



**Neser v Globology Limited & 7 others (Cause E033 of 2024)
[2025] KEELRC 1777 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEELRC 1777 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E033 OF 2024
NZIOKI WA MAKAU, J
JUNE 19, 2025**

BETWEEN

CHRISTIAN FRIEDRICH NESER CLAIMANT

AND

GLOBOLOGY LIMITED 1ST RESPONDENT

RODNEY MOHATLEGO SEEMA 2ND RESPONDENT

VERA NYAGUTHI WACHIRA 3RD RESPONDENT

TACO THIJS VAN DER MAST 4TH RESPONDENT

GEORGE OPONDO OOKO 5TH RESPONDENT

OKOTH PRIT'T OTIENO 6TH RESPONDENT

FREDRICK OBONDO ONYANDO 7TH RESPONDENT

ANNE WANJIRU NG'ANG'A 8TH RESPONDENT

JUDGMENT

1. Through an agreement dated 17th June 2019 the Claimant was employed as the Chief Executive Officer of the 1st Respondent on a permanent and pensionable basis at a basic salary of USD 5,650. On 30th June 2021 during the pendency of his employment, a board resolution on the company Employee Share Option (ESOP) resolved that he would benefit from the scheme. He asserted that he served diligently, till 30th October 2023 when he was called to a meeting in which representatives of the 1st Respondent pushed for a disengagement. Upon failure to agree on mutual separation the Claimant averred that on 5th January 2024 the Respondents notified him that they were commencing disciplinary proceedings. Following this notice, it was the Claimant's case that he was taken through a traumatic disciplinary process, replete with malice and marred with illegalities culminating in his dismissal on



15th April 2024. He averred that the dismissal was unprocedural and without reason. Consequently, he sought the following reliefs among others:

- a. A declaration that the termination of his employment was unfair;
 - b. A declaration that the termination of his employment was unlawful;
 - c. A declaration that he was unlawfully discriminated against entitling him damages;
 - d. A declaration that edging his advocate from the disciplinary process violated his right to representation under Article 50(2)(g) of the Constitution;
 - e. A declaration that denying him the right to appeal the disciplinary decision violated his rights under Article 50 of the Constitution and the Employment Act;
 - f. Damages for discriminatory treatment;
 - g. Damages for defamation
 - h. Damages for mental and psychological torture
 - i. A declaration that the vehicle KBX 925V constitutes part of the emoluments of the Claimant and an order barring the Respondent or its agents from dispossessing him of the said vehicle.
2. In response, the Respondents filed a Statement of Response dated 20th September 2024. They contended that the disciplinary action taken against the Claimant was not in retaliation for the failed mutual separation discussions, but was instead necessitated by pre-existing issues relating to his conduct. While admitting that the Claimant was eligible to participate in the ESOP, they averred that he was neither allocated any shares nor did he remit payment for the same. The Respondents further asserted that the termination of the Claimant's employment was both substantively justified and procedurally sound. They urged the Court to dismiss the Claim with costs.

Claimant's submissions

3. The Claimant identified the following issues for determination:
- a. Whether the termination of the Claimant's employment was unfair and unlawful;
 - b. Whether the Claimant was unlawfully discriminated against by the Respondent;
 - c. Whether the Claimant is entitled to Employee Share Option Plan (ESOP);
 - d. Whether the Claimant is entitled to damages for mental and psychological torture by the Respondents;
 - e. Whether motor vehicle KBX 925V constitutes part of the emoluments of the Claimant;
 - f. Whether the Claimant is entitled to the prayers sought in the Statement of Claim; and
 - g. Who should be condemned to bear the costs of this suit.
4. On the first issue the Claimant submitted that his termination from employment was both unfair and unlawful. He relied on sections 41, 43, and 45 of the Employment Act, 2007. He submitted that during a visit to Kisumu on 18th October 2023, the 4th Respondent, Mr. Taco van der Mast, informed him that the shareholders preferred an "amicable separation." When he declined to resign, the Respondents initiated disciplinary proceedings based on vague and undated witness statements. He asserted that the



