



**PG Security Limited v Ndiwa (Employment and Labour Relations Appeal E013 of 2024) [2025] KEELRC 2085 (KLR) (10 July 2025) (Judgment)**

Neutral citation: [2025] KEELRC 2085 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET  
EMPLOYMENT AND LABOUR RELATIONS APPEAL E013 OF 2024**

**MA ONYANGO, J**

**JULY 10, 2025**

**BETWEEN**

**PG SECURITY LIMITED ..... APPELLANT**

**AND**

**ISSAC NDIWA ..... RESPONDENT**

*(Being an appeal against the judgment of the Chief Magistrate's Court at Eldoret delivered by Honourable B. K. Kiptoo on the 17th February, 2023 in Eldoret CMELRC No. E054 of 2021)*

**JUDGMENT**

1. The Appellant herein was the Respondent, while the Respondent was the Claimant in Eldoret CMELRC No. E054 of 2021 wherein the Respondent sued the Appellant vide a Memorandum of Claim dated 19<sup>th</sup> May, 2021 seeking compensation and terminal dues for the alleged unfair termination of his employment.
2. After hearing the parties, the trial court delivered its judgment on 17<sup>th</sup> February, 2023, holding that the termination of the Respondent's employment was unlawful. Judgment was entered in favour of the Respondent and he was awarded reliefs as set out in the trial court's judgment at page 116 of the Record of Appeal. The reliefs will be addressed later in this judgment.
3. The Appellant being dissatisfied with that Judgment, lodged the instant appeal vide the Memorandum of Appeal dated 6<sup>th</sup> March, 2024 on the following grounds of appeal:
  - a. That the learned trial Magistrate erred in fact and in law by failing to appreciate the evidence (oral and documentary) of the Respondent/Appellant as presented by the Appellant's witness.
  - b. That the learned Magistrate erred in fact and in Law in finding that the Respondent/Claimant's dismissal was unfair despite having voluntarily resigned from employment.



- c. That the learned Magistrate erred in law and fact by granting one month salary in lieu of notice yet there was no such prayer in the Claim.
  - d. That the learned Magistrate erred in law in awarding the Claimant 17 months' salary as compensation for unfair termination contrary to the provisions of Section 49 1(c) of the [Employment Act](#) 2007.
  - e. That the learned Magistrate erred in fact and in law in 2 making awards without giving any explanation or justification.
  - f. That the learned Magistrate erred in fact and in law by not putting into consideration the cardinal interest of justice of ensuring that he appreciated submissions and authorities of both parties.
4. The Appellant prayed that the appeal be allowed with costs.
5. The appeal was disposed of by way of written submissions. The Appellant's submissions were filed on 25<sup>th</sup> November, 2024. The Respondent's submissions are dated 20<sup>th</sup> June, 2025.

### **Analysis**

6. This being a first appeal, this court, guided by the principles espoused in several decisions among them *Selle & Another v Associated Motor Boat Co. Ltd & Another* (1968) EA 123, is required to re-evaluate and re-examine the evidence adduced in the trial court in order to reach its own finding, taking into account the fact that this court had no opportunity of hearing or seeing the parties as they testified.
7. Vide his Memorandum of Claim dated 19<sup>th</sup> May 2021, the Claimant (now the Respondent) averred that he was employed by the Appellant as a security guard and deployed at Lake Oil Limited, Eldoret from 8<sup>th</sup> March, 2020. That on 30<sup>th</sup> July, 2020, while on duty at Lake Oil Limited, he was involved in an accident leading to the fracture of his right hand and/or right radius. He was treated at Moi Teaching and Referral Hospital and was granted 60 days sick leave to enable him recover.
8. The Respondent averred that before the expiry of the sick leave some officers from the Appellant called and asked him to sign some documents to claim some of his deducted dues from the company in order to enable him fund his treatment and house rent.
9. The Respondent averred that upon expiry of the 60 days sick leave his efforts to resume duty were rendered fruitless.
10. The Respondent contended that his employment rights were violated and his terms of contract breached by the Appellant.
11. He itemized the particulars of breach of contract and violation of rights as hereunder:
- a. Failure to compensate the claimant for the sick off and/or leave period contrary to section 30 of the [Employment Act](#) 2007.
  - b. His constitutional right to fair remuneration contrary Article 41(2) has been violated.
  - c. His right to medical attention contrary to section 34 of the [Employment Act](#) and Article 43(2) of [the constitution](#) has been violated and efforts for the employer to provide him funds to conduct second x-ray as suggested by Dr. Vadgama Harsh proved impossible.



