



**Nyongesa v Maseno University (Cause E006 of 2025)  
[2025] KEELRC 2246 (KLR) (29 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2246 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE E006 OF 2025**

**JK GAKERI, J  
JULY 29, 2025**

**BETWEEN**

**DR DESTAINGS NYENYI NYONGESA ..... CLAIMANT**

**AND**

**MASENO UNIVERSITY ..... RESPONDENT**

**JUDGMENT**

1. The claimant commenced this suit vide a Memorandum of Claim filed on 19<sup>th</sup> February, 2025 alleging that the respondent terminated his employment unfairly and illegally.
2. The claimant avers that he was employed by the respondent on 1<sup>st</sup> January, 2010 as an Assistant Lecturer, promoted to Lecturer on 24<sup>th</sup> June, 2014, Senior Lecturer on 4<sup>th</sup> September, 2019, Chair of Department of Economics on 27<sup>th</sup> January, 2015 and Acting Dean School of Business and Economics on 13<sup>th</sup> August, 2019.
3. The claimant further avers that the respondent terminated his employment on 3<sup>rd</sup> November, 2023 allegedly for having modified marks of seven (7) students namely;

Mbugua Teresia Nyambura BE/05020/2012

Ngolo Eunice Nechesa BBA/08001/2019

Kipkorir Agnes Jepchirchir BBA/08015/2019

Onong'no Calvince Ochieng EL/BED/01457/2019

Okuku Thomas Ouma BE/08082/2016

Nyambuigi Teckla Kemunto BE/08045/2016

Ougo David Ayieko BE/08014/2017



4. The claimant's case is that termination of his employment was unlawful and unfair and his appeals to the respondent's Council and the Public Service Commission were dismissed.
5. The claimant prays for:
  - a. A declaration that termination of services by the respondent was unprocedural, unlawful, unfair and illegal.
  - b. Reinstatement OR in the alternative
  - c. Award of Kshs.3,374,023.9 as compensation.
  - d. Certificate of service.
  - e. Costs of the claim.
  - f. Interest at court rates.
  - g. Any other reliefs the court may deem fit and just to grant in the circumstances.

### **Respondent's case**

6. The respondent admitted that the claimant was its employee from December 2009 to 3<sup>rd</sup> November, 2023, when his employment was terminated for having modified the marks of seven (7) students. It denied having done so unprocedurally or unlawfully in that the claimant was issued with a notice to show cause, invited and attended a hearing on 2<sup>nd</sup> November, 2023, found guilty and dismissed from employment.
7. The respondent prayed for dismissal of the suit with costs.

### **Claimant's evidence**

8. On cross-examination, the claimant confirmed that he served the respondent for over 10 years and additionally served as chairman of Department and was well aware of the respondent's examination processes, which he explained as follows:
9. Once students take an examination, the lecturer concerned collects the booklets, marks the examination within one (1) month, and provides marks by way of a mark sheet or enters the same in the system and in either case, the examination booklet must also be availed as is the marking scheme.
10. That there after a Board of Examiner's meeting would be held to consider the results.
11. The witness admitted having received the notice to show cause which had an annexure on the seven (7) students and was clear.
12. CWI admitted that he responded to the notice and requested for additional documents and access to the IMS System which was responded to vide letter dated 20<sup>th</sup> September, 2023 and did not view the MIS System. The witness further admitted having been invited for a disciplinary hearing which he attended and the union was represented and the outcome was communicated to him. That the respondent failed to prove that he entered or modified marks of the seven (7) students.
13. He testified that he did not enter the marks and his user credentials (d.nyongesa) were used to do so.
14. He denied having been the custodian of the examination booklets.



