



REPUBLIC OF KENYA



KENYA LAW
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**Monda v Aga Khan University (Cause E152 of 2023)
[2025] KEELRC 632 (KLR) (4 March 2025) (Judgment)**

Neutral citation: [2025] KEELRC 632 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E152 OF 2023**

**HS WASILWA, J
MARCH 4, 2025**

BETWEEN

DR JONATHAN MONDA CLAIMANT

AND

AGA KHAN UNIVERSITY RESPONDENT

JUDGMENT

1. The Claimant instituted this suit by a Memorandum of Claim dated 16th February 2023, seeking reliefs arising from his alleged unlawful termination, refusal by the Respondent to pay back salaries, and breach of contractual obligations. The Claimant is a male adult of sound mind residing and working for gain in the Republic of Kenya. The Respondent is a private university duly accredited by the Commission for University Education, offering medical training in Kenya.
2. The Claimant was employed by the Respondent as a Medical Resident in the Department of Anesthesiology, Medical College Division, with his appointment taking effect on 2nd January 2020. His consolidated gross salary was Kshs. 180,000 per month, and his appointment was for four years, subject to successful completion of each residency year. However, on 13th June 2022, the Claimant received a letter from the Respondent purporting to discontinue him from the residency program over allegations of failure to meet the standards of practice and performance expected of a medical resident. A subsequent letter dated 17th June 2022 was sent to the Claimant, terminating him from the residency program.
3. The Claimant contends that this termination was procedurally irregular and contrary to the AKU Graduates Programs Student Handbook, which governs the terms of medical residents working for the Respondent. Article 5.0, sub-article 5.3.1 of the Handbook stipulates that, in case of any breach of standards, the appropriate recourse should have been to either place the Claimant on academic suspension and/or a Performance Improvement Programme (PIP) before any decision to terminate.



4. Further, Article 6.0 of the Handbook requires that a disciplinary committee be convened before any termination, which was not done, thereby denying the Claimant his right to be heard. Additionally, the termination notice violated Section 35 of the *Employment Act*, 2007, as it was backdated to 1st June 2022, yet the letter was delivered on 13th June 2022. The Claimant, in compliance with the Handbook, lodged an appeal on 26th June 2022, citing these procedural irregularities. However, the appeal process was delayed, prompting the Claimant's counsel to issue a demand letter on 1st September 2022, seeking his immediate reinstatement and payment of back salaries.
5. On 13th November 2022, the Respondent issued its appeal decision, offering to reinstate the Claimant on a probationary basis. The decision stated that "the university is pleased to offer you the option to continue in the programme. The decision to terminate you has been dispelled. You would restart with the probation period with a clear remedial plan in writing which you would be asked to sign."
6. The Claimant avers that this decision is an admission by the Respondent that his termination was unprocedural and unlawful. Despite reinstatement, the Respondent failed to address the Claimant's demand for back salaries, leading to another demand letter seeking payment of the same, along with cumulated leave days, damages for breach of employment laws, and general damages for emotional, psychological distress, and professional disrepute.
7. The Respondent, in response, alleged that the Claimant was seeking dual employment benefits as he had been offered another unrelated locum appointment. However, the Claimant argues that this locum appointment, which was based on part-time hours and shift wages, was not equivalent to his previous terms of employment. The locum engagement was informally effective from 1st June 2022, with the Claimant working only three shifts in June and one shift in August and September 2022, before formally signing the locum contract on 6th October 2022.
8. The Claimant further asserts that the Respondent's actions have rendered him jobless and caused him mental, emotional, psychological, and physical distress, as well as professional disrepute. He has been compelled to seek clinical psychological services to cope with the effects of the unlawful termination.
9. The Claimant lists the following particulars of breach: unfair, unprocedural, and unlawful termination; refusal to pay back salaries; and refusal to pay one month's salary in lieu of notice. He seeks the following reliefs: six months' salary of Kshs. 1,080,000; cumulated leave days amounting to Kshs. 151,800; cumulated pension contributions of Kshs. 225,000; one month's salary in lieu of notice of Kshs. 180,000; damages for breach of employment laws; general damages for emotional, mental, and physical distress and professional disrepute; interest on the above amounts; and costs of the claim. Despite a formal demand being issued, the Respondent has refused to settle the claim. There is no pending claim between the parties over the same subject matter, and the jurisdiction of this Honourable Court is admitted.
10. The Claimant prays for judgment against the Respondent for:
 1. Six months' salary of KES 1,080,000
 2. One month's salary in lieu of notice of KES 180,000
 3. Cumulated leave days of KES 151,800
 4. Cumulated pension contributions of KES 225,000
 5. Damages for breach of employment laws
 6. General damages for emotional, mental, and physical distress and professional disrepute



7. Interest on the above amounts
8. Costs of the claim.
11. The Claimant filed a Verifying Affidavit of even date in which he, Dr. Jonathan Monda, an adult of sound mind, swore to the truthfulness of the matters stated in the Statement of Claim. He averred that he is the Claimant in the matter and is competent to swear the Affidavit. He further stated that he has instructed the firm of Humphrey & Company LLP to have conduct of the matter on his behalf. The Claimant affirmed that he has read and understood the contents of the Statement of Claim and verified the same to be correct and true. He deponed that the facts contained therein are true to the best of his knowledge, information, and belief.
12. The Claimant filed his Witness Statement dated 16th February 2023, wherein he stated that he, Dr. Jonathan Monda, an adult male of sound mind is the Claimant in the matter and is conversant with the details relating to the claim. He averred that he was appointed by the Respondent on or about 2nd January 2020 as a Medical Resident in the Department of Anaesthesiology, Medical College Division, under an Employment Contract that provided for a four-year engagement subject to successful completion of each residency year, with a gross monthly salary of Kshs. 180,000.
13. On or around 13th June 2022, he received a letter from the Respondent purporting to discontinue his engagement in the residency program over allegations of failure to meet the standards of practice and performance expected of a medical resident. Subsequently, on 17th June 2022, he was issued a termination letter informing him that he would only receive his salary up to 1st June 2022.
14. The Claimant lodged an appeal on 26th June 2022 within the specified institutional appeal timelines, citing procedural irregularities in his termination. However, the Respondent failed to acknowledge receipt of the appeal or provide any update on its progress until his counsel on record issued a demand letter on 1st September 2022. In response, the Respondent alleged that the appeal had been lodged out of time but indicated that an appeal committee was being set up to consider the matter.
15. While awaiting the appeal decision, the Claimant was engaged on a locum appointment by the Respondent as a Senior House Officer in the ICU/HDU Department, Medical Services Division, where payment was based on shifts covered. Between July and September 2022, he worked for five shifts. On 6th October 2022, he signed a backdated locum appointment letter to facilitate the processing of his delayed payments by the Human Resource Department.
16. Vide a decision dated 13th November 2022, the Respondent offered to reinstate him to the residency program under the previously agreed terms but failed to address the issue of the six months' salary owed. Consequently, his counsel on record issued another demand letter dated 24th November 2022, which the Respondent failed to heed, prompting the filing of this claim.
17. The Claimant stated that the Respondent's unlawful termination caused him great emotional, mental, and physical distress, necessitating him to seek counselling services. He also suffered professional disrepute and significant career delays. The Claimant thus prayed that the Court finds the claim meritorious and enters judgment as prayed in the Statement of Claim.

Claimant's Written Submissions

18. The Claimant filed written submissions dated 16th January 2025, wherein he stated that vide a letter dated 4th December 2019, he received an employment contract from the Respondent for the position of Medical Resident in the Department of Anesthesiology, Medical College Division, with the appointment taking effect from 2nd January 2020. Under the contract, he was entitled to a consolidated



gross monthly salary of Kshs. 180,000, and the contract was for a duration of four years, subject to successful completion of each residency year.

