



REPUBLIC OF KENYA



Mbotha v Usiku Entertainment Limited (Employment and Labour Relations Cause E651 of 2020) [2025] KEELRC 1993 (KLR) (8 July 2025) (Judgment)

Neutral citation: [2025] KEELRC 1993 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E651 OF 2020**

HS WASILWA, J

JULY 8, 2025

BETWEEN

AMOS MOSES MBOETHA CLAIMANT

AND

USIKU ENTERTAINMENT LIMITED RESPONDENT

JUDGMENT

1. The Claimant instituted this claim vide a Memorandum of Claim dated 15th October 2020 and prays for judgment against the Respondents for: -
 1. A declaration that the Respondent's action to dismiss the Claimant from employment was illegal, unlawful, unfair and inhumane.
 2. An order for the Respondent to pay the Claimant all her terminal dues and compensatory damages.
 3. 12 months compensation for wrongful dismissal Kshs. 150,000 x12 months= 1,800,000.
 4. Pro rata leave of 7 months.
 5. Payment in lieu of notice.
 6. Costs of the suit plus interests therein.

Claimant's Case

2. The Claimant avers that the Respondent offered him employment as the Director of Partnerships on 1st September 2019; the terms were orally agreed at a gross monthly remuneration of Kshs. 150,000.
3. The Claimant avers that he worked for the Respondent diligently and dutifully until 11th May 2020 when his employment was abruptly terminated on the unsupported reason of poor performance.



4. It is the Claimant's case that during the term of his employment, he performed his duties exemplarily to the satisfaction of the company thus he was rewarded bonuses, praises and promises of better terms of engagement.
5. The Claimant avers that through his mobilization efforts, he managed to grow the Respondent's active users from 85 users to 2300 users within two and a half months, and he was rewarded a bonus by the Respondent.
6. The Claimant avers that he used his personal influence and network to market and promote the Respondent's agendas through numerous television interviews thus saving the company huge marketing expenses and there were new registrations on daily basis.
7. The Claimant avers that it embarked on building partnerships with companies who would reward the registered members upon their win. It also initiated the launch of a television program named KTN Trivia in partnership with KTN. He secured several meetings with KTN and contract negotiation was ongoing before his wrongful termination.
8. The Claimant avers that owing to the existence of a recognition agreement, it was duty bound to ventilate the concerns of trade union membership within the Respondents' employ. It therefore appointed interim trade union officials to coordinate trade union activities at shop level.
9. The Claimant avers that he received an email from the Respondent's Chief Executive Officer (CEO), Mr. Jay Shapiro on 14th April 2020 complaining of his performance. He responded to the email the same day and continued performing his duties dutifully until his termination on 11th May 2020.
10. It is the Claimant's case that termination letter did not disclose the reasons for his dismissal.
11. The Claimant avers that the Respondent did not offer any support that he required to discharge his duties and neither did it evaluate his performance against a performance improvement plan before terminating his employment.
12. The Claimant avers that he was required to report directly to the CEO and his termination was out of malice because he demanded an employment contract that defined his job description and shares to the company as promised to him at the time of his engagement. He contends that he was targeted and harassed in violation of his right to fair administrative action and freedom from discrimination.
13. It is the Claimant's case that the he was neither issued a notice to show cause letter nor accorded a fair hearing contrary to the law of disciplinary procedures and employee grievances. He was also denied an opportunity to respond th the dismissal letter or accorded the right to appeal
14. The Claimant avers that no appraisals were conducted since he joined the company and there was no regular assessment with the CEO whom he reported to directly, in reviewing his performance, therefore, the email sent on the day of the termination was a ploy to justify the unlawful dismissal.
15. The Claimant avers that he wholly depended on this job for his livelihood and his unfair and unjustified dismissal affected him and his family adversely. He therefore seeks compensation in damages for the period he had not been in employment and the trauma and difficulty exposed to him by the Respondent.

Respondent's Case

16. In opposition to the Claim, the Respondent filed an Amended Memorandum of Response and Counterclaim dated 16th July 2024.