15. He admitted that in the case of Mbugua Teresia Nyambura, BE/050201/2012, marks were entered 10 years later and according to him, it was possible that her marks were held in abeyance in light of passage of time.
16. The witness clarified that the seven (7) students studied at Regional Institute of Business Management (hereinafter referred to as RIBM), which had an MOU with the respondent.
17. The witness admitted that he was unaware that the student had been deregistered or that a student could be registered after 8 years.
18. The witness however, admitted that the student sought re-admission vide letter dated 17<sup>th</sup> August, 2023 and was seeing the letter for the first time.
19. In relation to Eunice Nechesa Ngolo and Agnes Jepchichir, the claimant testified that he was unaware of when the respondent stopped exemptions at RIBM in 2019 and according to him, while students at the main campus took 4 years to complete their courses, those in Kisumu and other places with more semesters could take 2 years or 2 1/2 years and although the COVID 19 pandemic paralysed studies, the Nairobi Campus did not loose anytime.
20. That in relation to Calvince Ochieng, the witness could not confirm what EL in the student's registration number meant.
21. The witness admitted that during the disciplinary hearing, he was not on suspension but was not in office of Dean and could only access his own documents and was denied access to the system.
22. Concerning Thomas Ouma Okuku, the witness admitted that the marks in the mark sheet and the Academic Progress Report (APR) in Insurance Theory and Practice and Total Quality Management differed as follows;
  - APR 68%
  - Marksheet 44%
  - Total Quality Management
  - APR 55%
  - Marksheet 60%
23. The claimant testified that modification of marks took place at the Departmental level and was unsure whether the marks entered in 2023 were discussed in a meeting. He stated "I think they were adopted by the University".
24. On the reliefs sought, the claimant admitted that he had not cleared with the respondent and was claiming the entire salary for November 2023 but was dismissed from employment on 3<sup>rd</sup> November, 2023, did not serve thereafter and had pending leave days and was entitled to baggage and passage as per the CBA, but did not attach a copy.
25. On leave, the claimant added that he did not take leave in 2021.
26. On reinstatement the claimant admitted that this was not the first time he was being accused of modifying student marks and had been warned vide letter dated 7<sup>th</sup> June, 2023 and did not appeal the warning. He however, maintained that he ought to be reinstated.
27. He admitted that it was not right for a student to be given marks unless earned. The witness testified that was doing farming at home.



28. On re-examination, the claimant stated that his request for documents was declined. It was his testimony that student marks originated from the booklet but none was availed by the respondent and it was the only document that could authenticate the mark and the marksheets on record had no signatures, but admitted that on 22<sup>nd</sup> July, 2019, he was the Dean and ought to have signed the documents.
29. He denied that the user ID included his PF number, 2267.

### **Respondent's evidence**

30. RWI, Millicent Madara confirmed that the respondent had a MIS System for uploading of marks from the booklet. That the School Board verified the marks and the Deans Committee and the university Senate would approve the same.
31. The witness admitted that she could not tell who was setting or marking examinations or making entries and admitted that the respondent declined to avail the documents the claimant had asked for and he attended the hearing without them and no person testified as a witness at the hearing.
32. It was RWI's testimony that the respondent conducted an audit trial which showed who had logged in the system and the claimant recorded a statement during the investigation and the minutes of the disciplinary hearing were confirmed at the next meeting.
33. The witness admitted that she was aware of PETITION NO. E242 OF 2023 by students suing the respondent and RIBM for failure to graduate and the claimant's name was not mentioned and was unaware of its status.
34. The witness testified that the decision of the disciplinary committee was not pre-determined and the claimant was accorded a fair hearing.
35. The witness further confirmed that the claimant was a good lecturer before he became Dean and the respondent had lost trust and confidence in him.
36. On re-examination, the witness testified that examination booklets were the primary documents in examination and the claimant did not avail them and thus there was no verifiable source of marks.
37. That the claimant was invited to view the MIS but did not do so.
38. The witness maintained that the claimant alone had login credentials and did not allege that the credentials were used by another person.
39. Concerning reinstatement, the witness testified that since this was the second instance of misconduct, reinstatement was not an appropriate relief.

### **Claimant's submissions**

40. As to whether the respondent accorded the claimant a fair hearing counsel relied on the provisions of Article 47(1) and 50(2) of *the Constitution* of Kenya to submit that the claimant was not afforded a fair hearing as the respondent did not avail documents the claimant had requested for.
41. As to whether the claimant entered marks in the examination marksheet, counsel submitted that he did not enter any marks of the seven students from RIBM college and the alleged log-in details were not his as they had no PF Number.
42. That the marksheets on record were not signed and could not be verified and the charge was not proved.



43. As to whether termination was lawful, counsel submitted that it was unlawful because the claimant was not accorded fair administrative action.
44. On reliefs, counsel submitted that since the termination was unlawful, the claimant was entitled to the reliefs sought.