19. On 13th June 2022, he was discontinued from the residency program on allegations of failing to meet the expected standards of practice and performance for a medical resident. Subsequently, on 17th June 2022, he was wrongfully and unprocedurally terminated from the residency program, effective 1st June 2022.
20. Aggrieved by the decision, the Claimant lodged an appeal on 26th June 2022 within the prescribed timelines, citing procedural irregularities in the termination process. However, the Respondent failed, neglected, and/or ignored determining the appeal. Due to undue delay, the Claimant's counsel served the Respondent with a demand letter dated 1st September 2022, seeking immediate reinstatement to the residency program and payment of back salaries.
21. The Claimant finally received the Respondent's appeal decision seventy-nine days later, vide a letter dated 13th September 2022, wherein the Respondent offered to reinstate him to the residency program but on a probationary basis and failed to address the issue of back salaries. Consequently, his counsel issued another demand letter seeking settlement of the back salaries, payment for accrued leave days, damages for breach of employment laws, and general damages for emotional, psychological distress and professional disrepute occasioned by the unprocedural and unlawful termination. The Respondent's continued failure to address the aforementioned concerns led to the filing of this suit.
22. During the hearing, the Claimant confirmed that pursuant to an employment contract dated 4th December 2019, he was appointed as a Medical Resident in the Anaesthesiology Division of the Medical College, with a gross salary of Kshs. 180,000, subject to statutory deductions, including PAYE, NSSF, and NHIF. The Respondent's witness, Marcus Lance, confirmed during cross-examination that the Claimant was indeed entitled to this salary.
23. The Claimant submitted that he unequivocally qualifies as an employee, and the Respondent's assertion that the salary was a stipend cannot stand in light of the legal framework. Section 2 of the *Employment Act*, 2007 defines an employee as a person employed for wages or salary, including an apprentice and indentured learner, and under this provision, the Claimant clearly qualifies as an employee.
24. Additionally, Black's Law Dictionary, 9th Edition, at page 117, defines an apprentice as a person bound to work for an employer for a specified period to learn a craft, trade, or profession, particularly through hands-on experience under supervision. The Claimant was engaged in hands-on training under the supervision of qualified medical practitioners, fulfilling the criteria for apprenticeship and employment.
25. The Claimant further relied on the case of Michael Ouma Odera (on his own behalf and on behalf of 506 others) v Public Service Commission, Ministry of Health & Kenya Nutritionists and Dieticians Institute [2021] KEELRC 1609 (KLR), where Justice Ongaya held that interns are deemed employees for purposes of employment law. Additionally, in Forum for Good Governance and Human Rights v Teachers Service Commission (TSC) & 2 others [2024] KEELRC 795 (KLR), the court reinforced the principle that individuals in internship-like roles qualify as employees entitled to employment law protections.
26. Based on statutory provisions, contractual terms, and judicial precedents, the Claimant submitted that his gross salary was remuneration and not a stipend, and he should be recognized as an employee under Section 2 of the *Employment Act*.



27. On the issue of wrongful and unprocedural termination, the Claimant submitted that he received a discontinuation letter on 13th June 2022 and a termination letter on 17th June 2022, which backdated his termination to 1st June 2022. The Respondent's witnesses claimed he was terminated due to failure to meet performance standards, unsatisfactory academic performance, and alleged breaches of the Student Code of Conduct.
28. However, Kennedy Njenga averred that the alleged breach did not constitute a disciplinary offense. He alleged that the Claimant missed lectures, failed to submit research concepts, and did not maintain a logbook. The offenses the Claimant was accused of fell under Clause 5.1.1 of the Student Code of Conduct and Disciplinary Procedures, which governs failure to adhere to scheduled instruction, practical work, examination, or clinical assignments.
29. The Claimant submitted that under Clause 6 of the Student Code of Conduct, disciplinary matters were to be reported to the Dean, followed by the convening of a disciplinary committee. However, the Respondent provided no evidence of such proceedings. The Respondent's witnesses stated that the Faculty met to discuss his discontinuation, but there were no minutes or proof of communication to the Claimant.
30. Instead, the Respondent relied on a report dated 7th September 2022, compiled three months after his termination, which lacked an identified author, was unsigned, and was never shared with him. The Claimant only became aware of this report when it was served in the Respondent's bundle of documents. The Claimant further submitted that he was not given a fair hearing to defend himself against the allegations and that the Respondent's witnesses confirmed he was not subjected to any disciplinary hearing before termination.
31. The Claimant further submitted that he appealed the termination on 26th June 2022, within the required timelines, citing procedural irregularities. Clause 8.6.4 of the Student Code of Conduct required that appeals be determined within ten working days, but the Respondent only communicated its decision on 13th November 2022, four months later and only after receiving a demand letter.
32. The appeal decision reinstated him to the residency program but failed to address the issue of unpaid salaries for six months. The Claimant relied on *Kenya Ports Authority v Munyao & 4 others (Petition E008 of 2023)* [2023] KESC 112 (KLR) (Civ) (28 December 2023), where the Supreme Court held that wrongful dismissal includes dismissal without notice or with inadequate notice.
33. The Claimant was terminated effective 1st June 2022, yet the termination letter was dated 17th June 2022. He also relied on *Naima Khamis v Oxford University Press (E.A) Ltd* [2017] KECA 480 (KLR), where the Court of Appeal held that procedural unfairness arises when an employer fails to follow contractual procedures or fails to give the employee an opportunity to be heard. In the present case, the Claimant was not afforded a disciplinary hearing, notice, or payment in lieu of notice, making his termination wrongful and unprocedural under Section 45(2)(c) of the *Employment Act*, 2007, the employment contract, and the Student Code of Conduct.
34. The Claimant submitted that under Section 49 of the *Employment Act*, he is entitled to reliefs, including six months' salary amounting to Kshs. 1,080,000, accumulated leave days of Kshs. 151,800, accumulated pension contributions of Kshs. 225,000, one month's salary in lieu of notice of Kshs. 180,000, general damages for emotional, mental, and physical distress, professional disrepute, and damages for breach of employment laws.
35. The Claimant further submitted that, as per the termination letter dated 17th June 2022, his termination was effective from 1st June 2022. Upon appealing the decision, the Respondent reinstated



him via an appeal decision dated 13th November 2022. However, the Respondent failed to address the issue of salaries owed for the six-month period of termination.

36. At the time of termination, the Claimant earned a gross monthly salary of Kshs. 180,000, bringing the total salary arrears to Kshs. 1,080,000. The Claimant submitted that, upon reinstatement, the Respondent was obligated to pay all salary arrears from the date of dismissal. He relied on *National Bank of Kenya v Samuel Nguru Mutonya* [2019] KECA 404 (KLR), where the Court of Appeal held that salary arrears from the date of termination to the date of reinstatement, together with all benefits, are payable and can be executed in the normal manner.
37. He also relied on *Teachers Service Commission v Mwita (Appeal E049 of 2023)* [2023] KEELRC 3287 (KLR) (13 December 2023) (Judgment), where Radido J affirmed that reinstatement should be on terms as though the employment contract had not been interrupted, and salary arrears should be awarded accordingly. The Claimant therefore prayed for Kshs. 1,080,000 in salary arrears.
38. The Claimant further claimed cumulated leave days and pension contributions in the sums of Kshs. 151,800 and Kshs. 225,000, respectively, as provided for in his employment contract. His contract entitled him to 23 working days of leave per annum and participation in the Respondent's pension scheme, where he contributed 5% of his basic salary, with the Respondent matching the contribution.
39. The termination letter dated 17th June 2022 indicated that pension funds would be paid. The Respondent, as the custodian of employment records, failed to produce evidence that the Claimant had utilized his leave or that pension contributions were made. The Claimant relied on Section 10(7) of the *Employment Act*, which places the burden of proof on the employer in employment-related claims, and the decision in *Judith Atieno Owuor v Sameer Agriculture and Livestock Limited* [2020] KEELRC 609 (KLR), which affirmed this principle. He thus prayed for compensation for accumulated leave days in the sum of Kshs. 151,800 and unremitted pension contributions amounting to Kshs. 225,000.
40. The Claimant also submitted that he was terminated without notice, in contravention of his appointment letter dated 4th December 2019, which required one month's notice. The Respondent failed to demonstrate that such notice was issued. He relied on Section 36 of the *Employment Act*, which mandates an employer to pay one month's salary in lieu of notice where termination occurs without notice.
41. He cited *Kariki Limited v Karimi (Employment and Labour Relations Appeal E005 of 2023)* [2024] KEELRC 217 (KLR) (9 February 2024) (Judgment), where the court held that compensation for failure to give notice is equivalent to the salary for the notice period. He therefore prayed for Kshs. 180,000 as payment in lieu of notice.
42. The Claimant further submitted that his wrongful termination caused him immense emotional, mental, and physical distress, as well as professional disrepute. The abrupt and unsubstantiated dismissal created uncertainty and emotional turmoil. He was compelled to seek counseling services to cope with the resulting anxiety.
43. The wrongful termination also tarnished his professional reputation, affecting his standing in the medical field and delaying his career progression, as he had to restart his residency program. He relied on *Standard Group Limited v Jenny Luesby* [2018] KECA 353 (KLR), where the Court of Appeal awarded Kshs. 100,000 for emotional distress, and *Nyokabi v Multimedia University of Kenya* [2022] KEELRC 3897 (KLR), where Ocharo J similarly awarded Kshs.100,000 in general damages. He urged the court to award general damages, taking into account inflationary trends.