- Notice to Show Cause dated 1st March 2024 was unclear, and the attached documents did not specify the alleged misconduct with sufficient detail, leaving him to guess the reasons for disciplinary action.
5. The Claimant asserted that the disciplinary hearing held on 25th March 2024 was procedurally flawed. He affirmed that he was not afforded reasonable time to prepare, was not given prior warning letters, and was denied the right to legal representation, despite the complexity and seriousness of the allegations. He maintained that this contravened section 41 of the *Employment Act*. The Claimant further submitted that his termination was motivated by retaliation for raising grievances over the denial of leave to visit his terminally ill father, and the 1st Respondent's failure to review his compensation. He asserted that these were lawful complaints and that punishing him for raising them was prohibited under section 46(h) of the *Employment Act*.
 6. The Claimant relied on the following authorities: *Walter Ogal Anuro v Teachers Service Commission* [2013] eKLR, where the court held that both substantive and procedural fairness are necessary in termination. The case of *Mary Chemweno Kiptui v Kenya Pipeline Company Limited* [2014] eKLR, where it was emphasized that section 41 is mandatory and any deviation renders termination unfair. *Wakesho v Senaca Enterprises Ltd & another* [2022], where the court found that terminating an employee for raising a legitimate grievance was unlawful. *Janet Nyandiko v Kenya Commercial Bank Limited* [2017] eKLR, where the court highlighted the relevance of prior warnings and employer practice in determining fairness. The case of *Ratemo v Kenya Film Commission & another* [2014] eKLR, which acknowledged that legal representation may be necessary in disciplinary proceedings involving complex issues.
 7. The Claimant urged the Court to find that the Respondents failed to discharge their statutory burden under sections 43 and 45 of the *Employment Act*, and that the disciplinary process did not comply with the principles of natural justice. Accordingly, he prayed for compensation under section 49 of the Act.
 8. On the second issue, the Claimant submitted that he was subjected to unlawful discrimination contrary to section 5(3)(b) of the *Employment Act*, which prohibits both direct and indirect discrimination by an employer in respect of recruitment, training, promotion, terms and conditions of employment, termination, or other employment-related matters. He asserted that while other employees who committed various infractions were only issued with warning letters, he was summarily terminated upon the first allegation of misconduct. Furthermore, he asserted that he was consistently denied bonuses and additional employment benefits that were routinely extended to other staff during the tenure of his employment. To support his position, he relied on the decision in *Raol Investments [Pty] Limited t/a Thekwini Toyota v Mandlala* [2008] ILJ 267 (SCA), where the court held that discrimination against employees on the basis of arbitrary grounds has no place in employment relations and is unlawful. The Claimant also cited section 5(7) of the *Employment Act*, which places the burden on the employer, once discrimination is alleged, to prove that the discriminatory act or omission did not occur or was not based on prohibited grounds. The Claimant further referred to the case of *GMV v Bank of Africa Kenya Limited* [2013] eKLR, where it was held that once an employee establishes a prima facie case of discrimination, the burden shifts to the employer to provide a legitimate and non-discriminatory justification for the termination.
 9. The Claimant submitted that the Respondents' actions were not only in breach of statutory protections but also amounted to unfair labour practices and violated Article 27 of *the Constitution*, which guarantees the right to equality and freedom from discrimination. The Claimant submitted that the Respondents' differential treatment in regard to bonuses, salary increments, and disciplinary action —when compared to other similarly placed employees—amounted to discrimination. He therefore urged the Court to find that the Respondents were liable for unlawful discriminatory conduct against him.