### **Respondent's submissions**

45. Concerning termination of the claimant's employment, counsel submitted that it was procedural and fair as by law required as he was issued with a notice to show cause with an extract of the audit trial, student details, courses for which marks had been entered, that he responded, attended a hearing and participated.
46. Reliance was placed on the decision in *Postal Corporation of Kenya V Andrew K. Tanui* [2019] eKLR, on the elements of Section 41 of the *Employment Act*, to urge that the respondent complied with the procedural requirements.
47. As regards substantive fairness, counsel submitted that the claimant was found guilty of falsifying records contrary to the respondent's Human Resource Policy and Procedure Manual.
48. That the marks entered into the system had no supportive documentation, were entered outside the prescribe period and one Mbugua Teresa Nyambura was not in session in 2012/2013, 2013/2014 and 2024/2025 academic years but had marks, among others.
49. Counsel submitted that the claimant admitted keying in marks and did not raise the defence of the log-in credentials not having been his when he responded to the notice to show cause or during the appeals.
50. Counsel submitted that without examination booklets, the claimant could not justify the origin of the marks he entered and the respondent proved its case of a preponderance of probabilities.
51. Reliance was placed on the decision in *Sotik Highlands Tea Estates Ltd V Kenya Plantation and Agricultural Workers Union* [2017] eKLR on the standard of proof, to submit that the respondent established that the reason for termination of the claimant's employment was valid and fair.
52. On reliefs, counsel submitted that the remedy of reinstatement was undeserved because the claimant had not demonstrated any exceptional circumstances to qualify for the relief and compensation was only tenable where a finding of unfair termination of employment has been made as held in *Silali V Maseno University* [2024] KEELRC 967 (KLR).
53. The decision in *Oranga V Prime Steel Ltd* [2022] KEELRC 1357 (KLR) was also relied upon to urge that the claimant was not entitled to the reliefs sought.

### **Analysis and determination**

54. It is common ground that the claimant was an employee of the respondent from 2009 to November, 2023 when the respondent terminated his employment vide letter dated 3<sup>rd</sup> November, 2023 for gross misconduct, that he entered and modified marks of seven (7) students with intention to falsify records to irregularly enable the students pass the examinations and or fulfil graduation requirements.
55. Relatedly, vide letter dated 7<sup>th</sup> June, 2023, the respondent had warned the claimant for modifying marks of AEN 105 in the MIS for one Vivian Anyamba Musoma EL/BEB/01308/2018 to enable her pass the examination. The letter urged him to desist from such behaviours. The claimant admitted that he did not contest the warning letter.



56. While the claimant admitted that his credentials were used to modify marks on the MIS, he contended that he did not do so.
57. In his witness statement, the claimant admitted that he posted marks similar to what RIBM had indicated by letter dated 9<sup>th</sup> March, 2023.
58. Strangely, although the claimant alleged that other unnamed employees had access to the examination results and could tamper with the results posted on the students' portal, he did not explain when and how he discovered that his credentials had been used to alter or modify marks in the MIS or what he did.
59. The respondent on the other hand grounded its case on the premises that the claimant effected the modification of marks as ascertained by the audit trial.
60. It is common ground that the Respondent and RIBM had an MOU and all the affected students studied at the institution.
61. To buttress its case against the claimant, the respondent availed 18 documents which included the Investigation Report dated 6<sup>th</sup> October, 2023.
62. The investigator deployed several mechanisms namely; visits to various places and offices, interviews as well extraction and analysis of documents including the audit trial, marksheets and academic progress reports among others.
63. The investigator found that user ID DNYONGESA assigned to the claimant PF NO.2267, a Senior Lecturer in the School of Business and Economics made entries in respect of all the 7 students.
64. In the case of Mbugua Teresia Nyambura, marks were entered in the MIS while the student was not undertaking studies in 2013 – 2018 and as she sought re-admission 2019.
65. That Ngolo Eunice Nechesa had all marks for 4 years in the MIS but, no marks on the marksheet.
66. That the marks of Kipkorir Agnes Jepchirchir in ABA 302 Company Law in the MIS and marksheet were dissimilar.
67. That Onong'no Calvince was an e-learning student and did not take any examination and had registered for two (2) units in 2019.
68. That there were variations of Okuku Thomas Ouma's marks entered in the MIS and available on marksheets as were the marks of Tecla Kemunto Nyambugi in UCI 301 Management and Information Technology UCI, 3030 Media and Graphics Application and ABA 210 Intermediate Accounting II and the investigator found that no examination booklets were received in 2022 and 2023 calendar year for the 2021/2022 and 2022/2023 academic years for RIBM.
69. The investigator concluded that the user ID DNYONGESA assigned to the claimant PFNO. 2267 made the unauthorised entries.
70. During cross-examination, the claimant confirmed that indeed there was variations of marks on the marksheets and Academic Program Reports in relation to Thoma Ouma Okuku in Insurance Theory and Practice and Total Quality Management.
71. Significantly, the claimant admitted that modification of marks took place at the Departmental level after a meeting but could not tell whether the marks were discussed at any meeting.



