



**Makokha v Nzoia Sugar Company Limited & 3 others (Cause E012 of 2022) [2024] KEELRC 1686 (KLR) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1686 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE E012 OF 2022**

**JW KELI, J  
JUNE 26, 2024**

**BETWEEN**

**CPA MICHAEL WANJALA MAKOKHA ..... CLAIMANT**

**AND**

**NZOA SUGAR COMPANY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES & CO-OPERATIVES ..... 3<sup>RD</sup> RESPONDENT**

**CABINET SECRETARY, MINISTRY OF AGRICULTURE, LIVESTOCK,  
FISHERIES & CO-OPERATIVES ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this suit on 19/11/2021 by filing the Memorandum of Claim dated 18/11/2021 supported by his verifying affidavit of even date. The suit had been triggered by the termination of the claimant as the Managing Director of the 1<sup>st</sup> Respondent by the 4<sup>th</sup> Respondent. Vide the said Memorandum of claim, the Claimant prayed for the following reliefs:
  - a. Declaration that the said termination was unfair and unlawful.
  - b. Compensation for unlawful and unfair termination computed at 12 months' salary i.e. Kshs. 4,020,000/-.
  - c. An order directing the respondents to pay, unpaid six (6) months' salary computed at Kshs. 2,850,000/- (inclusive of Housing and Remunerative allowances).
  - d. Leave Allowance computed as (30 working days \* 1/3 of Kshs. 335,000) = Kshs. 116,666.67/-
  - e. Gratuity of Kshs. 1,245,200/-



- f. The respondent to meet the costs of this suit.
  - g. Interest on the award from the date of filing this suit.
  - h. Any other relief as the Court would deem just and expedient to meet the ends of justice.
2. Also filed in this suit are the claimant's list of witnesses dated 18/11/2021, the claimant's witness statement dated 18/1/2021, and the Claimant's list of documents dated 18/11/2021 and his bundle of documents.
  3. The claim was opposed. The 1<sup>st</sup> Respondent entered appearance on 20<sup>th</sup> December 2021 and on 20<sup>th</sup> January 2022, the 1<sup>st</sup> Respondent filed its response to the claim dated 21/12/2021, its list of witnesses of even date, the witness statement by Bryan Keya dated 21/12/2021, its list of documents dated on an even date and its bundle of documents.
  4. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents did not enter appearance.

## **HEARING AND EVIDENCE**

5. The claimant's case was heard on the 17<sup>th</sup> of October 2023 when the Claimant testified on oath as the witness of fact in his case, produced his evidence as the claim filed, the claimant's list of documents dated 18<sup>th</sup> November 2021 (comprising of 3 documents that were eventually adopted by the Court as the Claimant's Exhibits 1- 3) and the Claimant's witness statement dated on 18<sup>th</sup> November 2021. The Claimant was cross-examined by the counsel for the 1<sup>st</sup> respondent, Mulama.
6. The 1<sup>st</sup> respondent's case was heard on 29<sup>th</sup> November 2023 with one witness of fact, Bryan Keya (DW) who testified on oath, relied on the response to claim dated 21/12/2021, his witness statement dated 21/12/2021 and respondent's list of documents dated 21/12/2021 (comprising of 7 documents that were adopted by Court as Defence Exhibits 1 to 7). DW was cross-examined by the counsel for the Claimant, Olewe.

## **Claimant's case in summary**

7. The claimant submits he was employed by the 1<sup>st</sup> respondent on a fixed 3-year term and was issued with a suspension letter dated 7<sup>th</sup> June 2021 (C-Exhb-2) for allegations against him as a Managing Director by the 4<sup>th</sup> Respondent, which he did not respond to. It was his case that the suspension letter did not deny him the right to respond and the allegations in the Suspension letter were also directed to the DCI and EACC.
8. The Claimant alleged that the 1<sup>st</sup> respondent did not have a right to complain with EACC or the DCI. He argued that, although there was no substantive board at the time of his suspension and termination, the Cabinet Secretary could not exercise the power of the Board.
9. The Claimant confirmed that the suspension and termination letters were from the office of Cabinet Secretary (4<sup>th</sup> Respondent) and that he was not aware of an Ad hoc Committee formed to investigate him before the termination.
10. The Claimant argued that he was never summoned by the DCI and he was not aware whether the DCI or the EACC had received the matter although he was shown the letters dated 1<sup>st</sup> September 2021 sent to the DCI (D-Exh-6) and letters of 1<sup>st</sup> September 2021 sent to the EACC (D-Exh7).



