



**Haji t/a Almumin High School v Andunga (Appeal E011 of 2023)
[2025] KEELRC 1625 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1625 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
APPEAL E011 OF 2023**

**J RIKA, J
MAY 30, 2025**

BETWEEN

ZAIBAB HAJI T/A ALMUMIN HIGH SCHOOL APPELLANT

AND

JAVAN MUYIA ANDUNGA RESPONDENT

*(An Appeal from the Judgment delivered on 12th April 2023 by
the Hon. Senior Principal Magistrate Nakuru, A.P. Ndege, in
C.M.E.L.R Court Cause No. 21 of 2019, between the Parties herein)*

JUDGMENT

1. The Respondent filed Claim in the Trial Court against his former Employer, the Appellant herein, on 11th April 2019.
2. He was employed as the Deputy Principal of the Appellant's School. His contract was terminated by the Appellant on 29th November 2017.
3. He presented a Claim for unfair termination. He was granted damages for unlawful and unfair termination at Kshs. 210,000 and damages for breach of contract at Kshs. 420,000 -total Kshs. 630,000, with costs and interest.
4. The Appellant appeals against the said Judgment, through her Memorandum of Appeal, dated 8th May 2023.
5. There are 4 Grounds of Appeal, some which appear repetitious, namely: -
 - I. The Trial Court misdirected itself, and based its findings on wrong considerations.
 - II. The Trial Court erred in law and fact, by awarding damages to the Respondent in total disregard of the circumstances upon which the case was premised.



- III. The Trial Court erred by disregarding the Appellant's evidence.
- IV. The Trial Court erred by disregarding the submissions of the Appellant.
6. The Appellant proposes that: -
- a. The Appeal is allowed.
 - b. Judgment in favour of the Respondent is set aside.
 - c. Costs of the Appeal and the Trial, to the Appellant.
7. The Parties agreed to have the Appeal considered and determined on the basis of Record of Appeal and their submissions. They confirmed filing and exchange of their submissions at the last appearance before the Court, on 29th April 2024.
8. The Appellant submits that termination was fair. The Respondent was issued warning letters before termination. He refused to supply the Respondent with his Teachers Service Commission certificate of registration. He was consequently dismissed under Section 44 [4] [c] of the *Employment Act*, 2007. Lastly, the Appellant submits that the Respondent was on a fixed-term contract. The Trial Court erred by awarding him damages based on the outstanding period of his contract.
9. The Respondent submits that the Appellant did not give valid reason to justify termination. He was on a 3-year contract. He served for 1 ½ years. Termination was unlawful in substance and procedure. The Respondent was not presented with specific charges, and heard in the company of a colleague, or a trade union representative of his choice.
10. The Respondent submits that he would have served the balance of his contract, a period of 1 ½ years. Relying on E&LRC decision, *Mary Mutanu Mwendwa v. Avuda Ninos De Africa Kenya Limited* [2013] e-KLR, the Respondent winds up his submissions with the argument that the Trial Court did not err, by granting him compensation for unfair termination and damages for contractual breach, totalled at Kshs. 630,000.

The Court Finds: -

11. The Court does not find fault with the Trial Court's conclusion that termination was unfair and unlawful.
12. There were 2 letters of termination, both dated 29th November 2017, issued by the Zainab Haji to the Respondent.
13. The first letter indicates that the Respondent was dismissed due to his failure to meet the school's operational requirements. The second states that the Appellant had evaluated the Respondent's performance, over the past 1½ years, and found it unsatisfactory.
14. The reasons given in the 2 letters were not consistent.
15. There was no evidence placed before the Trial Court that the Respondent was heard, on any of the allegations made against him by the Appellant. If he had failed to supply his TSC registration certificate, the Appellant ought to have presented him with a specific charge to that effect, and given him a hearing in accordance with Sections 41 and 45 of the Employment.
16. If his performance was evaluated and found wanting, he ought to have been taken through a PIP and given a hearing if he did not improve.