44. The Claimant further submitted that he was entitled to 12 months' compensation for wrongful and unfair termination, amounting to Kshs. 2,160,000, calculated as Kshs. 180,000 x 12. He relied on Sections 43, 45, and 47(5) of the Employment Act, which impose a burden on the employer to justify termination once an employee presents credible allegations of wrongful dismissal.
45. He cited Emmanuel Kasandi Mujukane & Bernard Nyaga Mbogo v Cosmos Limited [2018] KEELRC 1825 (KLR), which reaffirmed this principle. He submitted that his termination was based on unsubstantiated allegations of unsatisfactory performance, academic performance, and attitude. The Respondent relied on a report prepared three months post-termination, which was not availed to him for rebuttal. Further, he was denied the right to be heard before termination, contrary to Section 45(2) (c) of the Employment Act and the Student Code of Conduct and Disciplinary Procedures.
46. The Respondent's own witnesses confirmed these procedural and substantive deficiencies. He submitted that Section 49 of the Employment Act allows the court to award compensation for wrongful termination, with the maximum award being 12 months' salary. Section 49(4) further provides factors for determining compensation, including the manner of termination and its impact on the employee.
47. The Claimant urged the court to award the maximum compensation, given the Respondent's unfair actions, including its reliance on a questionable report prepared three months post-termination. His employment contract, dated 4th December 2019, was for a fixed term of four years, yet he was dismissed after only two years and four months, depriving him of the opportunity to complete his contract and progress in his career. As a result, he suffered financial loss, emotional distress, and career stagnation, requiring counseling to cope with the trauma. He thus prayed for Kshs. 2,160,000 as compensation for wrongful termination.
48. The Claimant therefore prayed for a declaration that he was an employee of the Respondent and was wrongfully and unprocedurally terminated. Consequently, he sought the following reliefs: Kshs. 1,080,000 as salary for six months, Kshs. 151,800 for cumulated leave days, Kshs. 25,000 for unremitted pension contributions, Kshs. 180,000 as one month's salary in lieu of notice, general damages for emotional, mental, and physical distress, and Kshs. 2,160,000 as compensation for wrongful and unfair termination.

Respondent's Case

49. The Respondent filed a Statement of Response dated 6th April 2023, denying the averments in paragraphs 1 to 21 of the Statement of Claim, save where expressly admitted. The Respondent admitted paragraphs 1 and 2 only to the extent that they were descriptive of the parties, save for the Respondent's address for service, which was stated as care of Munyao, Muthama & Kashindi, Advocates.
50. Paragraphs 3 and 4 were admitted in so far as they described the terms of the Claimant's employment contract. The Respondent averred that the Claimant's engagement involved two interdependent contracts: one for the Master of Medicine postgraduate program and another for the medical residency, both of which complemented each other and were subject to successful completion of each residency year.
51. Upon admission to the residency program, the Claimant was issued an offer letter for training alongside an appointment letter as a medical resident. The stipend paid was not a salary but an allowance to support students during their training, covering statutory deductions such as NHIF, NSSF, and pension contributions. The Respondent emphasized that the engagement was primarily academic, with services rendered under faculty supervision as part of the training.



52. The Respondent asserted that the Claimant failed to meet the required academic and professional standards, leading to his discontinuation from the residency program. This discontinuation, in turn, automatically terminated the related stipend arrangement. The Respondent denied the averments in paragraphs 6 to 9 of the Statement of Claim and put the Claimant to strict proof.
53. It further stated that the Claimant breached Article 3.2 of the General Academic Conduct policy, which required students to attend lectures, tutorials, practicals, clinics, and ward assignments, and he was solely responsible for fulfilling these academic obligations. The Claimant also failed to provide a valid professional practice license for 2020 and 2021 within the prescribed timelines, contrary to the Student Handbook and the Kenya *Medical Practitioners and Dentists Act*.
54. Additionally, the Claimant failed to comply with scheduled instructions, practical work, and clinical assignments despite academic probation and remediation. His continued failure to demonstrate academic improvement led to his discontinuation under section 5.4.2 of the Student Code of Conduct. The Respondent asserted that the Claimant's termination was based on academic failure rather than disciplinary grounds, and therefore, there was no requirement to convene a disciplinary committee.
55. The Respondent admitted that the Claimant lodged an appeal but denied any admission of irregularities in his discontinuation. It maintained that it had the discretion to either uphold or overturn the discontinuation and decided to grant the Claimant another opportunity under a probation period with a structured remedial plan. However, the Claimant rejected this offer, and the Respondent argued that reinstating him did not amount to an admission of wrongful termination.
56. The Respondent denied the averments in paragraphs 13 to 17 and contended that from June 2022 to December 2022, the Claimant was engaged under a locum arrangement, where he rendered part-time services and was remunerated. Consequently, the claim for back payment of salaries was unjustified and amounted to an attempt at unjust enrichment.
57. The Respondent denied the allegations of breach of contract in paragraph 18 and put the Claimant to strict proof. It admitted receiving the demand letter from the Claimant's advocates, as stated in paragraph 19, but denied any liability warranting settlement. The Respondent admitted paragraphs 20 and 21 but denied that the Claimant was entitled to any of the reliefs sought. The Respondent prayed for the dismissal of the claim with costs.

Claimant's Reply to the Respondent's Statement of Claim

58. The Claimant filed a Reply to the Respondent's Statement of Response dated 2nd May 2023, maintaining the averments in the Statement of Claim and joining issue with the Respondent on all denials in the Response, save for any admissions made therein. The Claimant reiterated the material contents of the Claim and denied the assertions made in paragraphs 3 to 8 of the Statement of Response, putting the Respondent to strict proof thereof.
59. The Claimant further denied the contents of paragraphs 9 to 15 in their entirety and asserted that the Respondent failed to adhere to the mandatory procedures outlined in the AKU Graduate Program Student Handbook, which was binding upon it. In response to paragraphs 17 and 18 of the Statement of Response, the Claimant reiterated the averments in paragraphs 11 and 12 of the Statement of Claim.
60. The Claimant also denied the allegations in paragraph 19, maintaining that the locum arrangement entered into with the Respondent was entirely distinct from the residency program. The Claimant put the Respondent to strict proof of any payments allegedly made to him while reiterating the contents of paragraphs 13 to 17 of the Claim. In response to paragraph 21, the Claimant averred that the



Respondent's acknowledgment of service of the demand letter confirmed entitlement to costs. The Claimant, therefore, prayed for the dismissal of the Statement of Response and for judgment to be entered against the Respondent as prayed in the Statement of Claim.