72. It is also noteworthy that during re-examination, the claimant testified that as from 27<sup>th</sup> July, 2019, he was the Dean of the School and ought to have signed the examination marksheets, which he claimed were not authentic for want of signatures and did not deny that they were university records.
73. Significantly, the claimant admitted on cross-examination that he was invited and attended the Disciplinary Committee meeting held on 2<sup>nd</sup> November, 2023 and the union was represented. The uncontested minutes of the Committee signed by the chairman for circulation lay it bare that the claimant admitted having entered the student's marks on the MIS for purposes of a status report on the RIBM students for the Deans Committee, which marks had been forwarded by RIBM via email in April 2021 when the claimant was the Dean of the School, the marks had not been approved by the School Board, and were entered without reference to the examination booklets.
74. The Disciplinary Committee meeting found the claimant culpable and recommended termination of services.
75. The salient issue to determine at this stage is whether the respondent had a reason(s) to terminate the claimant's employment as by law required.
76. The provisions of Section 43 and 45 of the *Employment Act* require the employer to prove the reason or reasons for termination of the claimant's employment.
77. Specifically, Section 45 provides:
1. ...
  2. A termination of employment by an employer is unfair if the employer fails to prove—
    - a. that the reason for the termination is valid;
    - b. that the reason for the termination is a fair reason— (i) related to the employees conduct, capacity or compatibility; or  
(ii) based on the operational requirements of the employer; and
    - c. that the employment was terminated in accordance with fair procedure.
78. Equally, as regards the reason(s) for termination of employment Section 43 of the Act provides:
1. ...
  2. 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.
79. The foregoing provision has been construed to mean that all that the employer is required to show is that it had reasonable grounds for the genuine belief that it had a reason to terminate the employee's employment.
80. In *Galgalo Jarso Jillo V Agricultural Finance Corporation* [2021] KEELRC 323 (KLR). B. O. Manani stated:
- "In terms of Section 43 of the *Employment Act* an employer is deemed to have a substantive justification for terminating a contract of service if he/she genuinely believed that the matters that informed the decision to terminated existed at the time the decision was taken. In other words, it is not a requirement of the law that the substantive ground informing the decision to terminate must in fact be in existence. All that is required is for the employer to



have a reasonable basis for genuinely believing that the ground exists even if it later turns out that in fact, it did not ...”

81. The court went further to lay the test applicable as that of a reasonable man.
82. The court is in agreement with these sentiments as are those of the Court of Appeal in *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others* KECA 300 (KLR) where the court held:

“The standard of proof is on a balance of probability, not beyond reasonable doubt and all the employer is required to prove are the reasons that it “genuinely believed to exist” causing it to terminate the employee’s services. That is a partly subjective test”.