17. The Respondent admitted that it offered the Claimant employment as a Director Partnership at a gross monthly salary of Kshs 150,000 on 1st September 2019 vide an oral agreement.
18. The Respondent avers that the Claimant's duties and responsibilities were: seeking out relationships, drafting proposals and negotiating contracts with prospective clients in the social impact and non-profit space, for the purpose of hiring the Respondent to produce social impact games on a bespoke basis; seeking out relationships and negotiating partnerships with "outbound partners" which players of the Respondent's games could convert points towards real world benefits such as health insurance, paying children's school fees and retirement savings; supervising the creation and management of the street promotions team with the intention of raising awareness of the Respondent's games and recruiting new players; and acting as a spokesman for the company by representing the Respondent in the local media.
19. It is the Respondent's case that the Claimant was to act as an understudy to its CEO and learn professional management and it was an implied term of the contract that he would carry out his duties with due diligence, care, attention and the Respondent's best interest.
20. The Respondent avers that contrary to terms of his employment, his performance and proactive level in the company's growth was unsatisfactory; he did not generate ideas; he accomplished little when the office closed due to Covid 19; he did not participate in the company's weekly meetings despite reminders and neither did he do daily check-in updates as all staff had been requested; and he failed to complete a single contracted partnership on either the client or outbound side.
21. It is the Respondent's case that it conducted an in-person performance review with the Claimant at ABC Java House in which the Claimant was advised that his performance was not at par and that in other companies, he would already have been fired or disciplinary action taken against him.
22. However, he was given one more chance to redeem himself by developing an idea for a bespoke game that could be proposed to a prospective NGO client. The Claimant later presented an inappropriate, unprofessional and unusable idea which was never presented to the prospective client, he was issued with a warning letter vide an email dated 14th April 2020 and was informed his performance needed to improve.
23. The Respondent avers that the Claimant was reminded to submit work he was tasked to weeks prior vide an email dated 4th May 2020 which he failed to; the Respondent informed him to find an alternative way of dealing with the task. Further to this, he was issued several oral warnings.
24. The Respondent avers that despite the warnings, the Claimant failed to improve his performance though he was given ample and reasonable time and support which left the Respondent no choice but to summarily dismiss his employment vide a letter dated 11th May 2020.
25. The Respondent avers that the Claimant was paid in full for the months of May and June 2020, despite his conduct.
26. The Respondent denies that the Claimant was rewarded bonuses due to his exemplary performance and avers that the bonus referred to was for December 2019, which was paid to all employees and was not a reflection of his performance.
27. The Respondent denied the Claimant's efforts resulted in increased game users and avers that the Claimant joined the company before the product was launched and that it has invested substantially in paid advertising, search engine optimization efforts, public relations and daily street promotions which the Claimant did none other than driving the street promotion team to their locations.



28. The Respondent avers that it asked the Claimant repeatedly to maintain professional records in a spreadsheet of the daily activities and successes of the street promotions team, but he was unable to perform the same. It further contends that the Claimant was not successful in recruiting a single company or organization to partner with the Respondent.
29. The Respondent denied the Claimant initiated the program 'KTN Trivia' and avers that save for the initial introduction to one of KTN's staff, the other staff of the Respondent led the entire partnership discussion. Additionally, the partnership with KTN did not come to fruition.
30. It is the Respondent's case that the Claimant's performance was evaluated regularly through feedback shared by the Line Manager and that he was given several months to improve his performance but he failed and/or neglected to do so.
31. The Respondent avers that a performance improvement plan is not mandatory in law. An employer is required to point out an employee's areas of poor performance and provide the employee with reasonable opportunity to improve.
32. The Respondent denies the Claimant's termination was precipitated by malice and he was discriminated upon and avers that the same was based on the Claimant's pure performance and unwillingness to improve.