11. When asked whether the 1<sup>st</sup> Respondent had investigative powers, he testified that the 1<sup>st</sup> Respondent had disciplinary powers as the nature of allegations against him was a mix of policies and others were criminal.
12. The Claimant argued that he did not respond to the suspension letter because he did not have the opportunity although he confirmed that his rights to reply were not curtailed by the suspension letter.
13. The Claimant confirmed that he did not produce a copy of the Auditor General's Report for the 2018-2019 period which exonerated him from the financial impropriety allegations leveled against him.
14. The Claimant testified that the employment contract allowed him to use his motor vehicle or that of his spouse. As to the allegations that he submitted false mileage claims, he submitted that the motor vehicles KCA 260L and KCA 433E belong to his insurance company where he and his wife are the sole shareholders. He had no evidence of motor vehicle ownership in Court to prove the same. The Claimant did not respond when asked if the Court could know if the mileage claim was genuine.
15. On the claim for salary arrears, the Claimant confirmed that he was paid via the bank and he had not produced his bank statements to show he had been paid or had any salary arrears. He denied that if he was found culpable of allegations it could amount to gross misconduct.
16. The Claimant confirmed that before his dismissal he went on leave and that the office of the Managing Director had been taken over by Dr. Chrispine Omondi. He testified that he was not aware that the said Dr. Chrispine had been appointed as acting Managing Director.
17. The Claimant testified that he was not aware the Ad Hoc Committee was formed nor did he receive the said Committee's Report. He confirmed that there was no substantive Board of the 1<sup>st</sup> Respondent in office and that his bank statements could not show that he had arrears. He testified that he was never called to write any statements by DCI or EACC and he has never been charged for any offence.
18. The Claimant testified that he was paid his house and medical allowance during his suspension as per the PSC Procedure Manual.
19. During re-exam the Claimant testified that the suspension letter of 7<sup>th</sup> June 2021, did not require him to put a response and he was not supplied with copies of complaints from stakeholders or their names as alleged on Page 2 of the suspension letter. He testified that he was not given time to respond to the suspension letter and the materials to respond to the said letter were not availed. He testified that he was neither called by the Board to answer any queries and the letters to EACC and DCI had not been copied to him. The claimant further stated that the Ad hoc Committee founded by the Cabinet Secretary did not invite him to answer any queries and its report was not shared with him.
20. The Claimant stated that the termination letter did not disclose most allegations found by the Ad hoc Committee. He stated that he could not know whether the false mileage allegations were found as true as he was not called to defend himself.
21. On the issue of his salary arrears, he stated that the employer is a custodian of records of paid salaries and at the time of his termination, his 6 months' salary had not been paid, and his gratuity was provided under paragraph 14 of his contract. He stated that the termination letter did not indicate he was terminated for gross misconduct.