See also *Bamburi Cement Ltd V Willian Kilonzi* [2016] eKLR and *Judicial Service Commission V Gladys Boss Shollei* Civil Appeal No. 50 of 2024.
83. In *Kenya Revenue Authority V Reuwel Waithaka Gitahi & 2 Others* (supra), the Court of Appeal cited the guidelines in *Halsbury’s Laws of England*, 4<sup>th</sup> Edition Vo. 16 (1B) para 642 with approval, on the range of reasonable responses test in determining whether the employer acted reasonably in the circumstances. See also *Kenya Power and Lighting Co. V Aggrey Lukorito Wasike* [2017] eKLR.
84. In the instant case, the court is satisfied that the respondent has demonstrated that it had a reasonable basis to genuinely believe that the claimant modified student marks without the benefit of the examination booklets and his school was the custodian.
85. The Investigation Report and minutes of the disciplinary hearing lay it bare that the students marks were entered by the user ID Dnyongesa assigned to the claimant, a fact he admitted.
86. The contention that he needed the PF Number to log in could not avail the claimant because the PF number 2267 was not the password.
87. Closely related to the foregoing and notwithstanding the fact that similar fact evidence generates more heat than light the claimant’s admission, on cross-examination that this was not his first case of having been accused of modifying student marks and had been given a warning, barely 5 months earlier, which he did not contest was the claimant’s Waterloo.
88. Significantly even where a finding is made that the employer had a valid reason for terminating the employee’s employment, the court must still interrogate whether the employer followed the right procedure as ordained the provisions of the *Employment Act* and where the correct procedure has not been followed, the termination may be held to have been unfair.
89. It requires no belabouring that the procedure prescribed under Section 41 of the *Employment Act* is compulsory as held in *Pius Machafu Isindu V Lavington Security Guards Ltd* [2017] eKLR and *Jane Samba Mukala V Ol Tukai Lodge Ltd* [2013] eKLR.
90. The essentials of Section 41 of the *Employment Act* were highlighted by the Court of Appeal in *Postal Corporation of Kenya V Andrew K. Tanui* [2019] eKLR and are; explanation of the grounds of termination in a language understood by the employee, the reasons for which the employer is considering termination, entitlement of an employee to the presence of another employee of his choice when the explanation of grounds of termination is made and hearing and considering any representations made by the employee and the person chosen by the employee.
91. While the claimant contended that termination of his employment was unprocedural and thus unlawful, the respondent maintained that it conducted the termination of the claimant’s employment in accordance with the law.



92. It is common ground that the claimant was issued with and responded to a notice to show cause, was invited to a disciplinary hearing, attended the same and the union had two (2) representatives who pleaded that the claimant be pardoned and given another chance.
93. Equally, the respondent informed the claimant of his right to appeal, a right he exercised under a letter dated 15<sup>th</sup> November, 2023 addressed to the chairperson of the respondent's Council and the outcome was communicated vide letter dated 1<sup>st</sup> December, 2023.
94. Subsequently, the claimant appealed to the Public Service Commission and the appeal was dismissed vide a decision delivered on 18<sup>th</sup> September, 2024, thus the claimant exhausted all the internal dispute resolution processes.
95. In the court's view, the only contentious issue germane to procedure was the availment of documents.
96. However, by an earlier letter dated 14<sup>th</sup> September, 2023, the claimant sought 6 documents and access to marksheets of RIBM and E-learning for 2012/2013 to 2022/2023, access to inbox and outbox/send emails of sbe@maseno.ac.ke and dacc@maseno.ac.ke, access to two (2) Archives of SBE where booklets were stored (i) Near French Department (ii) Within SBE premises, access to the student Records Management System and Logins for the account dnyongesa with the PF 2267.
97. By a response dated 20<sup>th</sup> September, 2023, the respondent declined requests for items one (1) to nine (9) on the premise that they would not facilitate addressing the issue raised. However, the claimant was free to make arrangements to interrogate the MIS logs but no extra time was availed to do so and the claimant made no arrangements to view the logins as advised.
98. On cross-examination RWI, Millicent Madara confirmed that the respondent refused to avail all the documents and they were not supplied.
99. The court is at a loss as to why the respondent unilaterally determined that the documents the claimant had requested for would not facilitate his defence.
100. It is trite law that availment of the documents the employer uses to charge or prosecute an employee for alleged misconduct is an integral part of the constitutionally protected right to be heard and fair hearing. It is one of the elements of fair administrative action.
101. By refusing to provide the documents the claimant had requested for on the pretext that they would be of no use to him, the respondent impeded the claimants right to fair hearing.
102. See in this regard Judicial Service Commission V Mbalu Mutava & another [2015] eKLR where it was held that;

"The right to fair hearing under the common law is a general right albeit a universal one. It refers to the three features of natural justice identified by Lord Hodson in Ridge V Baldwin (supra)..."
103. In *Ol Pejeta Ranching Co. Ltd V David Wanjau Muhoro* [2017] KECA 329 (KLR) the Court of Appeal held:

"...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 cannot be said that the termination process was fair."