- d. His right to be compensated by the insurance company has been violated even after making frequent visitation to the respondent's office over the same contravening section 6 of the National insurance fund Act CAP 255.
  - e. Unfair termination of an employment (if any) according to section 45(1)and(2) of the Employment Act 2007 is an offence and from the actions of the employer, it is crystal clear that the claimant has suffered the same.
  - f. Subjecting the claimant to punishment for several months without pay at all.
  - g. Failure to pay the claimant for unlawfully withholding his remuneration (house allowance, salary underpayment, leave days due and service allowance) contrary to section 25 of the Employment Act 2007.
  - h. Failure to allow the claimant to go back on duty after sick leave.
12. The Respondent prayed for orders that the conduct of the Appellant of refusing to allow him back to work after sick leave and failure to pay what was due to him after sick leave was unlawful.
13. He prayed for the following reliefs:
- a. The directions that the Respondent do assign the Claimant the assignment available in order for the claimant to resume his duty.
  - b. The Respondent to pay the Claimant all dues payable to him as from the time of his sick leave to date.
  - c. In the alternative to (b) above, or in the event the Respondent has terminated the Claimant's employment, the declaration that the process of termination of the employment by the Respondent as against the Claimant was unlawful and that the Respondent be ordered to pay all dues payable for the employee on unlawful termination employment.
14. The Respondent further prayed for judgment against the Appellant as follows:
- a. The Declaration that the conduct of the Respondent not to allow the Claimant go back on duty after sick leave and failure to pay what is due to the Claimant was and is still unlawful.
  - b. In the alternative to (a) above a declaration that the termination process carried out by the Respondent (if any) as against the Claimant is unlawful and that during his employment, the Claimant was not remunerated as required by law.
  - c. Payment of sums of money as claimed under paragraph 10 (ten) above.
  - d. Costs and interests.
  - e. Any other relief that this court may deem fit to grant.
15. The Appellant filed a Memorandum of Response dated 9<sup>th</sup> August, 2021 in which it admitted that the Respondent was its employee but denied that he adhered to the terms of his employment contract as alleged. The Appellant further denied that the Respondent was in the course of his duties when the accident in which he was injured occurred. The Appellant averred that the Respondent was assisting another lorry parked at Petrol Bunia Company and not at Lake Oil Petrol Station where he was deployed, contrary to the scope of his duties.
16. The Appellant avers that after the accident the Respondent was taken to hospital by its back-up team. That the driver of the truck which injured the Respondent agreed to settle his hospital bill.



17. It was further the averment of the Appellant that the Respondent resigned by letter dated 29<sup>th</sup> September, 2020 after discharging himself from the Hospital stating that due to the injury he would not be able to continue with his duties as a security guard.
18. The Appellant denies terminating the employment of the Respondent unlawfully.