10. On the third issue, regarding his entitlement to ESOP, The Claimant submitted that under Clause 2 of the Shell Foundation Funding Agreement, the issuance of a grant to the 1st Respondent was conditional upon achieving key milestones, including confirmation of CEO share conditions by 3rd May 2021. He asserted that to meet this requirement, DOB Equity opted to donate its shares to the 1st Respondent, prompting the 2nd to 8th Respondents, who are directors of the 1st Respondent, to pass a resolution establishing an Employee Share Option Plan (ESOP) on 30th June 2021.
11. Despite this resolution, the Claimant submitted that he was denied an allocation under the ESOP. Prompting him to raise concerns through an email dated 23rd March 2023 addressed to the Board, lamenting both a reduction and his eventual exclusion from the ESOP. The Claimant asserted that under Clause 8(x) of the Globology ESOP Trust Deed, the Trustees (2nd to 8th Respondents) had full discretion to allocate shares under the ESOP rules, thus their refusal to allocate shares to him amounted to abuse of this discretion. In view of the foregoing, he asserted that it was vital to pierce the corporate veil due to the 2nd to 8th Respondent's egregious misuse of corporate structures. He cited the case of *Ukwala Supermarket v Jaideep Shah & Kamal Shah* [2022] eKLR, where the Court held that although piercing the corporate veil is not easily done, it can be warranted where directors misuse the company as a façade to evade responsibility. He further cited *Transport and Allied Workers Union v Kenya Bus Services Limited* (Cause 68 of 2006) [2023] KEELRC 2902 (KLR) (10 November 2023) (Ruling), where the Court endorsed Halsbury's Laws of England on circumstances where the veil may be lifted, especially where the character of the company or its controllers is relevant.
12. The Claimant also relied on the cases of *Jones v Lipman* [1962] 1 All ER 442 and *H.L. Bolton (Engineering) Co. Ltd v T.J. Graham & Sons Ltd* [1956] 3 All ER, to demonstrate that the directors who control the company represent its "mind and will," and that their misconduct can justify treating them as one with the company. Consequently, he urged the court to hold the 2nd to 8th jointly and severally liable for denial of his ESOP entitlement.
13. On the fourth issue the Claimant submitted that the Respondent's refusal to grant him leave to visit his terminally ill father throughout 2023 into January occasioned him untold psychological torture. The Claimant further submitted that, as a result of the compounded grief from his father's death and the frustration caused by the Respondents' conduct, he travelled to South Africa for psychological evaluation, and was diagnosed with depression. To support his claim for damages for mental and psychological distress, the Claimant relied on the case of *MKK v CWN* [2016], in which the Court outlined four elements necessary to prove wilful infliction of emotional distress: that the defendant's conduct was extreme and outrageous, that it was intended to cause emotional distress, that it actually caused the distress, and that the emotional distress suffered was severe. He also cited *Rose Mbula Ojuwang v Baraka Apparel EPZ (K) Ltd* [2004] eKLR, where the Court emphasized the necessity of producing a medical report and establishing a direct connection between the defendant's acts and the distress suffered.
14. On the fifth issue the Claimant submitted that motor vehicle KBX 925V formed part of his contractual emoluments as agreed between himself and the 1st Respondent. He asserted that prior to the execution of his employment contract, the 4th Respondent, in her capacity as Chairperson of the Board, negotiated the terms of his engagement, including his salary and other benefits. He affirmed that the 4th Respondent proposed that his total remuneration be split into salary and emoluments, so as to enable the 1st Respondent to take advantage of certain tax concessions. This proposal was communicated to the Claimant via an email dated 3rd April 2019, and was supported by tax advice from Rodl & Partners, as evidenced in an email dated 4th April 2019. He averred that Clause 6.4 of his Employment Contract stipulated that the company would provide a suitable vehicle for a family of five. He also pointed



to Clause 6.7 of the contract, which indicated that, in lieu of the listed emoluments (including the vehicle), the Claimant would be paid a monthly sum of USD 5,700 or an annual equivalent of USD 68,000.