Respondent's Witness Statements

61. The Respondent filed a Witness Statement dated 17th November 2023 through Kennedy Njenga, an adult male of sound mind and the Senior Manager, Post Graduate Medical Education at the Respondent institution. He stated that the Claimant was admitted to the Postgraduate Medical Education Residency Training Programme in Anesthesiology at the Respondent on 3rd September 2019, with an offer letter dated 1st September 2019.
62. The Claimant was admitted for a four-year program commencing on 2nd January 2020, with continuation subject to successful completion of each academic year. Upon admission, the Claimant was expected to adhere to the Respondent's policies and procedures, as outlined in the Graduate Programmes Student Handbook and the Postgraduate Training Manual, which were binding.
63. The training program included various sponsorships, including a stipend to help students defray living costs during the training. Admission to the program simultaneously appointed the student as a medical resident, engaging in both theoretical and practical training by attending to patients at the Respondent's facility. The Claimant's admission as a medical resident was contingent upon his academic performance and successful completion of each study year.
64. The training program was competency-based, with students continuously evaluated to assess their progressive attainment of expected learning objectives. Student performance was tracked through work-based assessments, continuous assessments, end-of-rotation evaluations, and summative assessments, with reports recorded in the Respondent's learning and curriculum management systems.
65. The Claimant, however, failed to conform to scheduled instructions, practical work, examinations, and clinical assignments, contrary to Clause 3.0 of the Student Code of Conduct, which required students to attend lectures, tutorials, practical sessions, clinics, ward assignments, and examinations. Multiple complaints were received through the evaluation tool on the Respondent's portal, indicating the Claimant's persistent failure to adhere to performance requirements, lack of willingness to learn, and disregard for faculty recommendations. Despite repeating a previous academic year, the Claimant failed to demonstrate progress toward expected competencies. A performance report dated 7th September 2021 documented his deficiencies.
66. In the second year, the Claimant's performance continued to decline, and his quarterly interim summative assessments recorded the worst performance at his level. His range of weaknesses had increased, and he did not demonstrate any effort to implement the faculty's recommendations. He failed to be eligible for the Part I examinations in the second year and was enrolled as a repeater.
67. His deficiencies included poor performance in core rotations, attitude, and personality issues, leading supervising consultants to consider him an unsafe anesthetist. As a result, the Faculty Board of Examiners met to deliberate on his performance and recommended his discontinuation. The decision was forwarded to the Medical College Faculty Council, which approved his termination due to consistent failure to meet program requirements, lack of demonstrable acquisition of core competencies, failure to develop sufficient knowledge in anesthesiology, and failure to attain the required professional skills and attitudes.
68. A report dated 7th September 2021 documented these findings. The Claimant's termination from the academic program automatically led to the termination of his medical residency, as he could not



- continue practical training without being an enrolled student. He was issued with a termination letter dated 13th June 2022, outlining the reasons for his discontinuation.
69. The Claimant appealed his discontinuation through a letter dated 26th June 2022. The appeal was considered, and the Claimant was given an opportunity to be heard. The Appeals Committee noted that the discontinuation was based on unsatisfactory academic performance, attitude, and repeated failure to meet academic requirements.
 70. However, the committee recommended that the Claimant be recalled to the program under probation, a decision communicated in a letter dated 13th November 2022. The Claimant was required to confirm acceptance or rejection of the reinstatement by writing to the University Registrar but failed to respond. Instead, he issued a demand letter dated 24th November 2022 through his advocates, seeking compensation for six months' salary, accumulated leave, damages for breach of employment laws, and general damages for emotional distress and disrepute allegedly caused by unlawful termination.
 71. The Claimant's discontinuation from the training program was justified and executed in accordance with the Graduate Programmes Student Handbook. The Claimant's assertion that a disciplinary committee ought to have been formed under Clause 6.0 of the handbook lacked merit, as the discontinuation was based on academic failure rather than a disciplinary offense.
 72. The Claimant was given an additional academic year under supervision to improve, but he failed to demonstrate willingness or capacity to attain the required competencies. The Respondent fully complied with academic evaluation requirements, and the discontinuation process was justified. The Claim is not warranted, and the Respondent prayed for its dismissal with costs.
 73. The Respondent filed another Witness Statement dated 17th November 2023 through David Odaba, an adult male of sound mind and the Director of the Residency Training Programme in the Department of Anesthesia at the Respondent institution, who had authority to testify on behalf of the Respondent. He stated that the Respondent offered the Claimant an opportunity to join its Residency Training Programme, which is essentially a Master's in Medicine program.
 74. The Respondent, in its commitment to promoting career development and growth among its graduates, offers various sponsorships, one of which includes the payment of a stipend or allowance to trainees for the duration of the program. The Claimant qualified for this sponsorship and received a stipend. His appointment and continuation as a Medical Resident were contingent on the successful completion of each academic residency year.
 75. To ensure proper evaluation, the Claimant was expected to report directly to the Director of his Residency Training Programme, which was necessary for tracking his academic performance.
 76. In June 2022, after following due process, the Claimant was discontinued from the academic Residency Training Programme due to repeated failure to meet the standard of practice and performance expected of a Resident student at the Respondent institution. The discontinuation letter, dated 17th June 2022, was issued to the Claimant and is found on pages 224 and 225 of the Respondent's Bundle.
 77. The Claimant's discontinuation from the academic Residency Training Programme automatically terminated his appointment as a Medical Resident, meaning he could no longer see patients since his admission and registration into the program had ceased to exist. This position was clearly outlined in the admission letter and the Residency appointment letter and was further reiterated in the termination letter. The nature of the relationship between the Claimant and the Respondent was clear to both parties.



78. At all material times, the Claimant was bound by the Graduate Programmes Student Handbook, which required him to meet the academic standards of each residency year to progress to the next level. The Claimant failed to meet these standards and was duly informed of his academic shortcomings. He was given an opportunity to improve, including repeating his second year, but demonstrated no improvement.
79. This was in violation of the Student Code of Conduct and Disciplinary Procedures, leading to his discontinuation in accordance with Clause 5.4.2 of the Student Code of Conduct and Clause IV on degree requirements on page 9 of the handbook. The Respondent had justified and valid reasons for discontinuing the Claimant from the Residency Training Programme and fully complied with the procedures outlined in the student handbook. The Claimant's suit has no basis, and he is not entitled to any of the reliefs sought. The Respondent, therefore, urged the Court to dismiss the claim with costs.
80. The Respondent filed a further Witness Statement dated 17th November 2023 through Marcus Lance, an adult male of sound mind and the Chairperson of the Anesthesia Department at the Respondent institution, who was well-versed with the facts of the matter and competent to testify on behalf of the Respondent. He produced as evidence all documents set out in the Respondent's Statement of Response, list, and bundle of documents.
81. He stated that the Claimant was known to him by virtue of his admission into the Respondent's Master's training program as a Resident. Throughout the training, the Claimant was required to adhere to the University's academic policies and procedures, including attending lectures, tutorials, seminars, practical sessions, clinics, ward assignments, examinations, and other scheduled course activities, as provided on page 34 of the Graduate Programs Student Handbook 2021.
82. Additionally, the Claimant was expected to participate in ward rounds, make presentations, undertake assignments and examinations, provide feedback to faculty, collaborate with clinical care teams, and initiate discussions with consultants to ensure appropriate patient care, as outlined on page 45 of the Residency Training Manual.
83. To be appraised as having successfully completed the Residency Training Program, the Claimant was required to maintain an up-to-date training portfolio, make at least three departmental presentations per year, submit at least sixteen clinical appraisal documents every four months, undergo multi-source feedback annually, maintain an accurate clinical case logbook, pass all continuous assessment tests with an average above 50% over two years, complete all rotations on schedule with supervisor reviews, and have a research proposal approved by the Departmental Research Committee by the second year, while a completed research project was required by the fourth year.
84. These requirements were set out on pages 78 and 79 of the Residency Training Manual. The Residency Training Manual provided that three appraisals were conducted annually by the Program Director, with eligibility examinations divided into two parts: part I at the end of the second year and part II at the end of the fourth year. A candidate could only proceed to part II after passing part I with a minimum score of 50%. Candidates who failed with scores between 45% and 49% were allowed to resit within six months.
85. Candidates scoring between 40% and 44% were referred to the Departmental Residency Training Committee, which had discretion to allow them to repeat the year. A candidate who failed part I after a second resit was subject to discontinuation on the advice of the Academic Council.
86. The Claimant's performance in his first year of residency training was below expectations. His shortcomings included lack of attention to detail, poor time management, lack of self-drive, minimal faculty interaction, failure to complete work-based assessments despite exposure to a good case mix,