### Hearing

19. The suit was heard on 16<sup>th</sup> November, 2022. The Respondent testified as PW1. He adopted his witness statement and documents. He testified that he was dismissed without notice. That he was involved in an accident while on duty arranging vehicles at Lake Oil Petrol station. He stated that he did not resign, was not paid sick off pay and was told to sign a document. That the alleged resignation letter was done on his behalf. That his request was for uniform refund, not resignation.
20. He stated that he was away with permission and was taken to hospital by the Appellant's vehicle. That he was not paid salary after the accident.
21. Under cross examination he stated that part of his work as a guard at the petrol station was to arrange vehicles as they off load and load fuel. That he was arranging vehicles when he got injured. That the lorry which injured him was owned by Petro Bunia, a client of Lake Oil.
22. He stated that he went back to the workplace after two days. He did not give the Respondent any document to show he was ready to go back to work.
23. The Respondent reiterated that he did not sign a resignation letter, that his request was for uniform refund and he signed the letter he was told to sign so that he could get the uniform refund.
24. He stated that he took the sick sheet from the company after 3 days and returned it in September.
25. Under re-examination the Respondent stated that the Appellant sent employees to check on him while he was unwell. That he wanted Kshs. 1000 for ex-ray and was told he could redeem uniform money.
26. For the Appellant Pamela Anyangala testified as RW1 and adopted her statement dated 9<sup>th</sup> August, 2021 together with the Appellant's List and Documents. She testified that the Respondent was assigned to work at Lake Oil to secure client's property and assist in parking of trucks of Lake Oil. That he was injured while directing a truck belonging to Petro Bunia.
27. RW1 stated that the Respondent he went to his rural home after the accident and turned up at work after on 17<sup>th</sup> August, 2020. She testified that the Respondent wrote a statement on 1<sup>st</sup> September, 2020 and explained why he did not report to work to get permission. She stated that PW1 was not forced to write the resignation letter.
28. Under cross examination RW1 stated that there was an agreement that the Respondent could go back to work after he recovered but he did not.
29. She stated that the two petrol stations share an entrance and the staff guard the entrance irrespective of the ownership of the vehicle.
30. In the judgment of the trial court, it held that the Respondent did not prove the reason for termination as required under section 43 of the *Employment Act* or take the employee through the disciplinary process under the Act. The trial court entered judgment against the Appellant as follows:
  - i. A declaration that the dismissal of the Claimant is unfair.
  - ii. Compensation for unlawful termination at Kshs. 100,000/=



- iii. One months' salary in lieu of notice at Kshs. 10,000/=
- iv. 17 months' salary as compensation for unfair dismissal at Kshs. 225.000/=
- v. Costs of the suit and interest until payment in full.

### **Appellant's submissions**

31. The Appellant submitted on two issues, whether the dismissal was unfair and whether the Respondent/Claimant is entitled to the awards.
32. On the first issue it was submitted that the Respondent handed in a resignation letter dated 29<sup>th</sup> September, 2020 in which he stated that he could no longer continue to carry on his duties due to the nature of his injuries as a result of the accident.
33. The Appellant submitted that as stated by the Court in *Rose Mwikali Nzuki v Food for Hungry Kenya* [2015] eKLR, a resignation is voluntary if the employer does not influence or prompt the employee to so resign. That this is irrespective of whether the employee committed some acts or omission that would otherwise warrant dismissal. That "where the employer prompts the employee to resign promising some carrot to ward off some stick then the resignation is not voluntary".
34. The Appellant submitted that where the employee resigns the employer is only liable if the employee can prove that the resignation amounts to constructive dismissal as was held in *Kenneth Kimani Mburu v Kibe Mungai Holdings Limited* [2014] eKLR and in *David M. Potter v New Brunswick Legal Aid Services Commission*, a Statutory Body Incorporate Pursuant to a Special Act of Province of New Brunswick 2015 SCC.
35. The Appellant further relied on the decision in *Benard Muriuki Gikandi v Kenya Wildlife Services* [2022] eKLR where the court stated that the prayer for unlawful and unfair termination cannot stand where the Claimant in his resignation letter indicated that he resigned for personal reasons.
36. On the awards the Appellant submitted that the Respondent having failed to demonstrate that he was unlawfully terminated and was not entitled to any of the reliefs sought. For emphasis the Appellant relied on the decision in *Texas Alarms (K) Limited v Juma Ramadhan Sadiki* [2021] eKLR.

### **Respondent's Submissions**

37. The Respondent set out the issues for determination to be: -
  - i. Whether the termination process by Appellant was lawful;
  - ii. Whether the Respondent established his case against the Appellant at the trial;
  - iii. Whether the Respondent's purported "resignation letter" is valid and the context when he signed it;
  - iv. Whether the trial Magistrate's finding was justified.



38. As a preliminary issue, the Respondent drew the attention of the court to the duties of a first appellate court as restated in Mbae (Suing as the legal *Representative of the Estate of Koome Mbae* v *Kinya* (Civil Appeal E018 of 2022) [2024] KEHC 2285 (KLR) where the court stated:

“It is now settled law that the duty of the first appellate court is to re-evaluate the evidence which was adduced in the subordinate court both on points of law and facts and come up with its own findings and conclusions.”