104. These sentiments apply on all fours to the circumstances of the instant suit bearing in mind that the respondent availed neither the investigation report nor the documents requested for as they all formed the basis of the disciplinary proceedings and eventual termination of the claimant's employment.
105. A similar holding was made in *Postal Corporation of Kenya V Andrew K. Tanui (supra)* in *Regent Management Ltd V Wilberforce Ojiambo Oundo* [2018] KECA 883 (KLR). In the latter case, the Court of Appeal observed:
- "We are at a loss as to why the appellant refused to grant the respondent certified copies of the documents requested even at his own expense. In our view, these documents were integral to the respondent preparing his defence..."
106. It is trite that where an employee requests for documents from the employer, the same should be availed falling which a reasonable explanation ought to be given. It does not lie upon the employer to determine whether or not documents are useful to the employee's case. The only obligation imposed on the employer is to furnish the employee with the documents the employer will rely on in its case against the employee.
107. For the foregoing reasons it is the finding of this court that termination of the claimant's employment by the respondent on 3<sup>rd</sup> November, 2023 was procedurally flawed and thus unfair within the meaning of Section 45 of the *Employment Act*.

### **Appropriate reliefs**

#### **Declaration**

108. Having found that termination of the claimant's employment was unprocedural, the declaration sought is merited.

#### **Reinstatement**

109. This is one of the remedies provided for under section 12(3) of the *Employment and Labour Relations Court Act* read with Section 49(3)(a) of the *Employment Act*, and analogous to other reliefs under Section 49, its award is discretionary, as held by Maraga JA (as he then was) in *Kenya Airways Ltd V Aviation & Allied Workers Union Kenya* [2014] eKLR and *Kenya Power & Lighting Co. Ltd V Aggrey Lukorito Wasike* (supra).
110. In determining whether to decree reinstatement, the court is enjoined to take account of the provisions of Section 12(3)(vii) of the *Employment and Labour Relations Court Act* and Section 49(4) of the *Employment Act*.
111. Evidently, the claimant wishes to be reinstated by the respondent and appealed the termination of employment to the university council of the respondent and the PSC but was unsuccessful. To his credit, the claimant was an employee of the respondent for about 13 years.
112. Although the claimant's case fell within the 3 years within which reinstatement may be decreed, several factors militate against it.
113. For instance, the claimant substantially contributed to the termination of his employment and had previously been warned about such conduct in the past a warning which did not appeal against and which dented his reputation as a leader.



114. Equally, the claimant did not demonstrate anything unique or compellingly exceptional to persuade the court that a case for the qualification of the common law rule that specific performance ought not to be issued in contracts of personal service.
115. In the court's view, however, the most compelling reason against the claimant's reinstatement is its practicability in these circumstances.
116. As the Newzealand Court of Appeal held in *Newzealand Education Institute V Board of Trustees of Auckland Normal Intermediate School* [1994] 2 ERN2 414 (CA) cited by Murgor JA in *Kenya Airways Ltd V Aviation & Allied Workers Union Kenya & 3 Others* (supra)
- Whether... it would not be practicable to reinstate (the employee) involves a balancing of the interests of the parties and the justices of their cases with regard not only to the past but more particularly to the future. It is no uncommon for this court or its predecessor, having found a dismissal to be unjustified, to nevertheless conclude on the evidence that it would be inappropriate in the sense of being impracticable to reinstate the employment relationship.
117. Practicability is capability of being carried out in action, feasibility or the potential for the re-imposition of the employment relationship to be done or carried out successfully. Practicability cannot be narrowly construed in the sense of being simply possible irrespective of consequences".
118. For the above stated reasons, the court is satisfied that reinstatement is not an appropriate remedy in the circumstances and it is declined.

### **12 months compensation**

119. Having found that termination of the claimant's employment was unfair, the claimant is entitled to compensation under the provisions of Section 49(1)(c) of the *Employment Act*.
120. Considering that the claimant substantially contributed to the termination of employment, had served for over 10 years and wished to continue in the respondent's employment, appealed the termination of employment and chances of securing comparable employment are significantly reduced, the equivalent of 3 months gross salary is fair compensation.
121. The copy of the claimant's payslip on record is illegible.

### **Certificate of Service**

122. The claimant is entitled to a certificate of service by dint of Section 51 of the *Employment Act*.
123. In the end, 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 and unlawful.
  - b. Equivalent of 3 months gross salary.
  - c. Certificate of service.
  - d. Costs of the suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 29<sup>TH</sup> DAY OF JULY, 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