- lack of follow-ups on assessments, and failure to submit his research concept to the Departmental Research Committee, as detailed in the Discontinuation Report dated 7th September 2022, specifically on page 3.
87. End-of-rotation reports for residency year one, found on pages 19 to 23 of the Discontinuation Report, corroborated these findings. The Claimant's academic struggles persisted in his second year, where he appeared disinterested and distracted, failed to provide accurate feedback on patient follow-ups, missed several lectures, failed to submit his research concept, demonstrated lack of respect for seniors, required constant reminders to complete tasks, and failed to submit his logbook, as indicated on pages 5 and 6 of the Discontinuation Report.
 88. There was no documentation of an end-of-rotation continuous assessment test or formal assessment. End-of-rotation reports for residency year two, found on pages 24 to 38 of the Discontinuation Report, confirmed these deficiencies.
 89. Due to these shortcomings, the Respondent required the Claimant to repeat the year. The Board of Examiners found the Claimant ineligible to sit for part I examinations and recommended that he repeat his second year and undertake all rotations afresh. He was also assigned a new supervisor, as recorded on page 6 of the Discontinuation Report.
 90. However, during his repeat year, the Claimant showed no signs of improvement. Consultants noted that, despite his intelligence and capability, he was disengaged, mentally absent in theaters with patients, unprepared for sessions, and only performed under pressure. He also struggled with time management, as recorded on page 14 of the Discontinuation Report. A critical consultant's comment was that the Claimant was "not a safe anesthetist as he did not involve himself much with departmental activities," as indicated on page 37 of the Discontinuation Report.
 91. Consequently, the faculty recommended the Claimant's discontinuation from the residency program for failure to meet set expectations, as recorded on page 39 of the Discontinuation Report. This decision was communicated to the Claimant, and he was given an opportunity to provide feedback on how he intended to improve.
 92. Dr. Odaba and Marcus Lance engaged the Claimant in discussions to encourage his participation in departmental activities, but he remained indifferent and unbothered. After reviewing assessment reports, rotation reports, and consulting with the Claimant, the faculty determined that he was not performing as required and resolved to discontinue him from the training program, as recorded on page 39 of the Discontinuation Report.
 93. The Claimant's discontinuation letter, dated 13th June 2022, set out that his termination was due to repeated failure to adhere to scheduled instruction, practical work, and clinical assignments. The discontinuation letter, along with the residency contract termination letter dated 17th June 2022, are found on pages 6 to 8 of the Claimant's bundle of documents.
 94. The Claimant appealed the decision on grounds of procedural irregularities. The Appeals Committee heard his case and recommended his reinstatement to allow him to complete his probation period. This decision was communicated to him by letter dated 13th November 2022, as found on page 15 of the Claimant's bundle. However, the Claimant declined reinstatement, as evidenced by an email on page 298 of the Respondent's bundle, and instead instructed his lawyers to issue a demand letter.
 95. Shortly after lodging the appeal, the Claimant, through his advocates, issued a demand letter dated 1st September 2022 to the Respondent, seeking payment of six months' salary, accumulated leave days, damages for breach of employment laws, and general damages for alleged emotional distress and



reputational harm caused by the termination. This demand letter is on pages 16 to 17 of the Claimant's bundle.

96. There was no employer-employee relationship between the Claimant and the Respondent, as the Claimant was a master's student admitted into a training program. His status was governed by the Student Handbook, and his discontinuation resulted from failure to meet the university's academic requirements for residency, as recorded on page 171 of the Respondent's bundle. The claim lacks merit and ought to be dismissed with costs to the Respondent.

Respondent's Written Submissions

97. The Respondent filed written submissions dated 12th February 2025, opposing the Claimant's claim for six months' salary amounting to Kshs. 1,080,000, one month's salary in lieu of notice of Kshs. 180,000, cumulated leave days of Kshs. 151,800, cumulated pension contributions of Kshs. 225,000, damages for breach of employment laws, general damages for emotional, mental and physical distress and professional disrepute, interest on all amounts, and costs of the claim.
98. The Claimant's Statement of Claim was filed on 6th February 2023, supported by a list of witnesses, a witness statement, and a list and bundle of documents of even date. The Respondent denied the claim and filed a Statement of Response dated 6th April 2024, a List of Witnesses dated 17th November 2023, Witness Statements by Marcus Lance and David Odaba both dated 17th November 2023, and a list and bundle of documents dated 20th November 2023.
99. The Claimant was admitted to the Respondent's Residency (Master's) Programme in Anesthesia for a period of four years, commencing on 2nd January 2020, as confirmed by the admission letter at page 1 of the Respondent's Bundle. The Human Resource Department was responsible for processing stipends for students, as the academic department lacked the capacity to do so.
100. The Claimant was subsequently issued an appointment letter as a medical resident, effective 2nd January 2020, with the continuation of his appointment contingent upon successfully completing each stage of the residency programme. The Residency Training Manual, at page 134 of the Respondent's Bundle, outlines the structure of the training programme, which is divided into two parts. The Claimant was required to pass Part I before proceeding to Part II.
101. To be eligible to sit for Part I, he needed to maintain an updated training portfolio, make at least three departmental presentations per year, submit at least 16 clinical appraisal documents per four-month period, complete all rotations on schedule, pass continuous assessments with an average above 50%, and have a research proposal approved by the departmental research committee, among other requirements.
102. The pass mark for each part of the residency programme was 50%, with those scoring below 50% but above 45% allowed to re-sit the examination. Those scoring below 45% were subject to review by the Departmental Residency Training Committee, which could recommend a repeat of the year. Further failure after the repeat year led to discontinuation from the programme.
103. The Claimant failed to meet the requirements in his first two years, leading to a directive that he repeat his second year. Despite the opportunity to redo the second year, his performance did not improve, resulting in his discontinuation, as evidenced in the discontinuation report at pages 179–217 of the Respondent's Bundle. The Claimant appealed against this decision, alleging procedural irregularities.
104. The Appeal Committee reviewed his case and recommended reinstatement on a probationary basis. However, despite acknowledging the appeal outcome, the Claimant declined to resume his studies, as seen in the email at page 298 of the Respondent's Bundle. Consequently, after his discontinuation



- from the programme, the Respondent issued a termination letter regarding his appointment as a medical resident. The Claimant contended that this termination was unlawful and unfair.
105. The trial commenced on 22nd October 2024, with the Claimant and one of the Respondent's witnesses, Dr. David Odaba, testifying. The second Respondent's witness, Prof. Marcus Lance, testified on 13 November 2024. The Claimant testified that he applied for a residency training programme, not a job, and his engagement with the Respondent was governed by the Graduate Student Handbook and the Training Manual. He stated that his involvement in patient care was part of his practical training rather than employment.
 106. He admitted that the University and the affiliated hospital had separate mandates—the University focusing on education and training, while the Hospital provided medical care. The Claimant further admitted that he was fully aware of the residency programme's academic and performance expectations. He conceded that in his first year, he failed to meet the required performance standard, achieving an aggregate of 2.1 out of 5 instead of the expected 3.1.
 107. As a result, he was required to repeat his second year, during which he was assigned a new mentor. He confirmed that his discontinuation from the residency programme resulted from unsatisfactory performance and acknowledged that he appealed the decision. The Appeal Committee reinstated him on probationary terms, but he declined the offer of reinstatement.
 108. The Respondent's witnesses, David Odaba and Marcus Lance, adopted their witness statements dated 17th November 2023 and the Respondent's List and Bundle of Documents. They testified that the Claimant was admitted to the residency programme and received a stipend, which was standard for master's students to support their living expenses. They clarified that residency programme applicants from other institutions or those retained by their employers were not entitled to the same stipend.
 109. The Claimant received a stipend only because he was not employed elsewhere nor sponsored. The stipend was processed through the Human Resource framework since the academic department lacked the capacity to facilitate it, but this did not equate to employment. The residency programme involved multiple competency assessments, and the pass mark was set at 50% to ensure adherence to professional standards.
 110. The Claimant asserted that an employer-employee relationship existed between him and the Respondent, but the Respondent contended that he was a student and not an employee. The Claimant's admission to the residency programme did not amount to employment, as he received a stipend solely for subsistence purposes. He was required to disclose whether he had sponsorship or employer support before registration, as indicated in paragraph 3 of his admission letter at page 1 of the Respondent's Bundle.
 111. The Graduate Student Handbook at page 45 of the Respondent's Bundle confirms that interns, residents, and fellows in the Postgraduate Medical Education (PGME) programme are students of the University. Clause 2.1.1 of the Handbook states that PGME interns, residents, and fellows are deemed students of the University for the purposes of the Student Academic Integrity Policy, while Clause 11.1.1 states that they are deemed students for the purposes of the Student Code of Conduct and Disciplinary Procedures. Additionally, at page 66 of the Respondent's Bundle, the Handbook clarifies that PGME interns, residents, and fellows are considered students for the purposes of University policies.
 112. The Claimant admitted that he did not apply for a job with the Respondent but only sought admission to the residency programme. His appointment as a medical resident was conditional on successful