39. On the issue whether the termination process by the Appellant was lawful, the Respondent submitted that the Appellant through the conduct of its officers, intended to constructively dismiss him and the officers were not honest in their intentions. That in so doing they violated section 41 of the *Employment Act*. That the Appellant did not explain to the Respondent why his employment was terminated by making him sign the “resignation letter”. That the Appellant’s officers also ignored the provisions of sections 43, 45(1) and (2), 47(5) and 44(4)(g) of the Act.

40. The Respondent relied on the decision in Francis Njeru Kariuki v Kenya Institute of Management [2014] eKLR where the court observed:

“From the foregoing, the evidence adduced by both sides demonstrates the manifest failure to follow the law on termination for misconduct. In the premises I find that the termination was unfair within the meaning of Section 45 and thus unlawful...”

41. On the second issue the Respondent submitted that he successfully established that there was an accident, that he served the Appellant with his 60 day sick leave but the Appellant refused to allow him to resume work, that he was not found guilty of any misconduct, that the Respondent’s officers came up with a ploy to manipulate, dupe and/or trick him into signing the purported resignation letter and in doing so forced the Respondent to cater for his medical expenses for injuries suffered in the ordinary course of his work and avoided paying his outstanding lawful dues.

42. He submitted that in this case context is key. That in this instance, it is worth pointing out that after the aforementioned accident, the Respondent was in desperate need of money since he was out of work and needed to pay for rent and money to cover his medical costs.

43. That when he was summoned to the Appellant’s offices and informed that he needed to draft and sign some documents as a condition precedent to them giving him a refund of the uniforms funds he quickly agreed to do so without fully appreciating the entire contents and consequences of the said documents.

44. That the truly revealing evidence that betrays the Appellant’s officers mal-intention of firing the Respondent without following due process is the Appellant’s letter to the Respondent’s Advocates dated 24<sup>th</sup> December 2020 (“Alleged Injury To Isaac Ndiwa On 30<sup>th</sup> July 2020”).

That in it, they were asked for funds to enable the Respondent get an 2<sup>nd</sup> X-ray. Instead, the Appellant’s officers launched into a litany of complaints that they apparently harboured against the Respondent but which, interestingly, they had never put forthrightly to him while he was still their employee.



45. The Respondent prayed that this court, just like the trial Magistrate did, finds merit in the case of Samson Irungu Karuma v Kenya Nut Company Limited [2021] eKLR where the Honourable Court faulted the validity of a resignation letter which had been made under coercion, holding:

“The claimant having signed the letter whether to his knowledge or not, he cannot recant the contents thereof. The general rule is that a party of full age and understanding is normally bound by his signature to a document, whether he reads it or not.

This was the decision of the Court of Appeal in C.A No.27/2017 at Mombasa by JJA Visram, Karanja & Koome (as they were then). The learned JJA, referred to Levison VS Patent Steam Carpet Cleaning Company LTD(1977)3 ALL ER 498 and stated that;

“Putting it another way, he is estopped by his/her signature thereon from denying his consent to be bound by the provisions/terms contained in that document”.

his rule has exceptions though where there is a plea of non est factum (emphasis mine)-see Halsbury's Law of England Vol 22 (2012) at paragraph 285 thus;

"where, however the plea of non est factum is available, the provisions contained in the document are completely void as against the signatory entitled to plead the defence, no matter into whose hands that document may come. The reason is said to be that the mind of the signatory did not accompany his signature so that the mistake renders his consents as represented by his signature as complete nullity."

This is actually the defence of the claimant herein when confronted with the letter he signed resigning from his job. He stated that he was forced to sign the said letter by respondent's head of security. He insisted that the letter was written by the security officer but he signed it. In my view, if indeed the claimant had intended to resign from work, he didn't need another to write his resignation letter for him. It is true that the letter bears his signature but was not written by him. I therefore start from the premise that the claimant never resigned from work but was terminated accordingly. Having been terminated, it was important that the respondents follow the procedure envisaged if indeed the claimant was guilty of some misconduct as envisaged under Section 41 of the Employment Act 2007..."

46. The Respondent further relied on the case of Milton M Isanya v Aga Khan Hospital Kisumu [2017] eKLR, where this court, in agreeing with various other decided cases observed:

“a constructive dismissal occurs when the employer does not express the threat or desire to terminate employment but frustrates the employee to the extent that the employee tenders resignation.”