Counter-claim

33. The Respondent avers that since his termination, the Claimant embarked on harassing the Respondent's CEO on multiple occasions. He began by sending the CEO a series of false and offensive emails in August 2020 over a span of several months threatening to take various actions to expose the Respondent and bring it to disrepute.
34. The Respondent avers that the Claimant vide an email send on 29th October 2020, indicated his intention to escalate his claims against the Respondent to the Betting Control and Licencing Board and demanded the CEO provides relevant documentation within 24 hours. Subsequently, in November 2020, the Claimant shared an email indicating he submitted a report to BCLB requesting them to conduct investigation into the Respondent's operations.
35. The Claimant contacted the Respondent's business partners with allegations that the Respondent was operating an illegal platform and sought their cooperation in investigations by the Director of Criminal Investigations (DCI). The Respondent had to write to the partner company to clear the falsehood which they accepted and put the matter to rest.
36. The Respondent avers that on 9th May 2022, its CEO received a text message from an office of the DCI based at Gigiri Police Station requesting he reports to the station. When he reported to the station, he was informed that the Claimant made complaints that the CEO was working in the country without a valid work permit and that the Respondent was in violation of the BCLB rules by illegally operating a gambling ring.
37. The Respondent avers that the DCI investigated the matter and the complaints were found to be false and baseless thus dismissed.
38. The Respondent prays for general damages for harassment; economic sabotage; and defamation.



Claimant's Response to the Counterclaim

39. The Claimant avers that he is protected by law from any form of retaliation or liability for reporting suspected illegal conduct, as this is in the interest of promoting transparency and accountability. Whistleblowing should not be punished or retaliated especially, not through the court system, as the Respondent is trying to do.
40. The Claimant avers that throughout the reporting process, the Defendant was in the know, as the Claimant informed them beforehand and even went further to request for information in order to present a full report to the authorities.

Evidence in Court

41. The Claimant (CW1) adopted his witness statement dated 15th October 2020 as his evidence in chief.
42. During cross examination, CW1 testified that he requested a written contract which was not given to him and that everything he was intimidated verbally.
43. CW1 testified that he met the Respondent's CEO at ABC Java where he yelled at him but he cannot remember the day or time. He stated that he asked about his health insurance and documents which the CEO did not have.
44. CW1 testified that GLIP was a software used by the Respondent's employees but it did not track their activities.
45. CW1 testified that he was asked several times by the Respondent's CEO to utilise the GLIP software.
46. CW1 testified that he received an email warning him of his slow growth and intimating he was not working from home. He responded by saying he would be checking his emails daily. Two weeks after the warning email, he received an email from the CEO saying he had not received a list of target organization.
47. The Respondent's witness (RW1) Jason Shapiro stated he is the Respondent's CEO and adopted his witness statement dated 23th September 2024 as his evidence in chief and produced the Respondent's filed list of documents dated 7th October 2024 as his exhibits 1-16.

Claimant's Submissions

48. The Claimant submitted that Section 8 of the *Employment Act*, provides that employment contracts may be either oral or written. This establishes that the existence of an employment relationship does not depend solely on a written document
49. The Claimant submitted that he was employed by the Respondent through an oral contract as substantiated by the payment of a monthly salary of Kshs. 150,000 evidenced by the pay slips produced in court. This was confirmed by the Respondent's CEO during hearing where he confirmed the existence of an oral contract with the Claimant.
50. It is the Claimant's submission that the Respondent's own acknowledgment, coupled with the issuance of pay slips evidencing a monthly salary, and the admittance by the CEO during the hearing, corroborates the existence of a bona fide employment relationship. This incontrovertible evidence not only validates the claimant's status as an employee but also reinforces his entitlement to the protections and remedies afforded under the Act.