academic progression and was tied to his status as a student. His practical training in patient care was part of the academic curriculum rather than an employment obligation.

113. In *Maurice Oduor Okech v Chequered Flag Limited* [2013] eKLR, the court held that in determining an employment relationship, the court must go beyond the contract's terminology and examine the facts. Section 2 of the *Employment Act* defines an employee as "a person employed for wages or a salary and includes an apprentice and indentured learner." The Claimant's relationship with the Respondent does not fall within this definition, as the stipend provided was for sustenance during training, not remuneration for employment.
114. Further, in *Wanjiku & 10 others v Chief Registrar of the Judiciary & another* (Cause 912 of 2014) [2017] KELRC 1696 (KLR) (21 February 2017), the court considered whether interns at the Judiciary were employees. It held that the claimants were not employed since they did not undergo a competitive recruitment process, nor were they appointed through a formal process by the Judicial Service Commission.
115. The court found that an employer-employee relationship did not exist and, therefore, there was no basis for alleging unfair termination. The Claimant in the present case was a student in a master's programme, not an intern, making the cases he relied upon inapplicable.
116. The Respondent further submitted that in *William Wachira Waruinge v Kago Mukunya & Associates* [2020] eKLR, the court reiterated that a training engagement does not automatically create an employment relationship, especially when the individual has not yet completed the necessary qualifications for the position being trained on. The court held that the fact that the Claimant was engaged as an intern did not by itself create an employment relationship.
117. The Respondent contended that the Claimant's performance was assessed from an academic perspective and not in an employment context. His evaluators were teachers and mentors rather than supervisors, and his assessments focused on academic progress rather than job output. The Claimant was, therefore, for all intents and purposes, a student enrolled in a residency training programme and not an employee of the Respondent or its affiliated hospital. The terms of engagement, including the stipend and appointment letter, aligned with the status of a student undergoing academic training.
118. The Respondent further argued that the discontinuation of the Claimant from the residency programme and the consequent termination of his appointment as a resident were substantially justified. The Claimant was expected to adhere to the University's academic policies, which included attending lectures, tutorials, seminars, practical sessions, clinics, ward assignments, examinations, and other scheduled activities as per page 34 of the Graduate Programs Student Handbook 2021.
119. The Claimant was required to pass all continuous assessment tests with an average above 50% over the preceding two years, complete all rotations as scheduled with performance reviews recorded on a MAST/ISAF form, and have an approved research proposal by the end of the second year, while fourth-year residents had to submit a completed research project as per page 78 of the Residency Training Manual. The Residency Training Manual provided that there were three appraisals conducted per year by the Programme Director.
120. The eligibility examinations were divided into two parts, with the first done at the end of the second year and the second at the end of the fourth year. A candidate could only proceed to part II after passing part I, with a pass mark set at 50%. A candidate who failed part I with an overall score of 45% or above was allowed to resit within six months. A candidate scoring between 40% and 44% was referred to the Departmental Residency Training Committee, which could decide whether to have the resident repeat the year. A candidate who failed part I after a second resit was discontinued from the



programme, subject to the advice of the Academic Council, as per pages 78 and 79 of the Residency Training Manual.

121. The Respondent submitted that the Claimant's performance in his first year of residency training was below expectations. The Discontinuation Report dated 7th September 2022 noted various deficiencies, including lack of attention to detail, poor time management, lack of self-drive, limited interaction with faculty, and failure to complete and follow up on work-based assessments. The Claimant also failed to submit his research concept to the Departmental Research Committee, as evidenced in the end-of-rotation reports for the first year, attached at pages 19 to 23 of the Discontinuation Report.
122. In the second year, the Claimant showed further academic setbacks, including disinterest, distraction, and inaccurate feedback on patient follow-up. He missed several lectures, failed to submit his research concept, showed lack of respect for seniors, and required constant follow-up to complete tasks. He also failed to submit his logbook to record the number of patients he had reviewed, and there was no documentation of end-rotation continuous assessment tests or formal assessments, as indicated in pages 24 to 38 of the Discontinuation Report.
123. Due to these deficiencies, the Respondent required the Claimant to redo the rotation. The Board of Examiners found the Claimant ineligible to sit for the part I examinations and recommended that he repeat his second year and undertake all rotations afresh. The Claimant was assigned a new mentor to support his improvement, as noted on page 6 of the Discontinuation Report.
124. During his repeat year, the Claimant still showed no improvement. His mentor observed that although he was exceptionally intelligent, he remained disengaged and was not mentally present when left alone with patients in theatres. He lacked preparation for sessions, performed only under pressure, and had trouble keeping time. A critical comment from a consultant stated that the Claimant was "not a safe anesthetist as he did not involve himself much with departmental activities," as recorded on pages 34 and 37 of the Discontinuation Report.
125. Due to his persistent failure to meet performance expectations, the faculty met and recommended his discontinuation from the residency programme, as evidenced at page 217 of the Respondent's Bundle. Assuming, without admitting, that the Claimant was an employee, his performance deficiencies would have justified termination on grounds of poor performance under sections 43 and 45 of the *Employment Act*, which permit termination based on valid and fair reasons, including poor performance.
126. The Claimant, though not an employee, failed to meet the academic and practical performance targets required of a student in the residency programme.
127. In *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR, the court held that an employer is deemed to have substantive justification for termination if they genuinely believed that the reasons for termination existed at the time of making the decision. It is not necessary for the reasons to be proven as fact; rather, what matters is whether a reasonable employer in similar circumstances would reach the same decision.
128. The Respondent argued that as an academic institution, it had an obligation to ensure that only competent individuals progressed in the residency programme and were allowed to enter the medical profession. The Claimant's repeated underperformance justified his discontinuation. The Claimant, even during his repeat year, did not meet the requirements, making it necessary for the Respondent to discontinue him in line with its duty to maintain academic standards. The decision was based on clear, documented performance deficiencies.



