



Juma v East Africa Villages and Rural Mobility Limited (Cause E043 of 2024) [2025] KEELRC 1448 (KLR) (20 May 2025) (Judgment)

Neutral citation: [2025] KEELRC 1448 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E043 OF 2024**

**JK GAKERI, J
MAY 20, 2025**

BETWEEN

LAWRENCE ALLOYCE JUMA CLAIMANT

AND

EAST AFRICA VILLAGES AND RURAL MOBILITY LIMITED . RESPONDENT

JUDGMENT

1. The claimant instituted the instant suit by a Memorandum of Claim filed on 22nd May, 2024 alleging that the respondent had terminated his employment unlawfully and unprocedurally, and prays for:
 - i. A declaration that the termination of employment was wrongful.
 - ii. An Order that the respondent pays full terminal benefits under paragraph 22 from the date of termination till determination of the suit.
 - iii. Damages including exemplary, compensatory and punitive damages.
 - iv. Certificate of service.
 - v. Costs of this suit with interest at court rates.
 - vi. Any other auxiliary compensatory relief the court may deem fit and just to grant.
2. The claimant's case is that he was employed by the respondent on 1st December, 2021 as a Data and Innovation Manager, was promoted to the position of Field Manager in 2023 and was in charge of Kisii Smart Community a Project Schedule run for 8 months from 1st May, 2023. That he was sent on compulsory leave for 14 days vide email dated 18th August, 2023 from Olujimi Akindele, a director of the respondent, which was extended by a further 14 days, was questioned by one Solomon Wachira of Stealth Africa on 5th September, 2023, received a notice to show cause on 13th September, 2023 responded requesting for particulars, hearing was conducted by Mr. Olujimi on 15th September, 2023,



no witnesses testified, no investigation report was provided and a letter of termination of employment on 28th September, 2023. That his advocate's demand elicited particulars of the alleged misconduct, not previously availed, request notwithstanding.

The claimant denied all the allegations levelled against him.

3. The claimant avers that loss of employment had caused him mental anguish and financial constraints.

Respondent's case

4. The respondent, on the other hand admits that it engaged the claimant under periodic contracts in different capacities from 1st December, 2021 and became a Field Manager on 1st May, 2023.
5. It admits having requested the claimant to proceed on compulsory leave to pave way for an inquiry into suspected fraudulent transactions, but on full salary and benefits.
6. It is the respondent's case that it contracted Stealth Africa Consulting to conduct forensic investigations of the alleged fraudulent transactions.
7. The respondent avers that the claimant was accorded sufficient time to respond to the notice to show cause and supplied with necessary information to do so, was accorded adequate notice of the disciplinary hearing, and allowed to have a representative and call witnesses to defend himself and was paid all terminal dues.
8. That the claimant did not request for any information nor appeal the termination of employment.
9. The respondent denies that the termination of the claimant's employment was unlawful or unprocedural.
10. The claimant responded to the respondent's response to the claim reiterating the contents of the memorandum of claim and denying having committed any fraud or falsified records of spoilt milk as it was not his role to keep records. He averred that there was no provision for appeal.

Claimant's evidence

11. On cross-examination, the claimant confirmed that he was employed on a contractual basis and as at the date of termination of employment, he was serving under an 8 months contract and was the Field Manager.
12. He admitted having received a notice to show cause and responded vide email dated 13th September, 2023 at 2:50pm, was invited for a disciplinary hearing and attended, but testified that he was not given an opportunity to defend himself or be heard.
13. He admitted that his employment contract prohibited conflict of interest under Clause 1.4.
14. The witness admitted having an interest in Majime Consulting Ltd, and had declared the same to Jimi but did not file the declaration or evidence to show that Mr. Jimi deemed it alright.
15. The witness confirmed that the notice to show cause was based on conflict of interest.
16. He further admitted that the leave days claimed accrued from a previous contract which ended before the one he was serving under and was entitled to 21 days a year and had no evidence to show that he sought leave and it was denied.
17. The claimant admitted that bonus was based on the achievement of the employer's objectives and was not payable if the objectives were not achieved.



18. Finally, the claimant confirmed that his employment was terminated during the currency of the last contract of employment.
19. On re-examination, the claimant denied having received any gifts and had disclosed to the employer about the company and it was addressed during the hearing and the respondent was aware when he formed the company and reimbursed the cost.
20. The claimant testified that other employees owned companies and their employment was not terminated or other action taken against them.
21. The claimant confirmed that although Majime was intended to be the local employer for the projects in Kenya, the respondent did not take it up as they incorporated their own company and the contract was never signed.
22. It was his testimony that he had oral permission to continue in those other positions and had an email on record to that effect.