51. On whether the Respondent was in breach of employment law, the Claimant submitted that despite the Claimant repeated demand a formal written contract outlining the complete terms of employment and a job description that clearly delineated the requirements and responsibilities of his role; the Respondent refused to provide such a contract violating of Section 9(2) of the *Employment Act* which obligates an employer to ensure that a written contract, complete with all particulars of employment, is drawn up and consented to by the employee. The Respondent further violated Section 10(2) of the *Employment Act* that imposes a duty on the employer to provide a detailed job description.
52. The Claimant submitted that Section 34(1) of the *Employment Act* mandates that an employer must ensure the provision of sufficient and proper medical care for its employees during times of illness, including facilitating medical attendance during serious illness. However, when Claimant suffered a severe illness that necessitated emergency surgery and hospitalization, the Respondent failed to extend healthcare insurance coverage and assist with the medical bills, despite promising to do so.
53. On the claim of poor performance, it is the Claimant's submission that it is a well-established principle in employment law that before an employee can be dismissed on the grounds of poor performance, they must be subjected to a structured and documented Performance Improvement Plan (PIP). The purpose of such a plan is to identify areas of concern, set clear performance benchmarks, and provide the employee with an opportunity to improve. During the hearing, the Respondent's CEO admitted that the Claimant was never placed on any form of a PIP rendering the allegation of poor performance dubious and legally indefensible.
54. The Claimant submitted that Respondent failed to provide any documentary evidence that could substantiate an allegation of underperformance. The Claimant was neither issued with a formal letter notifying him of any concerns about his performance nor was he given an opportunity to respond to these allegations. Instead, he was dismissed without any attempt at due process
55. On whether the termination was unprocedural and unlawful, the Claimant submitted that Section 41 of the *Employment Act* states that, before terminating an employee on grounds of poor performance, misconduct, or physical incapacity, the employer must clearly explain, in a language understood by the employee, the reasons for considering termination. Additionally, the employee is entitled to have a colleague or a union representative present during this explanation. In this case, the Respondent failed to provide an explanation as the termination letter issued to the Claimant was devoid of any substantive reasons, and no union representative or colleague was afforded the opportunity to be present. This was in breach of statutory duty and rendered the termination procedurally defective and fundamentally unjust.
56. The Claimant submitted that Section 41(2) of the *Employment Act*, clearly stipulates that an employee must be given an opportunity to be heard before their employment is terminated on grounds of poor performance. The Claimant contends that this was not done, he was locked out and told not to contact the office as per the termination letter, and despite seeking to be heard, the Respondent dismissed his request.
57. The Claimant submitted that the entire termination process fell short of the fair procedures required by Section 45(2)(c) and 45(5) of the *Employment Act*. There was no formal communication, no proper notice, and certainly no opportunity afforded to the Claimant to address or rebut the alleged performance issues.
58. On the counterclaim, the Claimant submitted that no law exists that suppresses the right to whistleblow; Article 33(1) of *the Constitution* provides for the freedom to seek, receive, and impart information as a cornerstone of democratic society. Further, the jurisdiction of the Employment and



Labour Relations Court is confined exclusively to employment matters, as provided under Section 12(1) of the *Employment and Labour Relations Court Act*.

59. The Claimant submitted that Section 20 of the *Defamation Act* stipulates that no defamation or libel case may be brought after the expiration of 12 months from the date of the alleged defamatory act. The Respondent's memorandum of claim indicates that the alleged defamation occurred between 2020 and 2021, yet the counterclaim was filed on 16th July 2024, 3 years well beyond the statutory limitation period.
60. It is the Claimant's submission that the statutory limitation, the restricted jurisdiction of this Court to employment matters, and the constitutional protection afforded to whistleblowers, the Respondent's defamation counterclaim is without merit and should be dismissed with costs awarded against the Respondent.
61. On reliefs sought, the Claimant relied on *Elizabeth Kioko v Beyene Haire Warde & another* [2018] eKLR and *Kiptum Nyaoke v Kenya Post Office Savings Bank* [2022] eKLR in which the court awarded 12 months salary for unfair termination and other reliefs prayer for. Based on these case laws, the Claimant urged the court allows his claim as per the memorandum of claim.

Respondent's Submissions

62. The 1st Respondent submitted on three issues: - whether the Claimant's Claim is merited; whether the Claimant is entitled to the reliefs sought; and whether the Claimant's counterclaim is merited.
63. On the first issue, the Respondent submitted that at the time of entering into the agreement, the had not established a human resource team and the employment relationship was informal in nature, driven by goodwill and trust. Additionally, the Claimant was not experienced in the Respondent's line of work and the Respondent had no prior knowledge of the Claimant's skills set. These unique circumstances precluded the immediate provision of a written job description.
64. The 1st Respondent submitted that while there was no written job description, the Claimant was orally informed of his duties and responsibilities during the onboarding process. The Claimant confirmed during cross examination when asked a question about bringing up an idea of a game and whether the Respondent CEO was receptive, he stated that it was not in his job description and it was not his job to come up with games. This affirms that the Claimant was aware of the scope of his duties from the onset and he cannot claim afterwards that the lack of a written job description was a breach of the terms of the employment law.
65. The Respondent submitted that it made considerable efforts to support and train the Claimant during his employment as evidenced by the WhatsApp chat on page 4 of the Respondent's bundle of documents, where the Claimant was seeking guidance from the Respondent, telling him, "Today just take me through writing standard usiku proposals." Despite receiving consistent feedback, and considerable support, the Claimant failed to rectify his performance issues.
66. The Respondent submitted that Claimant consistently ignored clear directives from his supervisor; he was repeatedly being instructed to use the official communication channel, Glip, but he continued to use WhatsApp in disregards of the employer's protocols. Additionally, vide a warning letter dated 14th April, he informed that his work was not at the expected normal levels as he had accomplished very little and for the past two week he had not contributed anything in the weekly meetings. In his response, the Claimant stated that his poor performance was as a result of a lack of a written job description.
67. The Respondent submitted that two weeks after receiving the warning letter and promising to improve, the Claimant received another letter dated 4th May 2020 wherein the supervisor expressed his