129. Furthermore, in his appeal against the discontinuation, the Claimant did not dispute his poor performance, as recorded on page 217 of the Respondent's Bundle. He had been involved in periodic evaluations and appraisals conducted by his supervisors and had received timely and constructive feedback throughout his training. Despite these efforts, the Claimant failed to address the performance concerns.
130. The Respondent further submitted that the process of discontinuing the Claimant from the residency programme was procedurally fair. The discontinuation was conducted in accordance with the Graduate Student Handbook and the Residency Training Manual, which outlined the process for academic progression and discontinuation. The Claimant was required to report directly to the Director of his Residency Training Programme for oversight of his academic progress.
131. In June 2022, the Claimant was discontinued from the academic residency training programme due to repeated failure to meet the required standards, as evidenced in the discontinuation letter at pages 224 and 225 of the Respondent's Bundle. The discontinuation automatically resulted in the termination of his appointment as a Medical Resident, as he could no longer attend to patients. The terms of his appointment were clear in both the admission letter and the Residency Appointment Letter, as reiterated in the termination letter dated 17 June 2022.
132. At all times, the Claimant was subject to the Graduate Programmes Student Handbook and required to meet all academic standards. Having failed to meet these standards, he was given an opportunity to improve by repeating his second year but still showed no progress. Consequently, he was discontinued under clause 5.4.2 of the Student Code of Conduct.
133. The Respondent contended that the Claimant received fair treatment throughout the residency programme, with clear and transparent academic policies governing progression. In *Dayo v Ecart Services Kenya Limited (Cause 553 of 2019) [2025] KELRC 139 (KLR)* (30 January 2025), the court reiterated that the disciplinary procedure for poor performance is distinct from that for misconduct. The proper procedure, as established in *Kenya Science Research International Technical and Allied Workers Union v Stanley Kinyanjui & Magnate Ventures Ltd (Cause 273 of 2010)*, requires the employer to point out performance shortcomings and allow a reasonable time for improvement, typically two to three months.
134. In this case, the Claimant was granted a full repeat year to improve but failed to do so. He was informed of his shortcomings and met with faculty members, including Dr. David Odaba and Prof. Marcus Lance, to discuss his performance, yet he did not show measurable improvement. Contrary to the Claimant's submissions, he had access to his appraisals and evaluations through the Respondent's student portal, and the compiled report was made available to him during his appeal, as confirmed by Dr. David Odaba.
135. Throughout his training, he underwent periodic appraisals to assess his progress and provide feedback. The repeat year was designed to give him a chance to address his deficiencies, yet he failed to meet the required standards.
136. The Respondent further submitted that despite being granted an opportunity for improvement under a new mentor, the Claimant demonstrated no significant progress. The mentor assessed the Claimant and noted that while he possessed exceptional intelligence and capability, his disengagement from the program was a major concern. The Claimant continued to struggle with fundamental responsibilities such as punctuality and preparation, and he was unable to perform consistently without external pressure.



137. His disengagement was particularly evident in clinical settings such as the theatre, where he was expected to work independently with patients. The mentor's assessment, as documented in the Discontinuation Report at page 212 of the Respondent's Bundle, indicated that the Claimant remained unable to meet the required performance standards despite the extended training period and additional guidance. The Claimant was informed of this feedback.
138. The Claimant exercised his right to appeal the decision to discontinue him from the residency program by submitting an appeal letter dated 26th June 2022. Contrary to the Claimant's assertion in paragraph 24 of his submissions, the Respondent addressed all the issues raised in the appeal, including procedural concerns, and there is no basis for the court to reopen matters conclusively addressed at the appeal stage.
139. The Claimant was granted an opportunity to present his case before the Appeal Committee, which, after careful deliberations, recommended his reinstatement to the program on a probationary basis. This outcome was communicated to the Claimant through a letter dated 13th November 2020, as seen at page 224 of the Respondent's Bundle. However, despite this favorable outcome, the Claimant voluntarily declined the offer to resume training and did not return to the program.
140. Therefore, the Claimant's discontinuation was procedurally fair as he was given ample opportunities to meet the program's expectations.
141. The Respondent submitted that the Claimant was not an employee of the Respondent but a student enrolled in the residency training program. His status was governed by the Graduate Programmes Student Handbook and the Residency Training Manual, not the *Employment Act*, 2007. As such, the Claimant cannot allege unfair termination of employment and is not entitled to the reliefs sought.
142. The Respondent relied on *Wanjiku & 10 Others v Chief Registrar of the Judiciary & Another* (Cause 912 of 2014) [2017] KELRC 1696 (KLR) (21 February 2017), where the court found that in the absence of an employer-employee relationship, claims for unfair termination could not stand. The Respondent also cited *Thaiti v Eldoret Express Company Limited* (Employment and Labour Relations Cause 15 of 2022) [2023] KELRC 385 (KLR) (3 February 2023), where the court similarly held that without proof of an employment relationship, no claim for wrongful termination could succeed.
143. On the Claimant's demand for six months' salary amounting to Kshs. 1,080,000, the Respondent submitted that the Claimant's access to patients was solely in the capacity of a student, and he was only entitled to payments for periods when he actively engaged in patient care. Following his discontinuation, he no longer had authorization to attend to patients, and thus, his claim for back pay was invalid.
144. The Respondent relied on *Ezekiel Nyangoya Okemwa v Kenya Marine & Fisheries Research Institute* [2016] KELRC 971 (KLR), where the court held that employment remedies should be based on actual earnings at the time of exit. Similarly, in *Willis Owotsi v Attorney General* [2018] KELRC 457 (KLR), the court held that salaries and wages are compensation for work done and cannot be awarded for periods where no labour was provided.
145. The Respondent further argued that since the Claimant voluntarily declined to resume the residency program after the appeal decision reinstated him, he is estopped from claiming salaries for the period of discontinuation. Additionally, during the hearing, the Claimant introduced the claim for back pay for the first time, yet it had not been pleaded. Based on this alone, the claim should be dismissed. The Respondent further asserted that back pay is typically awarded in cases of reinstatement, which does not apply in the Claimant's case since he chose not to return.



146. Regarding the claim for one month's salary in lieu of notice, amounting to Kshs. 180,000, the Respondent submitted that the Claimant was subject to the Graduate Student Handbook and the Residency Training Manual, which do not provide for notice prior to discontinuation. The Respondent followed the prescribed procedure in discontinuing the Claimant, and he is not entitled to any payment in lieu of notice.
147. On the claim for cumulated leave days amounting to Kshs. 151,800, the Respondent submitted that the Claimant was a student and only permitted breaks as per the academic calendar. He was not entitled to leave days outside the prescribed schedule. The Claimant's payment statements, found at pages 21–24 of his bundle, indicate that he had no leave balance.
148. Even if the Claimant were deemed an employee, he failed to provide any evidence of unpaid leave days. *In Kamau v Panari Hotel (Cause 1874 of 2017)* [2023] KELRC 2107 (KLR) (20 September 2023), the court held that leave must be pleaded and specifically proven. The court stated that a claimant must provide evidence regarding the number of leave days accrued but untaken.
149. Regarding the claim for pension, the Respondent submitted that the Claimant, as a student, was not eligible for participation in the pension scheme. Even if he were considered an employee, participation in the scheme was not mandatory. The Claimant has not provided any evidence to show that he made the required 5% contributions to the scheme.
150. In *The German School Society & Another v Ohany & Another (Civil Appeal 325 & 342 of 2018 (Consolidated))* [2023] KECA 894 (KLR) (24 July 2023), the Court of Appeal held that a claimant must demonstrate active participation in a pension scheme to claim benefits. The Respondent also submitted that the court lacks jurisdiction to award pension benefits, relying on *Mumba & 7 Others (Sued on their own behalf and on behalf of predecessors and/or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 Others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) (Petition 3 of 2016)* [2019] KESC 83 (KLR) (8 November 2019), where the Supreme Court held that pension disputes should be addressed through statutory mechanisms provided under the *Retirement Benefits Act*, including the Retirement Benefits Authority and the Retirement Benefits Appeals Tribunal.
151. The Respondent further submitted that the Claimant's claim for damages for breach of employment laws was baseless, as the specific laws allegedly breached were neither pleaded nor particularized. The Claimant's discontinuation from the program was based on valid grounds, and he is not entitled to compensation for alleged unfair dismissal.
152. The Respondent cited *Oi Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR, where the Court of Appeal held that remedies for wrongful dismissal are subject to multiple factors, including the employee's contribution to termination, and should be awarded judiciously. Similarly, in *Josephat Munyao Kovulo v Teachers Service Commission* [2019] eKLR, the court held that where a dismissal is justified and fair procedure followed, the claimant is not entitled to the reliefs sought.
153. The Claimant's discontinuation followed due process as outlined in the Student Graduate Handbook and the Residency Training Manual, and thus, there is no basis for an award of damages for alleged wrongful termination.
154. Finally, regarding the claim for general damages for emotional, mental, and physical distress and professional disrepute, the Respondent submitted that the Claimant failed to adduce any evidence to support this claim, and therefore, it should be dismissed.