Respondent's evidence

23. On cross-examination, RWI Olujimi Akindele, admitted that he did not avail the final version of the investigation report to the claimant and the hearing took place on 15th September, 2023 and the investigation report finalised on 25th September, 2023.
24. The witness further admitted that it was not the respondent's practice to avail report or evidence to employees but admitted that the findings should have been given to the claimant since the respondent relied on the preliminary findings to charge the claimant and that the report implicated other employees as well.
25. Mr. Olujimi Akindele confirmed that the notice to show cause was issued two days before the hearing and the claimant did not request for more time and attended the hearing alone. He denied having used the words "stupid" and "liar" and other unpalatable words, yet the terms are appear on the transcript of the Disciplinary hearing held on 15th September, 2023.
26. The witness confirmed that he had had discussions with the claimant's involvement in Majime as he was to be retained as a consultant as Majime was to be sub-contracted by their respondent for purposes of some duties as well payment of salary and statutory deductions, but incorporated a new company and notified the claimant.
27. The witness testified that the claimant directed the respondent to work with other companies without disclosing that he had an interest in those companies and did not disclose irregularities.
28. That he was aware that the claimant had an interest in Lakeside and other affected employees such as Cornelius were released from the company.
29. RWI confirmed that during the investigations, the claimant was holding the most senior role, was aware of the fraud and colluded with the fraudsters.
30. The witness testified that the price of milk changed over time and the claimant negotiated the price and the largest off taker of milk changed from time to time though Ogembo was the largest at one time. He testified that Lakeside was not formed to take up excess milk and the claimant sold excess milk and there were allegations of waste due to spoilage by companies the claimant was involved in.
31. RWI stated that record keeping was undertaken by the claimant before a Finance Manager was on-boarded and the claimant had not been involved in any other form of misconduct previously.



32. He admitted that Babra could have given misleading information about the claimant but the respondent relied on other employees as well and had discussed Babra with the claimant, who was very agitated about her.
33. The witness further admitted that the investigation report was not conclusive, the respondents accounting system was insufficient and process did not exist.
34. The witness equally admitted that the respondent had many financial challenges, the main one being non-payment of off-takers and disloyalty by managers.
35. That the management was responsible for record keeping, Babra, Otieno Odhiambo and the Field Manager, the claimant, to whom the Finance Manager was answerable.
36. RWI testified that the issues were self-dealing and the claimant was implicated and antagonistic, and the respondent did more to Zaid than it did to the respondent.
37. According to the witness, the companies the claimant had interest were in competition with the respondent precipitating a conflict of interest.
38. On re-examination, Mr. Olujimi confirmed that the notice to show cause informed claimant that he could attend with a colleague, but attended alone. It was his testimony that the transcript on record was incomplete.
39. That he had not given the claimant consent to be involved in other businesses and the letter of termination of employment stated the reason for termination.

Claimant's submissions

40. On termination of the claimant's employment, counsel for the claimant cited the decision in *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR, to urge that the termination of the claimant's employment was characterised by procedural flaws including insufficient notice and cited the decisions in *Reboi V Forum for African Women Educationists (FAWEK)* 2024 KEELRC 13492 (KLR) and *Post Corporation of Kenya V Andrew K. Tanui* [2019] eKLR, to submit that the notice was insufficient to prepare a defence.
41. On lack of particulars, counsel submitted that the respondent did not furnish the claimant with evidence of the alleged offences.
42. Concerning the reason(s) for termination of employment reliance was placed on *Muthaiga Country Club V Kudheiha Workers* [2017] KECA 282 (KLR) and *Josphine M. Ndungu & Others V Plan International Inc* [2019] KEELRC 663 (KLR) to urge that once an employee establishes a prima facie case that termination of employment was unfair, the burden shifts to the employer to prove that it was fair.
43. Counsel submitted that while the claimant discharged his burden, the respondent did not demonstrate that it had a substantive justification for the termination.
44. On reliefs, counsel submitted that the claimant was entitled to 2 month's salary in lieu of notice, performance bonus, unpaid wages for September 2023 unpaid leave days, compensation for wrongful termination Kshs.10,000,000.00, exemplary damages Kshs.10,000,000.00, Certificate of service and compensation under Section 49(1) of the *Employment Act* and costs.