15. In view of the foregoing the Claimant submitted that the 1st Respondent acquired motor vehicle KBX 925V for him through a hire purchase arrangement, jointly registered in the names of the Claimant and the financier, with deductions being made from his salary to service the vehicle loan. The understanding, he contended, was that ownership of the vehicle would revert to him upon completion of the loan repayment. Due to the above he urged the Court to find that the motor vehicle formed part of his emoluments and that the contractual documentation and correspondence demonstrated the parties' mutual intention. He emphasized that the Court ought to give effect to the parties' agreement and not re-write their contract. In support of this position, the Claimant cited the case of National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] eKLR, in which the Court held that:

“ A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

16. On the strength of the foregoing, the Claimant urged the Court to compel the 1st Respondent to transfer ownership of the motor vehicle KBX 925V to him, or in the alternative, to award him a sum equivalent to its value.
17. On the sixth issue, The Claimant submitted that he had demonstrated sufficient grounds to warrant the grant of most of the reliefs sought in his Statement of Claim, specifically prayers (a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), and (m). Regarding prayer (j), the Claimant submitted that he was entitled to three months' salary in lieu of notice, pursuant to Clause 15.5A of the Employment Contract, which specified a three-month notice requirement or equivalent pay. Based on his monthly salary and emoluments, the Claimant claimed a total of USD 34,050 (net of taxes) for this item.
18. On the claim for 12 months' compensation for unfair termination, the Claimant relied on the decision in Alphonse Maghanga Mwachanya v Operation 680 Limited [2013] eKLR, which affirmed the Court's discretion to award up to 12 months' gross pay for unfair termination. He submitted that he had served the 1st Respondent faithfully for almost five years without any disciplinary issues and that his termination was effected without regard to due process. He urged the Court to award the maximum compensation permissible under the law, given the egregious nature of the breach.
19. In relation to severance pay, the Claimant contended that he was entitled to USD 36,482 (net of taxes) based on the length of his service. With respect to 4.5 months of interrupted annual leave, the Claimant submitted that he had worked continuously and was frequently denied uninterrupted vacation time, even during compassionate leave following the death of his father. He added that, during this period, the 4th Respondent verbally abused him when he declined to attend a board meeting. For this, the Claimant claimed USD 51,075 as compensation.
20. Regarding one month of accrued annual leave, the Claimant submitted that he had accrued 30 days of unused leave for which he had not been compensated, especially during the period in December when he was forced to extend his compulsory leave. He sought USD 11,350 for this. As for the Employee Share Option Plan (ESOP) benefits, the Claimant asserted entitlement to 53% of USD 372,775, translating to USD 199,275. The Claimant further claimed bonuses for three years, asserting that Clause 7 of his Employment Contract entitled him to annual bonuses of up to 10% of his basic annual salary. He contended that he had not received any bonuses during his tenure and claimed a total of USD 40,860. On emoluments, the Claimant submitted that during a meeting on 8th June 2021,



the Board, including the 2nd to 8th Respondents, agreed to settle outstanding emoluments. Despite this, the Claimant stated that the Respondents had not honoured this resolution and owed him USD 233,316.86 at the time of termination. On costs he submitted that they should be borne by the Respondents.

Respondents' submissions

21. On their part the Respondents identified the issues for determination as:
 - a. Whether the termination of the Claimant's employment was unfair and/or unlawful;
 - b. Whether the Claimant was subjected to discrimination during employment or upon termination;
 - c. Whether the Claimant is entitled to benefits under ESOP;
 - d. Whether the Claimant is entitled to damages for alleged mental and psychological distress;
 - e. Whether the motor vehicle registration number KBX 925V formed part of the Claimant's terminal entitlements;
 - f. Whether the 2nd to 8th Respondents are properly joined and necessary parties to these proceedings;
 - g. Whether the Claimant is entitled to the reliefs sought; and
 - h. Who should bear the costs of the suit.
22. On the first issue the Respondents submitted that the termination of the Claimant's employment was above board. They asserted that the Claimant had admitted to acts of gross misconduct including rudeness, inappropriate conduct and serious breaches of company policy, which justified summary dismissal. They relied on section 43(2), 44 and 45(2) of the *Employment Act* to buttress their position. In addition, they also referred to the case of Charles Musungu Odana v Kenya Ports Authority [2019] eKLR, in which the burden was placed on the employer to establish a valid reason for termination of employment.
23. On the second issue of discrimination, the Respondents argued that the Claimant had failed to adduce any evidence of differential treatment. They cited the case of Rose Wangui Mambo & 2 others v Limuru Country Club & 17 others [2014] eKLR, which, referring to Peter K. Waweru v Republic [2006] eKLR, defined discrimination as unfair treatment based on protected characteristics such as race or gender. The Respondents maintained that the dismissal resulted from the Claimant's misconduct and not any discriminatory conduct. They further submitted that there was no evidence of discrimination in salary increments or other aspects of employment.
24. Regarding the ESOP, the Respondents submitted that the Claimant was not entitled to any benefits under the scheme, as the programme had not been operationalized at the time of his dismissal. Moreover, he had not met the five-year continuous service requirement for eligibility. In further support of their position the Respondents submitted that disputes concerning ESOP were subject to arbitration based on Clause 20 (a) of the Trust Deed. They relied on the case of Okeyo v Board of Directors HHI Management Services Ltd & another [2024] KEELRC 1006 where the court affirmed that ESOP -related disputes are commercial in nature and should be pursued under commercial dispute resolution mechanisms.