155. The Respondent submitted that the Claimant’s allegations of emotional, mental, and physical distress, as well as professional disrepute, were unsubstantiated. In *Monica Sang v Habib Bank Limited* [2019] KELRC 2064 (KLR), the court held that an employer’s requirement for an employee to explain their absence and any resultant disciplinary action does not amount to emotional torture or harassment. The court emphasized that employees, particularly in essential services, cannot unilaterally extend leave without consequence and that any stress arising from such actions is self-inflicted.
156. Similarly, in *Mbaya v Murban Movers Limited* (Cause E334 of 2023) [2024] KELRC 1350 (KLR) (6 June 2024) (Judgment), the court found that the claimant had failed to provide medical records to substantiate a claim of emotional distress and, therefore, could not recover damages on that basis. The Respondent further argued that the Claimant’s assertion, at paragraph 52 of his submissions, that restarting his residency led to delays in completing his training and meeting career milestones was neither pleaded nor raised at trial.
157. The court should therefore reject the claim as it is being improperly introduced at the submissions stage. In *Lemelita v Tourism Promotion Services (K) Ltd (Cause 515 of 2017)* [2023] KELRC 2174 (KLR) (22 September 2023) (Judgment), the court held that issues first raised during submissions fall outside the claim and cannot be considered, as parties are bound by their pleadings.
158. Likewise, in *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* [2014] eKLR, the Court of Appeal reaffirmed that submissions cannot replace evidence and that a party must prove its claim through proper evidence rather than relying on arguments advanced in submissions. The Respondent asserted that the Claimant had failed to establish any legal basis for the relief sought.
159. The discontinuation from the residency programme and the resultant termination of his appointment as a medical resident were not in an employment setting, and in any event, the process was substantially and procedurally fair. Consequently, the suit lacks merit and should be dismissed with costs to the Respondent.
160. I have examined all the evidence and submissions of the parties herein. From the evidence above, it is indeed true that the claimant was offered a residency training programme at Aga Khan University Nairobi campus. The letter stated as follows:

“The Aga Khan University

Faculty of Health Sciences

Medical College

September 3, 2019

Jonathan Philip Monda P. O. Box 34959 00100 Nairobi

Dear Dr. Monda,

RE: Residency Training Programme At Aga Khan University, Nairobi Campus

It gives us great pleasure to inform you that your application for admission to the Aga Khan University’s Master of Medicine (M.Med) Postgraduate Medical Education (PGME) residency training programme in Anesthesiology (Nbi) was successful.

This is a four-year training programme, which will start with registration and orientation on January 2, 2020. Details of salary, benefits and costs will shortly be made available through Human Resources. Please contact Ms. Margaret Muthee on telephone no. 0711xxxxx or



email: Margaret.muthee@aku.edu if you wish to receive further information at this point in time.

If you have negotiated any institutional sponsorship, clearly indicate that your current employer/sponsor will grant you paid study leave and will meet the cost of your training and/or your salary for the period of study. Such contractual arrangement/commitment by your sponsor should be presented to the university in advance of registration if this is possible.

We require you to acknowledge receipt of this letter and confirm your acceptance of this offer in writing by September 30, 2019.

Following this, we shall inform you about the orientation programme while our Human Resources Department will provide you with a formal written contract and further information on pre-employment processes.

With very best regards.

Yours sincerely,

Dr Dorothy Kamyn

Director, Postgraduate Medical Education

Aga Khan University

Nairobi Campus

Dr. Samina Mir

Programme Director

Department of Anaesthesiology(Nbi) Postgraduate Medical Education

Nairobi Campus

cc:

Recruitment Manager

Human Resources Department

Aga Khan University Hospital

161. In the letter as shown above, the claimant was offered a post in graduate training which was also coupled with an employment opportunity and that is why the letter lists out salary benefits and costs to be availed by the HR department. It is also true that the respondent terminated the claimant's residency vide a letter dated 13th June 2022 but backdated to 1/6/2022.

162. The claimant has averred that this termination of residency was in breach of the existing rules of the respondent and in particular article 60 of AKU graduate programme student handbook and article 5.3.1 of the said handbook. Article 6.0 of the AKU graduate programme student handbook states as follows:

6.0 Disciplinary Procedure.

6.1 Any breach of a disciplinary offence will be immediately reported to the dean/director of the students academic entity, or his/her designate.

6.2 Once informed the Dean/Director or his/her designate will:



- 6.2.2 Convene and refer the matter to the academic entity Disciplinary Committee for investigation.
- 6.2.3 Inform the University Registrar that a Disciplinary Committee has been convened.
- 6.3 While the Disciplinary Committee is investigating an offence, the Dean / Director may suspend the student or restrict him/her from specific or all campus based activities until the investigation is completed and a decision reached.
- 6.4 The Disciplinary Committee:
- 6.4.1 The academic entity Disciplinary Committee will be a standing committee and shall consist of at least five members of the faculty and senior staff of the University, one of whom shall be the Chairperson.
- 6.4.2 Members of the academic entity Disciplinary Committee will be appointed by the Dean/ Director for a one-year term, which may be extended for a further period of two years.
- 6.4.3 The Dean/Director will ensure there is continuity of membership on the Committee and will have the discretion to extend the tenure or co-opt members on the Committee whose tenure have expired and who are involved in on-going cases.
- 6.4.4 There must be a quorum of at least three members of the Committee present for a hearing to proceed.
- 6.4.5 The academic entity Disciplinary Committee will be entitled to use services of any personnel of the University as the Committee may deem appropriate for the purposes of assisting the Committee in conducting the disciplinary proceedings.”
163. The claimant has averred that no disciplinary committee was ever constituted to investigate the claims against him and therefore his termination was un procedural. The respondents have averred that the contract between them and the respondent was 2(two) fold and involved one for Master of Med Post graduate programme and the other for medical residency and they were complementing each other.
164. The respondents however agree that the claimant failed to meet the required academic and professional standards and this led to his discontinuation from the residency programme and this automatically led to the termination of the related stipend.
165. The respondents contend that the claimant breached the required policy especially failure to attend lectures and this is why he was discontinued.
166. Upon the claimant’s termination he appealed the discontinuation citing failure by the respondents to adhere to their own policy document. The appeal was considered and allowed with the claimant being reinstated to the residency programme vide a letter dated 13th November 2022. The acceptance of the appeal was in my view an admission of a wrongful initial discontinuation of the claimant from the programme. The main complaint by the claimant was failure by the respondents to adhere to the AKU graduate programme student handbook.
167. The respondents have not demonstrated that they constituted a disciplinary committee to investigate claims against the claimant. He was not given an opportunity to defend himself. This was particularly necessary due to the employment aspect of the contract which necessitates that an employee should not be terminated without due process.



168. After the appeals committee considered the appeal by the claimant he was reinstated to be allowed to complete his probation period. This decision was communicated to him vide the letter of 13th November 2022. The letter indicated in part that:
- i. The university is pleased to offer you the option to continue with the programme. The decision to terminate you has been dispelled.
 - ii. You would restart the probation period with a clear remedial plan in writing which you would be asked to sign.
 - iii. You will be provided with a mentor to guide you during this period”
169. The claimant declined to re-join the programme as advised in the letter above. He cited delay in considering the appeal amongst other reasons why he was unwilling to go back. The respondent also failed to address the claimant’s unpaid salary and unpaid leave days.
170. It is indeed true that the respondents having decided to reinstate the claimant unto the programme he was entitled to his back pay as reinstatement envisages putting him in a position he was in before the termination. It is also true that he is entitled to payment of any leave days owing.
171. The claimant having opted not to go back to his residency, he is only entitled to payment of his salary and leave not paid.
172. I therefore find for the claimant and I enter judgment for him as follows:
1. 6 months’ salary not paid between the termination and reinstatement period = $6 \times 180,000 = 1,080,000/-$
 2. Cumulated leave days as prayed kshs 151,800/-
 3. 1 month salary in lieu of notice = 180,000/-
Total 1,411,800/- Less statutory deductions.
 4. The claimant is also free to claim for his pension from the pension scheme.
 5. The respondents will pay costs of this suit plus interest at court rates w.e.f the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF MARCH, 2025.

HELLEN WASILWA

JUDGE