Respondent's submissions

45. As to whether termination of the claimant's employment was lawful, the respondent's counsel submitted that it was in that the respondent had a valid reason to do so as required by the provisions of Section 45(2) of the *Employment Act*, namely; breach of contractual duties engagement in fraudulent actions, acts, of financial concealment, misrepresentation, professional misconduct and failure to comply with duties as expected by the employer.
46. Counsel, further urged that the termination of employment was conducted in accordance with a fair procedure in that the respondent issued the claimant with a notice to show cause, engaged an external investigator to investigate the concerns and a report was prepared implicating the claimant in misconduct and the employer considered all the facts in the dismissal of the claimant.
47. Reliance was placed on the Court of Appeal decision in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others* [2019] eKLR to urge that a termination of employment must be substantively and procedurally fair.
48. On reliefs, counsel submitted that the claimant was not entitled to any as termination of his employment was fair.

Analysis and determination

49. It is common ground that the claimant was employed by the respondent from 1st December, 2021 and worked until 28th September, 2023 when his employment was terminated allegedly for conflict of interest among other accusations.
50. The claimant contends that the dismissal was unfair as he had disclosed his interest in the companies that conducted business with the respondent and was not accorded an opportunity to defend himself.
51. The respondent, on the other hand maintained that the dismissal was justified and conducted in accordance with the law.

The issues that commend themselves for determination are:

- i. Whether termination of the claimant's employment was lawful.
 - ii. Whether the claimant is entitled to the reliefs sought.
52. (See *Jennifer Nyambura Kamau V Humprey Mbaka Nandi NYR CA* [2013] Eklr and the sentiments of the Court of Appeal in *Daniel Toroitich Arap Moi V Mwangi Stephen Muriithi & another* [2014] eKLR).
 53. On termination of employment, it is trite law that for a termination of employment to pass the fairness test, it must be demonstrated that the employer had a valid and fair reason to dismiss the employee and the dismissal was conducted in accordance with a fair procedure.
 54. Put in the alternative, it must be proved that there was a substantive justification for the dismissal and the process was fair see *Naima Khamis V Oxford University Press (EA) Ltd* [2017] eKLR, and *Walter Ogal Anuro V Teachers Service Commission* [2013] eKLR
 55. In this case, the respondent accused the claimant of various forms of misconduct including conflict of interest, which the claimant's employment contract outlawed and gifts had to be disclosed. The claimant was accused of being engaged with 3rd parties doing business with the employer without consent of the employer.



56. He was also accused of engaging in fraudulent transactions to the detriment of the employer.
57. The claimant admitted having interests in Majime Consulting Ltd Zaida Agri-Solutions Ltd and Lakeside Organic Ltd, but denied any conflict of interest as the companies were incorporated with knowledge of the respondent's officials and approval in the case of Majime Consulting Ltd and Lakeside Organic Ltd and the claimant had declared interest in other entities in 2021 and one Olujimi approved the same as long as the claimant was a passive owner.
58. Mr. Olujimi Akindele testified that no contract was concluded with Majime as the respondent had its own company and the claimant directed the respondent to companies he had substantial interest without disclosing the other parties as the investigation revealed.
59. The Notice to show cause accused the claimant of conflict of interest, fraudulent actions, dereliction of duty and unprofessional conduct and the claimant responded to the allegations vide email dated 13th September, 2023.
60. Although the claimant admitted on cross-examination that he had no documentary evidence to prove that he disclosed his interest in the companies and reimbursement of the costs of incorporating Majime Consulting Ltd, the contents of the response sound credible and honest and Mr. Olujimi did not deny the purpose for which Majime was incorporated.
61. Notably, although the investigators questioned the claimant, the report dated 25th September, 2023 makes no reference to what he told the investigators and what role he was personally playing in the running of the companies.
62. It is also evident that the investigators did not question Mr. Olujimi or Mr. Thibaut on what they knew about the alleged companies. From the claimant's response to the notice to show cause, it would appear that they were aware that the companies existed and Mr. Olujimi confirmed as much.
63. Significantly, the claimant brought out the details about the three companies because the notice to show cause lacked particulars on any of the allegations and the report of the forensic audit of the respondent was not availed to the claimant for information.
- Similarly, the claimant sought clarification but none was provided.
64. In sum, none of the five (5) charges enumerated by the notice to show cause dated 13th September, 2023 was supported by particulars and no evidence was availed at the hearing save for the exchange between Mr. Olujimi and the claimant.
65. In determining this issue, the court is guided by the provisions of the [Employment Act](#) and case law.
66. Section 43(2) of the [Employment Act](#) provides that:
- The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
67. It is trite that all that the employer is required to demonstrate is that it had reasonable grounds for the genuine believe that reasons for termination of the employee's employment existed. See *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] eKLR and *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 3 Others* [2017] eKLR.
68. The salient question is whether Mr. Olujimi genuinely believed that he had reasonable grounds for the decision to dismiss the claimant. This is because he did it alone on 15th September, 2023 at the