## Defence case in summary

22. The defence case was summarized from the testimony of Bryan Keya's (DW) witness statement dated 21-12-2021 to the effect that the Claimant was employed by the 1<sup>st</sup> Respondent to deal with the challenges facing the sugar company.
23. DW testified that the Claimant was suspended for allegations of misappropriation of funds through a suspension letter that originated from the 1<sup>st</sup> respondent's Parent Ministry, Cabinet Secretary (CS), and the 4<sup>th</sup> Respondent.
24. DW testified that the 1<sup>st</sup> respondent did not have a board and the Ministry was responsible for policy directions which were carried out by the Managing Director through daily operations.
25. DW testified that at the Claimant's employment, farmers used to be paid, but at his exit, there was an accumulated amount due of 1 billion. He testified that he was not aware of any arrears owed to the Claimant. He testified that the letter from the Cabinet Secretary gave EACC and DCI the investigative power and the 1<sup>st</sup> respondent had nothing to do with the termination process. He stated that they received information from the Cabinet secretary that the Ad Hoc Committee had been formed.
26. On cross-examination, DW testified that at the Claimant's time of employment, one Shadrack Masinde was the Human Resource Manager and that he took over from the 1<sup>st</sup> week of June 2020. The Claimant had been a managing Director since 15<sup>th</sup> July 2019. He testified that the Claimant's salary was Kshs. 335,000, House allowance of 80,000, Gross of 475,000.
27. DW confirmed that the claimant was entitled to Kshs. 50,000 leave allowance and the Claimant's employment letter had been signed by the Chairman and witnessed by a Director of the Board of the 1<sup>st</sup> Respondent, and thus there was then a Board that appointed the Claimant.
28. DW confirmed that the claimant accepted the contract on 15<sup>th</sup> July 2019(Pg. 65 of the Claimant's documents). He confirmed that, as the Human Resource Manager of the 1<sup>st</sup> respondent, he did not address the claimant on the issue of financial misconduct, nor did he issue the Claimant with a show cause letter.
29. DW further testified that he became aware of the allegations of financial misconduct from the suspension letter. When asked who were the complainants as stated in paragraph 3 of the suspension letter, who had complained against the claimant, he stated that the said persons had not passed through their office. That they had farmers' representatives, local administration and the county and had no idea who among them complained. He testified that the term public was an amorphous term and the 1<sup>st</sup> respondent had not made any allegations against the claimant.
30. DW stated that staff had complained about unpaid salaries but the issue was solved internally. He stated that there was no letter to the Cabinet Secretary that no salaries had been paid and if any complaints were there they addressed them with the union.
31. DW testified that when the claimant was employed they hoped he could improve the company's performance but he was not aware how much the company made annually.
32. DW testified that although the suspension letter suspended the claimant from office immediately, and there was no request for him to respond, the claimant could have requested time and documents to respond. DW was not aware whether the Claimant was called for a hearing and confirmed the claimant was a public officer.



33. DW confirmed that the claimant was paid his medical and housing allowance during his suspension, but his half salary was never paid under section K(7)(2) of their policy.
34. DW testified that though the Policy stated that they pay half salary the Ministry gave specific instructions that the Claimant not to be paid.
35. DW testified that the company had a pool transport and had documents that were produced as per policy, but he had no evidence the claimant's claim for mileage was false.
36. DW confirmed that 3 items (4,5,6) in the termination letter were not in the suspension letter and no reports had been made at the police as the investigations were by the ministry.
37. DW testified that there was no evidence the Claimant had sold 7000 tonnes and not accounted for them and that the Board had authorized the sale of 5000 tonnes. The 1<sup>st</sup> Respondent's board had been dissolved in 2019.
38. DW testified that he was not aware of any Director of the 1<sup>st</sup> Respondent who had participated in the Ad Hoc Committee and such reports could only be received by the acting Managing Director. He stated that the claimant went on leave though no documents were produced.
39. DW stated that EACC and DCI investigations were done by talking to the internal auditor.
40. DW testified that the allegations against the claimant were criminal thus the involvement of the EACC and DCI.
41. DW testified that the Claimant was aware there was no Board and the 4<sup>th</sup> Respondent who is a party to this suit was well placed to answer the allegations in the termination letter. He testified that his evidence was only on behalf of the 1<sup>st</sup> Respondent and the suspension letter as it was, was a show cause letter.
42. DW testified that the claimant never responded, he said that nothing stopped the claimant from responding to the allegations in the suspension letter. He contended that the claimant never brought any evidence before Court to rebut the allegations in the suspension letter, and he received his medical and housing allowances while on suspension.
43. DW stated that there is no evidence of salary arrears owed to the Claimant and that the additional allegations against the Claimant came out after investigations alluded to in the suspension letter. He stated that the Claimant failed to adhere to the Mileage policy.

## **WRITTEN SUBMISSIONS**

44. The Court on 29<sup>th</sup> November 2023 after the close of the defence hearing directed parties to file written submissions. Only the 1<sup>st</sup> Respondent filed submissions. The 1<sup>st</sup> Respondent's written submissions drawn by Abok Odhiambo & Company Advocates were dated 16<sup>th</sup> February 2024 and received in Court on 22<sup>nd</sup> February 2024.