25. They also cited the case of *Muriithi v Autocheck Kenya LTD* [2024] KEELRC 518 (KLR) (7 March 2024) (Judgment), where the court held that ESOP claims are not employment claims unless incorporated in the contract of service.
26. On the claim for damages for mental and psychological distress, the Respondents submitted that such claims can only be entertained in the context of a constitutional petition. They relied on the case of *Lydia Pamela Nyagala v Royal Media Services Ltd* [2016] KEELRC 1556 (KLR), and further submitted that section 49 of the *Employment Act* exclusively prescribes the remedies available for unfair termination. Citing the case of *Kenya Ports Authority v Edward Otieno Okundi* [2021] eKLR, they submitted that the *Employment Act* does not envisage compensation for psychological stress. With respect to the medical report presented by the Claimant, the Respondents argued that there was no causal connection established between the Claimant's medical condition and the Respondents' actions. They pointed out that the report at page 398 of the Claimant's bundle predated the commencement of any disciplinary proceedings.
27. On the issue of the motor vehicle, the Respondents maintained that vehicle KBX 925V was merely a facilitative benefit and not part of the Claimant's terminal entitlements. They asserted that no salary deductions were being made to service the vehicle loan and highlighted that the correspondence between the Claimant and the company's finance manager did not support any such arrangement. Regarding whether the 2nd to 8th Respondents were necessary parties to this suit the Respondents submitted that the 2nd to 5th Respondents as directors were not individually liable for employment claims, neither were the 6th to 8th Respondents as Trustees. They maintained that under corporate and employment law principles Directors and Trustees enjoyed immunity from personal liability in employment disputes, unless the conduct was attributable to them in their personal capacities. They relied on the case of *Mugo v Technical Institute Group of Schools & another* (Employment and Labour Relations Cause E428 of 2022) [2024] KEELRC 1210 (KLR) (17 May 2024) (Ruling), where it was reaffirmed that directors cannot be sued in employment disputes absent clear evidence of personal culpability. Moreover, they asserted that there was no privity of contract between the 2nd to 8th Respondents and the Claimant in the Claimant's contract dated 17th June 2019. They also drew attention to the fact that ESOP was governed by a separate trust deed distinct from the Claimant's employment contract.
28. On the Claimant's entitlement to the reliefs sought the Respondents submitted that he is not entitled to any. They relied on the reasoning in *Steel Makers v Obare* (Appeal E001 of 2020) [2023] KEELRC 396 (KLR), where it was emphasized that compensation for unfair termination is not meant to either punish the employer or unjustly enrich the employee. On 12 months' compensation for unlawful termination the Respondents reiterated that the termination was both substantively and procedurally fair.
29. As for notice pay the Respondents asserted that the Claimant was summarily dismissed hence not eligible for notice pay. On bonuses the Respondent submitted that the Claimant was only eligible to bonuses pegged on performance milestones under clause 7.1 of his contract. He cited the case of *Musau & another v Microsoft East Africa Limited* (Petition 223 of 2019 & 6 of 2020 (Consolidated)) [2023] KEELRC 578 (KLR) (10 March 2023) (Judgment), in which it was held that a discretionary bonus was not an entitlement. In respect of severance pay the Respondents asserted that it only arose in cases of redundancy. Which was not the case in this suit. On annual leave the Respondent submitted that there was no evidence of accrued or unutilised leave. On Educational Assistance Prayer the Respondents asserted that the Claimant was not entitled to educational fees after the termination of employment. On relocation costs and transfer of vehicle monetary equivalent, the Respondent asserted