- conclusion of the hearing and before he had received the forensic Audit report which is dated 25th September, 2023 and which could not have been availed to the Claimant for purposes of the hearing. However, he confirmed on cross-examination that he relied on a Preliminary report.
69. Strangely, the notice of dismissal made no reference to the investigation report or any other evidence or foundation for the decision and identified no particular reason(s) for dismissal of the claimant from employment, although Mr. Olujimi testified on re-examination that the letter indicated the reason for termination of the claimant's employment.
 70. In the court's view, and having regard to all the circumstances surrounding the claimant's dismissal from employment, the court is not persuaded that the respondent has proved that it had a reason(s) to terminate the claimant's employment as by law required.
 71. An elaborate articulation of the reason(s) for termination of the claimant's employment would have significantly embellished the respondent's case.
 72. Section 45(2)(c) of the Employment Act provides that the employer must prove that the termination of the employee's employment was conducted in accordance with a fair procedure.
 73. The provisions of Section 41 of the Employment Act set out the procedural elements of a fair termination or dismissal from employment and as held in Pius Machafu Isindu v Lavington Security Guards Ltd [2017] eKLR, the provisions of Section 41 of the Employment Act are mandatory.
 74. In Postal Corporation of Kenya V Adrew K. Tanui [2019] eKLR, the Court of Appeal isolated the essential elements of procedural fairness under Section 41 of the Employment Act as; explanation of the grounds of termination of employment in a language understood by the employee, the reasons for which termination of employment is being considered, entitlement of the employee to the presence of another employee of his/her choice when the explanation made and hearing and considering the representations made by the employee and the employee of his choice.
 75. In the instant case, it is evident that the claimant was issued with a notice to show cause which identified the alleged charges namely; (i) "engaged in outside exploits with 3rd parties commercially related with your employer" (ii) through your alleged fraudulent actions you continually proceeded to conceal your actions, overtly by withholding detailed financial information and provided misleading statements... (iii) you also solicited the support of your colleagues to enact fraudulent schemes, conceal truths and provide misrepresentations to employer" (iv) "you engaged in continuous gross dereliction of duty in financial oversight and reporting to the employer by taking over actions well as engaging in severe deliberate negligence with respect to the management of compensation, provision of work benefits and over sight over expenses" (v) "you engaged in unprofessional conduct in the workplace with respect to communication with other employees and misused your authority over such employees for your personal gain...".
 76. I have reproduced a significant portion of the notice to show cause to provide a snapshot of how the document was framed. The Notice of dismissal was different.
 77. Clearly, the notice to show cause lacked essential facts and/or details to enable the claimant respond effectively. The charges were framed in terms that can best be described as generalised, vague and circumlocutious, not easily discernible.
 78. Puzzlingly, neither clarifications nor supporting documentation was availed to the claimant despite written request vide email dated 13th September, 2023 at 9:19pm.