## **DETERMINATION**

### **Issue for determination**

45. The 1<sup>st</sup> Respondent addressed the following issues for determination in the claim:-
  - a. Whether the claimant was an employee of the 1<sup>st</sup> Respondent



- b. Whether the Claimant's suspension and subsequent termination from employment emanated from the 1<sup>st</sup> Respondent.
  - c. Whether the Claimant's termination from employment was justified.
46. The Court having heard the case and perused the 1<sup>st</sup> Respondent's submissions was of the considered opinion that the issues placed before the Court by the parties for determination were as follows: -
- a. Whether the client was an employee of the 1<sup>st</sup> Respondent.
  - b. Whether the termination of employment of the claimant was fair and lawful.
  - c. Whether the claimant was entitled to reliefs sought.

**a). Whether the client was an employee of the 1<sup>st</sup> Respondent**

47. This issue was raised by the 1<sup>st</sup> respondent. The claimant in paragraph 1 stated he was employed by the Board of the 1<sup>st</sup> Respondent company effective 28<sup>th</sup> June 2019 for a term of 3 years.
48. In the witness statement of the defence witness Brian Keya adopted as defence evidence in chief he stated in paragraph 3, 'That the claimant was employed by the 1<sup>st</sup> respondent to serve as the company's Managing Director vide a contract of employment dated 15<sup>th</sup> July 2019 and which contract was for a duration of 3 years with an option of renewal through a written request by the claimant.'
49. The 1<sup>st</sup> respondent submitted that there was employer-employee relationship until the termination of employment by the Cabinet Secretary (4<sup>th</sup> Respondent) vide letter dated 1<sup>st</sup> September 2021.
50. The Court holds that the existence of the employer-employee relationship between the claimant and the 1<sup>st</sup> Respondent was not a contested issue.

**b). Whether the termination of employment of the claimant was fair and lawful**

51. It is trite that for termination of employment to meet the fairness test it must be both substantively fair in terms of valid reasons and procedurally fair as held in *Walter Ogal Anuro V Teachers Service Commission (2013)e KLR* where Justice Ndolo stated:- '22.In light of the foregoing, I find that Respondent had a genuine reason for terminating the Claimant's employment as required under Section 43 of the *Employment Act*. However, for a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness.'

**a. Whether there was procedural fairness**

52. The claimant stated that the 4<sup>th</sup> respondent (Cabinet Secretary) issued him with a suspension letter dated 7<sup>th</sup> June 2021 (C- Exh 2) purporting to investigate the claimant on alleged complaints by stakeholders (not defined) and leaders (not defined or employees) on alleged financial impropriety, non-payment of farmers' arrears amounting to Kshs. 700 million and withholding staff salaries to the tune of approximately Kshs. 2 billion. Further that on the 1<sup>st</sup> of September, 2021 the Cabinet Secretary without approval of the Board of Directors proceeded to issue a termination letter on a raft of allegations not investigated and which were not stipulated in the suspension letter.
53. The 1<sup>st</sup> Respondent submits that as per DW1's testimony, for lack of a Board, which was not in dispute, it was the Cabinet Secretary who was in charge of overseeing the operations of the 1<sup>st</sup> Respondent's company as well as disciplinary issues concerning the claimant. During the claimant's employment,



he was adversely implicated in financial misconduct which prompted the 4<sup>th</sup> respondent to issue a suspension letter addressed to the claimant.

54. The letter dated 7<sup>th</sup> June 2021 suspended the claimant from employment for 3 months alleging to pave the way for investigations. He was further asked to hand over to Dr. Omondi pending the investigations.
55. The termination of employment letter was dated 1<sup>st</sup> September 2021 and stated that an audit had been done on the financial impropriety and the mismanagement of the company and the particulars of the allegations were stated. It was stated that in view of the seriousness of the matter and the fact that he had been found culpable and in the absence of the Board of Directors, the Cabinet Secretary terminated his employment contract.
56. Procedural fairness is provided for under section 41 of the [employment act](#) to wit:- ‘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.’ Further section 45(2) provides that a ‘ 2) A termination of employment by an employer is unfair if the employer fails to prove— (c) that the employment was terminated in accordance with fair procedure.’
57. The Court holds that there was no compliance with the provisions of section 41 of the [Employment Act](#) as the Claimant was not afforded an opportunity to be heard before the decision of termination.