17. The Appellant alluded to warnings issued to the Respondent, preceding termination. Warnings are not a substitute for a proper hearing, under Sections 41 and 45 of the [Employment Act](#).
18. The Court does not think however, that the Trial Court was justified, in granting the Respondent 6 months' salary as damages for unfair and unlawful termination; and an additional 12 months' salary as 'compensation.'
19. The specific figures granted were Kshs. 210,000 [6 months' salary as damages for unlawful and unfair termination]; and, Kshs. 430,000 [described in the Judgment as 12 month' salary compensation, and also as damages for breach of contract].
20. In total the Respondent received equivalent of 18 months' salary as compensation for the same act of wrongful termination.
21. Section 49 [1] [c] of the [Employment Act](#) allows the Court to grant the remedy of compensation, to a maximum of 12 months' salary, in compensation for unfair termination.
22. In assessing what is an appropriate remedy, the Court is guided by Sections 49 [4] and 50 of the [Employment Act](#). This includes consideration of the Employee's length of service with the Employer. The Trial Court considered that the Respondent had served for 1 ½ years.
23. It includes consideration of the reasonable expectation of the Employee, as to the length of time, for which his employment with the Employer might have continued, but for the termination. Again the Trial Court considered that the Respondent was on a 3-year contract, had served half the period, and reasonably expected to serve another 1 ½ years.
24. Having looked at the past service, and anticipated service, the Trial Court awarded the Respondent equivalent of 6 months' salary as damages for unfair and unlawful termination, under Section 49 [1] [c] of the [Employment Act](#).
25. The award should have rested there. There was no reason to delve into additional compensation, over the same act of wrongful termination.
26. In this Court's *G.M.V v Bank of Africa Limited* [2013], citing the House of Lords, in *Eastwood & Another v. Magnox Electric PLC ; McCabe v. Cornwall County Council & Others* [2004] UKHL 35, explained limits on compensatory awards as follows:

“In fixing these limits on the amount of compensatory awards, Parliament expressed its view on how the interests of the Employers and Employees, and social economic interests of the country as a whole are best balanced in cases of unfair dismissal.

It is not for a Court to depart significantly from the balance set by Legislature. To treat the statute, as prescribing the floor, would do just that. It would be inconsistent with the purpose Parliament sought to achieve, by imposing limits on compensatory awards payable in respect of unfair dismissal.”
27. The Court of Appeal in *Elizabeth Wakanyi Kibe v. Telkom Kenya Limited* [2014] e-KLR; and more recently, *Telkom Kenya Limited v. Ngokonyo & 2 Others* KECA [2024] 880 [KLR], held that compensation for unfair and unlawful termination can only be for lack of fair procedure and substantive reasons. Employment remedies must be proportionate to the economic injury sustained by the Employee. The Court should discourage Employees from replicating wrongs, and multiplying remedies. There was a single act of wrongful termination of the Respondent's contract by the Appellant, which was remedied by statutory compensation.



28. Grant of contractual damages in addition to statutory compensation, risks turning the 12 months' salary cap, into a floor, which is contrary to the legislative intent. The Trial Court had the leeway to grant the Respondent up to 12 months' salary in compensation for unfair termination. It awarded 6 months' salary in compensation, having taken into consideration, all the relevant factors. In the respectful view of this Court, the Trial Court erred, in awarding separate contractual damages at Kshs. 420,000.

It is ordered: -

- a. The Appeal is partly allowed.
- b. The award of damages for breach of contract in the sum of Kshs. 420,000 is set aside.
- c. The Appellant shall pay to the Respondent equivalent of 6 months' salary in compensation for unfair and unlawful termination at Kshs 210,000, as ordered by the Trial Court.
- d. No order on the costs of the Appeal.

DATED, SIGNED AND DELIVERED ELECTRONICALLY, AT NAKURU THIS 30TH DAY OF MAY 2025.

JAMES RIKA

JUDGE