frustrations at the Claimant's failure to deliver a list of target organisations and game concepts that had been requested two weeks earlier. This demonstrated lack of diligence of the part of the Claimant.

68. It is the Respondent's submission that poor performance is one of the grounds for termination of employment under Section 45 of the *Employment Act*. Therefore, there was substantive and fair justification for terminating the Claimant's employment.
69. On procedure, the Respondent submitted that the Claimant was given several warnings, both oral and written regarding concerns about his performance. Specifically, the Claimant was informed of the concerns in the letter dated 14th April 2020. He responded to the warning letter in a letter dated 4th May 2020 wherein he acknowledged the concerns and attempted to provide justification. This demonstrates that he was indeed granted an opportunity to respond to the issues raised.
70. The Respondent submitted that COVID 19 presented challenges which forced the country into a full lockdown. Restriction on movement, physical interaction and general disruption of business operations made it extremely difficult to convene formal meetings or conduct structured disciplinary proceedings as envisaged under Section 41 of the *Employment Act*. It relied in the Court of Appeal case of *Kenya Ports Authority v Fadhil Juma Kisuwa* [2017] KECA 652 (KLR), which addressed the issue of oral disciplinary hearing as follows:
- “it must however be stressed that the necessity of an oral hearing will depend on the nature and the subject and the nature of the dispute, the whole circumstances of the particular case.”
71. The Respondent submitted that it lacked the administrative capacity to implement a disciplinary hearing, in strict compliance with the *Employment Act* as it was operating without a HR department.
72. The Respondent submitted that although the formal disciplinary hearing did not take place: the Claimant was expressly informed of his shortcomings; he was given an opportunity to explain himself through written responses; and his response was considered, was given an opportunity to improve and was mentored so that he could perform his duties satisfactorily.
73. It is the Respondent's submission that the spirit of Section 41 was fulfilled as the Claimant was only dismissed after it became clear that there were no demonstrable improvements. He was further informed the termination stemmed from persistent underperformance.
74. The Respondent submitted that the Claimant was deeply aggrieved by the loss of the employment and consumed by the desire to retaliate against the Respondent. This is evidenced by the Claimant's actions of sent false information to the government agencies claiming that the Respondent was conducting its business in breach of the law and requesting the government agencies to fast-track the investigations so that he could escalate the matter to the media. The allegations were investigated and found to be false.
75. On the reliefs sought, the Respondent a full award of 12 months' salary would amount to unjust enrichment and would unduly punish the Respondent, contrary to the equitable spirit of the employment law. It relied in the Court of Appeal case of *Kiambaa Dairy Farmers Co-Operative Society Limited v Rhoda Njeri & 3 others* [2018] KECA 150 (KLR) that held:

“Twelve months, the statutory maximum ought in all logic to be reserved for the most egregious cases of abuse where there is blatant and contumelious disregard for the rights and dignity of an employee who is being dismissed. Awards of the full twelve months ought therefore to be the exception, all fully explained and justified, as opposed to a default or knee jerk award for every and any case of unfair dismissal.”