79. It requires no belabouring that a notice to show cause ought to clearly set out the specific charges the employee is facing and the documents which form the basis of the charge must be availed to facilitate the employee in preparation of their response.
80. The respondent's generalized, rather vague and circumlocutious charges did not in the court's view meet the threshold of charges of grounds for termination of employment.
81. The reasons for which termination of employment is being considered ought to inform the employee the actual allegations.
82. The charges must be clear, simply stated and factual, not hypothetical.
83. The hearing process adopted by Mr. Olujimi can be faulted in various respects; first, the notice to show cause did not accord the claimant time to respond to the allegations as submitted by the claimant's counsel. Second, the hearing was slated one (1) after issue of the notice to show cause, third, the meeting had no agenda and was attended by Mr. Olujimi and the claimant only, fourth, Mr. Olujimi dismissed the claimant on that day and finally, the notice of dismissal is silent on the right of appeal.
84. Needless to belabour, the purpose of the notice to show cause is to inform the employee that certain facts have emerged and required his/her response to enable the employer decide whether or not further action against the employee is necessary, hence the requirement for availment of the documents or reports on which the charges are based.
85. The respondent did not accord the claimant sufficient opportunity to respond to the allegations but he did, albeit grudgingly owing to the lack of particulars.
86. Second, the one day notice of the disciplinary hearing was patently insufficient and unreasonable. The fact that the claimant did not ask for more time notwithstanding. Although what constitutes reasonable time is a question of act and varies from circumstance to circumstance, a one day's notice does not meet the threshold. The fact that the claimant did not protest cannot avail the respondent. One day's notice was, in the court's view insufficient for the claimant to look for a colleague to accompany him to the hearing, a right guaranteed by law. It is not surprising that he attended alone.
87. Thirdly, it is clear that the entire process was conducted by one person, Mr. Olujimi Akindele, the Director of the respondent. He did not explain the charges to the claimant in a language he understood as ordained by law and was the complainant, prosecutor, witness and the Judge at the same time as he drafted and signed the notice to show cause, convened and conducted the hearing single handedly and dismissed the claimant at the conclusion of the hearing and issued the notice of dismissal.
The claimant was guilty as charged.
88. The portion of the transcript of the hearing on record leaves no doubt that Mr. Olujimi's mind was made up.
89. The hearing was a mere formality to create some semblance of legality of the dismissal.
The hearing in the court's view, was a sham.
90. Fourth, Mr. Olujimi heard but did not consider the claimant's representations made during the hearing as the dismissal was instantaneous. He had not retired to review the transcript and the claimant's repeated requests for specificity were rebuffed.
91. As adverted to elsewhere in this Judgment, the respondent did not avail any documents to the claimant to enable him defend himself effectively.



92. Instructively, the claimant had been forced to proceed to compulsory leave to facilitate an auditor's investigations into certain allegations, initially for 2 weeks, but was extended to 14th September, 2023, (a total duration of 28 days).
93. Although the notice to show cause made reference to the audit/investigations as the foundation of the charges, a copy was not availed to factualize and contextualize the generalized charges, nor was it availed at the hearing, perhaps because the investigation was concluded after the hearing on 15th September, 2023, and the report is dated 25th September, 2023.
94. Availment of documents and evidence the accuser will rely on is an essential ingredient of the right to be heard and fair administrative action, which are constitutional imperatives.
95. The foregoing is fortified by the sentiments of the Court of Appeal in *Ol Pejeta Ranching Co. Ltd V David Wanjau Muhoro* [2017] eKLR where the appellant declined to furnish the respondent with an audit report to enable him respond to the allegations.

The court had this to say

“Fairness in the circumstances would inform that the respondent be supplied with the allegations against him in sufficient detail to adequately prepare for a defence...

That, coupled with the fact that he had no knowledge of the audit findings, he had no fair chance to advance his defence. In the circumstances, therefore, it cannot be, said that the termination process was fair”.

These sentiments apply on all fours to the facts of the instant case.

96. Similarly, in *Regent Management Co. Ltd V Wilberforce Ojiambo Oundo* [2018] eKLR, the Court expressed displeasure with the appellant's refusal to avail documents the respondent had requested for.
97. Finally, in *Postal Corporation of Kenya V Andrew K. Tanui* (supra) the court stated:

“...The Board had in its possession the very document that formed the basis of the charges framed against the respondent but kept it away from him. Even in criminal trials which are more serious in nature, an accused is entitled to the statements that support the charges laid against him. That is the essence of fairness even outside a judicial setting...”

98. In the instant case, the claimant's email dated 13th September, 2023, requested for specific details in relation to the charges on conflict of interest, engagement with 3rd parties, fraudulent actions and financial misinformation, soliciting colleagues for fraudulent schemes and gross dereliction of duty.
99. In a nutshell, all the charges levelled against him and concluded as follows:

“I look forward to the disciplinary hearing scheduled for Friday 15th September, 2023 at 7:00am at Kamel Park Hotel and hope that you will graciously provide the additional context I have requested. I am confident that, with that additional context and the opportunity to provide more detailed information and clarification during the hearing my innocence regarding these allegations will become evident...”