#### **b. Whether the termination of employment was lawful.**

58. Lawfulness of the termination of employment relates to the validity of the reasons for the termination as provided in the [Employment Act](#) as follows:-

“

“ 43. Proof of reason for termination

- “(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
- (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.”

Section 45

- (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 employee's conduct, capacity or compatibility; or
- (ii) based on the operational requirements of the employer;'

59. Further it is provided in sub-sections 4 and 5 of section 45 of the *Employment Act* as follows:- '(4) A termination of employment shall be unfair for the purposes of this Part where— (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee. (5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider— (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision; (b) the conduct and capability of the employee up to the date of termination; (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41; (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and (e) the existence of any previous warning letters issued to the employee.'
60. The letter of the termination of employment (C-Exh 3) stated there was an audit but the same was not produced. The alleged audit was said to have proved financial impropriety as per the suspension letter and further it was stated that the claimant made false mileage claims using Motor Vehicles Registration Numbers KCA 260L, KCA 433 E, and KCC 377J which did not belong to the Managing Director, that he unilaterally undervalued and reduced Nuclear Estate Cane from Kshs. 3800 to 3100 per Metric Ton, discounted sugar already sold and later directed the marketing department to re-issue the same sugar again, that Uni-maize Limited stole 228 bags of sugar from Nzoia Sugar Company worth Kshs. 1 million with his knowledge and that the Board of Nzoia Sugar authorized the sale of 5000MT of sugar to M/S Butali Sugar but he went ahead and sold 7000MT without approval of the additional tonnage and the extra cash was not receipted on the company's books of accounts.
61. The 4<sup>th</sup> respondent, the author of the letter of termination did not file a response.
62. During the hearing, the claimant confirmed that at the time of termination, there was no Board in place. During cross-examination, the claimant confirmed he had not produced the alleged auditor report which he had stated in paragraph 5 of his memorandum of claim that when he took over, the company was literally insolvent and that the reports of the Auditor General confirmed that.
63. The Claimant confirmed that he had no evidence to rebut the allegations, on the allegations of false mileage claims using Motor Vehicle Registration Numbers KCA 260L, KCA 433 E, and KCC 377J which did not belong to the Managing director, the claimant told the Court the said motor vehicles belonged to his insurance company where he and the wife were the sole directors. He admitted the log books were not before the Court to confirm the ownership of the motor vehicles.
64. The Court noted that the claimant in his witness statement stated he had logbooks to prove the said motor vehicles were owned by him and his wife. The question in the mind of the Court was why he never proved the log books which would have cleared him of this allegation. The Court concluded that the claim for false millage claim was true. Even if it was true the Motor vehicles belonged to a company where he and the wife were the shareholders that was still not appropriate as a company as a legal entity is separate from the director as per *Salomon v A Salomon & Co Ltd* [1896] UKHL 1,



[1897] AC 22 where the House of Lords reinforced the principle of corporate personality and limited liability, confirming that a company is a separate legal entity distinct from its shareholders.

65. Taking into account all the circumstances of the case, can it be said that the employer did not act by justice and equity in terminating the employment of the claimant as stated in section 45(4)b of the *Employment Act*? The test of a reasonable employer as stated by Lord Denning in *British Leyland UK Limited v Swift*(1981)I.R.L.R 91 that:-

‘The correct test is: Was it reasonable for the employers to dismiss him? If no reasonable employer would have dismissed him, then the dismissal was unfair. But if a reasonable employer might reasonably have dismissed him, then the dismissal was fair. It must be remembered that in all these cases there is a band of reasonableness, within which one employer might reasonably take one view: another quite reasonably take a different view...’  
I find that the claimant submitted mileage claims using motor vehicles that did not belong to him as the managing director and that, was proof of the existence of a valid reason to terminate his employment as the reason related to the operational requirements of the employer (section 45(2)(ii) of the *Employment Act*) and amounted to gross misconduct under section 44 of the said Act to wit:- ‘44(g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer’s property.’