76. The Respondent opposed the prayer for pro rata leave of 7 months and submitted that no evidence of the leave accrual has been tendered and the Claimant has not established, to the required standard, that there was pending leave.
77. On payment in lieu of notice, the Respondent submitted that it is undisputed that the Respondent paid the Claimant salary for two months after the date of termination, therefore, the requirement for notice under Section 36 of the *employment Act* was fulfilled.
78. The Respondent opposed the prayer for cost of the suit plus the interest and submitted that the parties had opportunity to resolve this dispute out of court, however, these attempts met with hostility and rejection by the Claimant and contrary to Article 159 of *the constitution* which encourages out-of-court settlement.
79. On whether the counter claim is merited, the Respondent relied in the Court of Appeal case of Kenya Medical Research Institute v Davy Kiprotich Koech [2018] KECA 128 (KLR) that stated as follows:
- “As seen above, sections 47 and 87 (1) of the *Employment Act* 2007 were explicit that the court had jurisdiction to deal with any question, difference, or dispute as to the rights and liabilities of an employer or employee, as well as on matters touching on misconduct, neglect, ill treatment, or any injury to the person or property of either party or infringement of statutory rights. Considering that the respondent’s claim was that his employer was alleged to have injured to his person by way of defamation, we find that the court had the requisite mandate with which to determine the dispute between the parties.”
80. The Respondent submitted that on 4th November 2021, the Claimant sent defamatory emails to the Respondent’s partner, falsely accusing the Respondent of breaching the law, information he was well aware was false and inaccurate. The email at page 50 of the Respondent’s bundle clearly shows the Claimant knew what he was doing was defamatory and even tells the Respondent’s CEO, “You can sue me for slander if you want.” Therefore, the Respondent prays its counterclaim is allowed.
81. I have examined all the evidence and submissions of the parties herein. From the evidence, both the claimant and the respondent were able to establish that the claimant was an employee of the respondent.
82. The respondents however did not issue any employment contract to the claimant as envisage under section 9(1) and (2) of the *Employment Act* 2007 which states as follows:
- (1) A contract of service—
 - (a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
 - (b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months, shall be in writing.
 - (2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3)
83. The contract of service is also expected to give a job description of the employment among other requirements as per section 10(2) of the *Employment Act* which states as follows:



- (2) A written contract of service shall state—
- (a) the name, age, permanent address and sex of the employee;
 - (b) the name of the employer;
 - (c) the job description of the employment;
 - (d) the date of commencement of the employment;
 - (e) the form and duration of the contract;
 - (f) the place of work;
 - (g) the hours of work;
 - (h) the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;
 - (i) the intervals at which remuneration is paid;
 - (j) the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and
 - (k) any other prescribed matter.
84. It is however unfortunate that the respondent failed to issue the contract or even set out the duties that the claimant was to do.
85. The respondents have averred that the claimant performed his duties in a sloppy manner and thus was terminated for none performance. This would be a valid reason for termination but the respondents were then duly bound to examine the contract and periodically review areas of non compliance before termination. There is no demonstration that this was done and so the issue of whether there were valid reasons for termination of the contract as per section 43 of the *employment act* 2007 is not established.
86. Other than validity of reason to terminate, the respondents went ahead and terminated the claimant's employment on 11/5/2020. The claimant agreed that before the termination, the claimant was not subjected to any formal disciplinary hearing. The respondents did not on their part demonstrate that they subjected the claimant to any disciplinary hearing. The process envisaged before a termination/dismissal is as per section 41 of the *Employment Act* 2007 which states as follows:
- 41.
- (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
87. Section 45(2) of the *employment act* 2007 on other hand states as follows:
- 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. (ii) based on the operational requirements of the employer; and
 - (c) that the employment was terminated in accordance with fair procedure.
88. In view of the fact that the claimant was not subjected to any proper disciplinary process and neither was it established that there were valid reason for termination, it is my finding that his termination was unfair and unjustified.
89. As concern counter claim this is not established and I dismiss it accordingly.
90. In terms of remedies, having been dismissed unfairly and in view of the fact that the respondents failed to issue him with any employment contract, I find that he is entitled to compensation
- 1. for unfair termination equivalent to 8 months' salary which I grant at $8 \times 150,000 =$ kshs 1,200,000/-.
 - 2. I also find that he is entitled to 1 month salary in lieu of notice = kshs150,000/-.
 - 3. I grant him leave prorated at 7 months = $7/12 \times 150,000 =$ kshs 7,500
TOTAL = kshs 1,437,500/- less statutory deductions.
 - 4. The respondent should pay costs of this suit pus interest at court rates with effect from the date of this judgment.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF JULY 2025.

HELLEN WASILWA

JUDGE