47. He further relied on the decision in Joseph Matiti Maema & 3 others v Kabiro Builders Limited (2016), where the court observed that employees were bullied into quitting. They were called one morning and informed that the company they worked for was closing and that they had to tender resignation letters if they wished to be paid their dues. The distraught employees initially protested this directive but eventually caved in. Justice Monica Mbaru held that they had resigned not voluntarily, but due to the employer's behaviour, and had therefore been constructively dismissed.

48. The Respondent submitted that the same scenario applied in the instant case where the content of the letter was dictated by the Appellant's officials. He submitted that he never originated the letter. Hence the contents and the signature do not match the intention of the Respondent. That the document cannot be deemed as a resignation letter.



49. On the final issue the Respondent submitted that the trial court was justified in making the awards in the judgment.

### **Analysis and determination**

50. I have considered the Record of Appeal and the submissions by both parties. The grounds of appeal may be summarized as follows:
- i. Whether Respondent was unlawfully terminated by the Appellant; and,
  - ii. Whether the Respondent is entitled to the award by the trial court.

### **Whether Respondent was unlawfully terminated by the Appellant**

51. It is the submission of the Appellant that the Respondent resigned from its employment and therefore the finding of the trial court that it dismissed the Respondent is in error. The Respondent on the other hand states that he was issued with the letter which he signed.
52. In his witness statement which he adopted as his evidence the Respondent states as follows:
- “That before the expiry of 60 days the officers from PG Security called me and informed me to sign some documents to reclaim my deduction dues from the company (my employer) in order to enable me fund my treatment and house rent which monies I have not been given to date.
- That upon the expiry of the 60 days sick leave I have tried to resume duty but has been rendered fruitless todate. (sic) That my employment rights have been violated and my terms of contract have been breached by the company and/or my employer/respondent herein.”
53. There is a letter from the Respondent which on the face of it is a resignation. There is no clear evidence on record whether this letter was drafted by the Appellant and the Respondent asked to sign it as he alleges in his witness statement and in his evidence where he severally insisted that he did not resign.
54. At page 00109 of the Record of Appeal the Respondent stated:
- “... I did not resign... the alleged resignation letter was done on my behalf. It was to request that my uniform allowance be refunded. It was not to be a resignation.”
55. Under cross examination he repeated the same averments at page 00110 when he asserted:
- “I did not write a statement. I did not write a resignation letter. I was requesting for refund of uniform money refund. (sic). I signed his letter I was told to sign so that I could get my uniform money.”
56. If these averments are true, then the court would have to agree with the Respondent that he did not resign. As submitted by the Respondent a plea of non est factum would constitute an exception to the rules of estoppel that a party is bound by documents he has signed as was held in the case of Samson Irungu Karuma supra.
57. As submitted by the Respondent, he was in desperate need of money for rent and hospital bills and was informed he could be refunded uniform deductions if he resigned.



58. The letter of resignation would lend credence to the Respondents assertions. The letter reads:

Isaac Ndiwa  
Box 7979  
Kitale  
29/09/2020  
To  
Administration Manager  
Security Ltd  
Box 3643-30100  
Eldoret

Dear Sir/Madam

REF: Resignation With Immediate Effect

In regard of the above mention subject following the accident that I was involved in while I was on duty (Lari oil ltd assignment), on 30<sup>th</sup> July, 2020. This leads to my right hand fraction and it had made me not able to continue with my duties as a guard and I have bills to pay. I therefore decided to resign with immediate effect, so that I can be paid my uniforms refund to enable me pay house rent and purchase foods. I will resume company duties immediately or as soon as doctors will inform me that I am no is my next checkup and doctors recommendations, this is to assure me embark on with duty or until within specified period.

Thank you in advance as I wait for your positive verdict.

