unfair dismissal at a maximum of 12 months. The Act does not make provision for payment for the unexpired term of contract. This prayer is declined.

60. In sum, the Judgment of the trial court dismissing the Appellant's suit is set aside and substituted with the following orders:

- i. A declaration be and is hereby issued that the termination of the Claimant's employment was unprocedural only to the extent that he was not informed of his right to be accompanied by a colleague of shop floor union official of his choice.
- ii. The Appellant is awarded 1 (one) months' salary as compensation for unfair dismissal at Kshs. 29,000.00
- iii. The Appellant is awarded 50% of costs both in the trial court and in the appeal.
- iv. Interest at court rates shall accrue from date of this judgment.

61. Orders accordingly.

DATED, SIGNED AND VIRTUALLY AT ELDORET ON THIS 7TH DAY OF FEBRUARY 2025

MAUREEN ONYANGO

JUDGE