that the contract imposed no such obligation. In conclusion, the Respondents submitted that there was no evidentiary basis for the claims relating to vehicle transfer, monetary equivalents, or damages for discrimination, mental anguish, or psychological torture. They therefore urged the court to dismiss the suit with costs.

Disposition

30. The Court has considered the law, testimony adduced as the pleadings of the parties to come to this determination. The Court distils the issues for determination as:
 - a. Whether the termination of the Claimant's employment was unfair and/or unlawful;
 - b. Whether the Claimant was subjected to discrimination during employment or upon termination;
 - c. Whether the Claimant is entitled to benefits under ESOP;
 - d. Whether the Claimant is entitled to damages for alleged mental and psychological distress;
 - e. Whether the motor vehicle registration number KBX 925V formed part of the Claimant's terminal entitlements; whether the 2nd to 8th Respondents are properly joined and necessary parties to these proceedings;
 - f. Whether the Claimant is entitled to the reliefs sought; and
 - g. Who should bear the costs of the suit.
31. The Claimant was on the verge of a mutually agreed separation when the 1st Respondent changed tack and instead preferred myriad accusations of misconduct against the employee leading to a dismissal by the Respondent. Where disciplinary process is commenced purely for the ulterior motive of ensuring a dismissal, such disciplinary process cannot be said to be fair or lawful in terms of section 41 of the [Employment Act](#). On 30th October 2023 when the Claimant was called to a meeting at which representatives of the 1st Respondent pushed for a disengagement and upon failure to agree on mutual separation the and the ensuing commencement of disciplinary proceedings leading to a traumatic disciplinary process, replete with malice and marred with illegalities culminating in dismissal on 15th April 2024 is found to be unprocedural and without reason. On the first issue the Court returns that the termination of the Claimant's employment was unfair and unlawful.
32. On the second issue, the Claimant was denied special leave to go and attend to his ailing father. Only a cruel and sadistic employer can deny a person the necessary accommodation to ensure dignity for loved ones who are terminally ill. Compassionate leave is called compassionate for that simple reason. It is only human for one to empathise, something the Respondents seem clearly incapable of. The court finds and holds that the denial of leave for the Claimant to visit his terminally ill father, and the 1st Respondent's failure to review his compensation were evidence of discrimination and unfair treatment. The Claimant was also victimised for raising issues related to his emoluments. Punishing an employee for raising such concerns is prohibited under section 46(h) of the [Employment Act](#). On this score, the Court returns there was discrimination of an employee. Discrimination is not limited to race and gender as the Respondents would want us to believe. Article 27 ad 41 of [the Constitution](#) are crystal clear as section 5 of the [Employment Act](#) which provides in parre materia
 - (3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee— (a) on grounds of race, colour,



sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status;

- (7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.
33. The Court is not persuaded that there was no discrimination in the manner the Claimant was treated by the employer. As such there is a finding in his favour on that score.
34. On the issue as to whether the Claimant is entitled to benefits under ESOP which is tied to the issue as to whether the 2nd to 8th Respondents are properly joined and necessary parties to these proceedings, it was clear from the proceedings before the Court that the Claimant was instrumental in securing the grant from Shell Foundation. The 2nd to 8th Respondents were the members of the Board tasked with coming up with the conditions of the employee share programme. The joinder was challenged by the Respondents who assert the 2nd to 8th Respondents were not necessary parties to these proceedings. In *Transport and Allied Workers Union v Kenya Bus Services Limited* (supra) Abuodha J. held as follows:

The legal distinction between a company and its members was set out in the celebrated case of *Salmon vs. Salmon* 1 WLR 833 where Lord Macnaghten affirmed the separation between the corporation and its members as follows:

“The company is at law a different person altogether from its subscribers...and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers, as members, liable, in any shape or form, except to the extent and in the manner provided by the Act”.