Yours faithfully

Signed

Isaac ndiwa

[Emphasis added]

59. In the said letter of resignation the Respondent states “I will resume company duties immediately or as soon as doctors will inform me that I am now able to carry on with normal duties or fully recovered”.
60. It is also worth noting that in the witness statement of RW1 she stated that the Appellant wrote a desertion letter to the Respondent on 14<sup>th</sup> August, 2020 which was never withdrawn. This therefore begs the question, did the Respondent resign through the letter dated 29<sup>th</sup> September, 2020 or had his employment already been terminated for desertion of duty by then?
61. Whichever way it is looked at it would lead to the same conclusion. This is because if the letter is considered as the one that terminated the Respondent’s employment the pleas of non-est-factum would apply and if the termination was by letter dated 14<sup>th</sup> August, 2020 on grounds of desertion it would still be unfair termination as section 44(4)(a) provides that absenteeism would only constitute justifiable or lawful ground for the dismissal if—
- “(a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work”



62. The Respondent had lawful cause for being away from work which the Appellant was aware of. He was thus absent “for lawful cause” and could not be dismissed on grounds of desertion of duty.
63. It is for these grounds that I would not interfere with the finding of the trial court that the termination of the Respondent’s employment was unfair for want of justifiable or lawful reason.
64. The trial court finding on this limb is therefore upheld.

**Whether the Respondent is entitled to the award by the trial court**

65. In its judgment, the trial court awarded the Respondent the following:
  - i. A declaration that the dismissal of the Claimant is unfair.
  - ii. Compensation for unlawful termination at Kshs. 100,000/=
  - iii. One months’ salary in lieu of notice at Kshs. 10,000/=
  - iv. 17 months’ salary as compensation for unfair dismissal at Kshs. 225.000/=
  - v. Costs of the suit and interest until payment in full.
66. I will consider each award on its own head.
67. The first award is a declaration that the dismissal of the Claimant is unfair. As I have already held above, I agree with the finding of the trial court that the termination of the Respondent’s employment was unfair for reasons already stated above. I would thus uphold this award.
68. The second award is (ii) compensation for unlawful termination at Kshs. 100,000/=. I will consider this award alongside the award number being (iv) 17 months’ salary as compensation for unfair dismissal at Kshs. 225.000/=.
69. On the face of it, the Respondent was awarded compensation separately for unlawful termination and for unfair dismissal.
70. Compensation is provided for in section 49 of the *Employment Act* which provides:
  - (1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—
    - (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;
    - (b) where dismissal terminates the contract before the completion of any service upon which the employee’s wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or
    - (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.
71. Section 49(1) provides for compensation of up to a maximum of 12 months. In this case the Respondent was awarded more than the 12 months maximum compensation.



72. Further, in awarding compensation the court is supposed to consider the factors in section 49(4) which provides as follows:

- (4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following—
- (a) the wishes of the employee;
  - (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and
  - (c) the practicability of recommending reinstatement or re-engagement;
  - (d) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;
  - (e) the employee's length of service with the employer;
  - (f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;
  - (g) the opportunities available to the employee for securing comparable or suitable employment with another employer;
  - (h) the value of any severance payable by law;
  - (i) the right to press claims or any unpaid wages, expenses or other claims owing to the employee;
  - (j) any expenses reasonably incurred by the employee as a consequence of the termination;
  - (k) any conduct of the employee which to any extent caused or contributed to the termination;
  - (l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and
  - (m) any compensation, including ex gratia payment, in respect of termination of employment paid by the employer and received by the employee.

73. By virtue of section 50 courts are guided by these factors in awarding compensation. Section 50 provides:

50. Courts to be guided

In determining a complaint or suit under this Act involving wrongful dismissal or unfair termination of the employment of an employee, the Industrial Court shall be guided by the provisions of section 49.

74. Going by the provisions of section 49(4) it is my view that the award for compensation was inordinately high and that this court is justified in interfering with the same. In my view taking into account all the circumstances of this case together with the provisions of section 49(4), compensation equivalent to 6 months salary would be reasonable. I accordingly set aside the award for compensation by the trial court and substitute the same with an award of Kshs. 60,000 equivalent to 6 months salary.

75. The rest of the award of the trial court will remain undisturbed as the Respondent is entitled to pay in lieu of notice as awarded and to costs.



76. The appeal having been successful partially, each party shall bear its costs of the appeal.
77. In conclusion, the judgment of the Trial Court is set aside only in respect of the award on compensation for unfair termination. The court substitutes the same with an award of compensation in the sum of Kshs. 60,000 for unfair termination.
78. Each party shall bear its own costs of the Appeal.
79. For the avoidance of doubt, the order for costs in the lower court is upheld as this court has upheld that the termination of the Respondent's employment was unfair.
80. Judgment accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 10<sup>TH</sup> DAY OF JULY 2025**

**MAUREEN ONYANGO**

**JUDGE**