100. Strangely, although the claimant responded to the notice to show cause on the same day, perhaps to underscore the importance of specific details on the allegations for purposes of mounting an effective defense to establish his innocence, the respondent was unresponsive and hearing proceeded as if no request for information had been made.



101. The specific details and context requested for by the claimant were invariably in the forensic audit report, which the respondent had in some form, but adamantly keep it to itself thereby impeding the claimant's right to fair hearing.
102. Finally, Mr. Olujimi appear to have been in a hurry to conclude the hearing and his parting shot was "you are dismissed".
103. Section 45 of the Employment Act provides:
SUBPARA (1)
...
SUBPARA (2)
...
SUBPARA (3)
...
SUBPARA (4)
A termination of employment shall be unfair for purposes of this part where
SUBPARA (a)
....
SUBPARA (b)
It is found that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.
104. In making the determination whether it was just and equitable for an employer to terminate the employment of an employee, the court is enjoined to consider, the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision compliance with the provisions of Section 41 and 51 of the Employment Act is also considered.
105. In this case, the respondent complied with neither the provisions of Section 41 nor 51 of the Act and additionally failed to inform the claimant that he could appeal the decision of Mr. Olujimi to the Board of the organization, if any.
106. For the foregoing reasons, it is the finding of the court that the procedure adopted by the respondent did not meet the threshold of having been a fair one.
107. In sum, it is the finding of the court that termination of the claimant's employment by the respondent was unlawful and unfair within the meaning of Section 45 of the Employment Act.

Appropriate Reliefs

i. Declaration

108. Having found that the termination of the claimant's employment by the respondent was unlawful and unfair, a declaration to that effect is merited.



ii. Two month's salary in lieu of notice

109. Clause (d) of the claimant's Contract of Employment dated 1st December 2021 provided that contract was terminable by a two (2) month's written notice or 2 months' salary in lieu of notice.
110. Having found that the dismissal was unfair, the claimant is awarded two (2) month's salary in lieu of notice.

iii. Unpaid leave 30.75 days

111. The claimant's written statement dated 15th May, 2024 makes no reference to the fact that he did not proceed on leave, when the leave days accrued and the number of pending leave days.
112. On cross-examination, the claimant stated that the days accrued from the previous contract which ended before the current one.
113. The claim lacks particulars and is declined.

iv. Performance bonus for 2023 USD 2400

114. The claimant's contract of employment dated 1st December, 2021 made no reference to bonus payable to the claimant and his written witness statement is silent on the issue of bonus. It is unclear to the court to whom, when and how much bonus was payable to an employee.
115. However, during cross-examination, the claimant admitted that bonus was payable if the objectives of the employer were met and none was payable if they were not achieved.
116. The claimant, however, tendered no evidence to show that the objectives for 2023 had been met to qualify for bonus and did not file a performance appraisal report.
117. The claim was declined.

v. 12 months compensation

118. Having found as above, the claimant qualifies for compensation under Section 49(1)(c) of the *Employment Act* subject to the provisions of Section 49(4) of the Act.
119. The court has considered that the claimant had served the respondent for a fairly short time, did not appeal the decision of Mr. Olujimi Akindele or express his wish to remain in the employment of the respondent.
120. Finally, the court has also considered that the claimant did not demonstrate how he attempted or mitigated loss and had no previous instance of misconduct.
121. In the circumstances, the court is satisfied that the equivalent of three (3) month's gross salary is fair.

vi. Exemplary, compensatory and punitive damages.

122. Applying the test laid down in *Rookes V Bernard & Others* [1964] A.C 1129 and *Obonyo & another V Municipal Council of Kisumu* [1971] EA 91, on the circumstances in which exemplary damages are awardable, the court is not persuaded any of the circumstances has been demonstrated for an award of exemplary damages.
123. The claim lacks supportive evidence and it is dismissed.



vii. Certificate of service

124. The claimant is entitled to a Certificate of Service by dint of Section 51 of the [Employment Act](#).

125. In conclusion, Judgment is entered in favour of the claimant against the respondent in the following terms:

- a. Declaration that termination of the claimant's employment was unfair.
- b. Two (2) month's salary in lieu of notice USD 4600.
- c. Equivalent of three (3) month's gross salary compensation USD 6900.
- d. Certificate of service.
- e. Costs of this suit.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 20TH DAY OF MAY, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of [the Constitution](#) which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of [the Constitution](#) and the provisions of Section 1B of the [Civil Procedure Act](#) (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