14. The distinction may however in special cases, be overlooked and the company and its shareholders treated as one and the same. The Halsbury’s Laws of England, 4th edition at paragraph 90; outlines the circumstance in which the corporate veil may be lifted as follows:

“Notwithstanding the effect of a company’s incorporation, in some cases the court will ‘pierce the corporate veil’ in order to enable it to do justice by treating a particular company, for the purposes of the litigation before it, as identical with the person or persons who control that company. This will be done not only where there is fraud or improper conduct but, in all cases, where the character of the company, or the nature of the persons who control it, is a relevant feature. In such case, the court will go behind the mere status of the company as a separate legal entity distinct from its shareholders or even as agents, directing and controlling the activities of the company. However, where this is not the position, even though an individual’s connection with a company may cause a transaction with that



company to be subjected to strict scrutiny, the corporate veil will not be lifted” [Emphasis mine]

35. I thus find and hold that the joinder of the 2nd to 8th Respondents was not only necessary but rather appropriate given the central role they played in ensuring the denial of employee benefits connected to the shares the Claimant was entitled to. He was forced to cede his shares and share with the 2nd to 8th Respondents and denying him the shares would be unconscionable.
36. The next issue is whether the Claimant is entitled to damages for alleged mental and psychological distress. The Claimant has availed medical reports which sadly indicate there is basis for the Court to find in his favour. I say sadly because it was not enough that the Respondents denied the Claimant time to go and be with his terminally ill father but as a result has led to mental and psychological distress. The Respondents would want us to believe that where an employer causes an employee to suffer ailments is insured against a suit at the Employment and Labour Relations Court. Sick leave is a recognised benefit under the Employment Act and where the employee rights are abridged the only recourse for relief for such infarctions is the Employment Court. In this case, the Claimant is entitled to relief on that score.
37. As to whether the motor vehicle registration number KBX 925V formed part of the Claimant’s terminal entitlements, the same was acquired for the Claimant’s use. It is apparent that the benefit was a term of the contract per Clause 6.4 of the Employment Contract which stipulated that the company would provide a suitable vehicle for a family of five. In Clause 6.7 of the contract, there was provision that in lieu of the listed emoluments which was inclusive of the vehicle, the Claimant would be paid a monthly sum of USD 5,700 or an annual equivalent of USD 68,000. It is therefore my finding that the vehicle was a term of the contract and the mere fact that it was under a car hire agreement does not detract from its intent and purpose. It was a term of the contract.
38. As to whether the Claimant is entitled to the reliefs sought, it is my finding that he is and that the Respondents shall bear the costs of the suit. The Claimant did not prove defamation and is not entitled to recover on the claim.
39. In the final analysis it is my finding that the Claimant is entitled to:
- a. A declaration that the termination of his employment was unfair and unlawful;
 - b. Damages for discrimination – Kshs. 1,000,000/-;
 - c. Damages for mental and psychological distress suffered as a result of the Respondents denial of compassionate leave – Kshs. 1,000,000/-;
 - d. A declaration that the vehicle KBX 925V constitutes part of the emoluments of the Claimant computed as USD 68,000;
 - e. three months’ salary in lieu of notice pursuant to Clause 15.5A of the Employment Contract USD 34,050 (net of taxes);
 - f. 12 months compensation for unlawful termination – USD 136,200;
 - g. 30 days of unused leave equivalent to USD 11,350;
 - h. USD 233,316.86 as part of his share of the shares forming part of his contract;
 - i. Costs of the suit;
 - j. Interest at court rates on the sums in (b), (c), (d), (e), (f) (g) and (h) above from the date of judgment till payment in full.



Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE 2025

Nzioki wa Makau, MCIArb.

JUDGE