66. In the upshot, I find that there existed a valid reason for the termination of the employment of the claimant and that the act of the 4<sup>th</sup> Respondent, the Board of the 1<sup>st</sup> Respondent being vacant, was reasonable.

#### **Whether the claimant was entitled to reliefs sought**

67. The Court held there was a valid reason for the termination of the employment of the Claimant but there was no procedural fairness.
68. The claimant sought several reliefs which the Court proceeded to consider.

#### **Claim for compensation for unlawful and unfair termination.**

69. The Court held there was no procedural fairness. The letter of employment granted 3 months’ salary as notice of termination which is all that the claimant gets under this relief. The claimant did not produce his payslip. His letter of employment provided a basic salary of Kshs. 335,000 house allowance of Kshs. 80000 and other remunerative allowance of Kshs. 50000. During cross-examination the claimant confirmed his gross salary was Kshs. 475,000.
70. Consequently, notice pay for the lack of procedural fairness is awarded as per clause 27 of the employment letter thus 475000 x 3 total award Kshs. 1,425,000.

#### **Claim for 6 months Unpaid salary**

71. The claimant pleaded that as at time of his contract termination, he had not been paid salary for six months which he claimed, including the remunerative allowances total of Kshs. 2,850,000/-
72. The claimant in his witness statement stated that he had paid wages to workers each month till his suspension in June 2020. He then claimed 6 months’ wages.



73. During cross-examination, the claimant admitted his salary was paid through the bank and that he had not produced his statement. During re-examination, he stated that the employer was the custodian of records and that the bank statement would not show arrears.
74. During the cross-examination of the respondent's witness, the question put by counsel related to the salary was about section k(7)(2) of the 1<sup>st</sup> Respondent's policy to the extent that during suspension half salary was payable. DW told the Court the communication by the Cabinet Secretary was clear on the terms of suspension. That the 1<sup>st</sup> respondent relied on the directions of the Cabinet Secretary. The witness stated the policy may not apply to the claimant.
75. In the claim, the claimant did not substantiate the basis of the 6 months' salary wages. From the evidence at the hearing, it was clear salaries of workers had been paid up to June 2020 when the Claimant was suspended and what he was claiming was payment while on suspension.
76. The letter of suspension relied on section K.7(2) of the Human Resources Policies and Procedures Manual for public service, that where an officer is suspended from exercise of functions, he shall be entitled to house allowance and medical benefits and no basic salary. DW confirmed they complied with the contents of the suspension letter.
77. The employment contract clause 26 stated the claimant was subject to the *Employment Act*, the company staff rules and regulations as issued. Neither party produced the alleged policy nor was it pleaded. The Court without seeing the policy alluded to during the hearing is unable to make any orders outside the suspension letter.
78. The claim for unpaid salary was not proven and is denied.

**Claim for Leave allowance computed for Kshs. 116,666.67.**

79. The contract of employment clause 13 provided for leave allowance of Kshs. 50000 or 1/3 of the basic salary whichever was less. During cross-examination, the claimant admitted he had proceeded on leave prior to suspension. The claim is without basis and is disallowed.

**Gratuity**

80. The claimant claimed for gratuity of Kshs. 1,245,200. Under the contract clause 14 gratuity was provided for in the following terms: - 'upon successful completion of each contract term the employee qualifies for a one-off gratuity calculated at rate of 31% of the employee's annual basic salary.' There was a proviso that gratuity was only payable if the separation was not based on gross misconduct.
81. In the instant case, the claimant never completed the three-year contract term and secondly the separation was due to acts amounting to gross misconduct. The Court holds that the claimant did not qualify for the gratuity.

**Conclusion and disposition**

82. The Court holds that there existed a valid reason for termination of the employment of the claimant. That the termination lacked procedural fairness.
83. The claimant is awarded the equivalent of 3 months' salary for the unfair termination as notice pay as per contract of employment thus Kshs. 475,000 per month x 3 (months) total award Kshs. 1,425,000 (subject to statutory deduction of PAYE) with interest at Court rates from the date of judgment until payment in full plus costs of the suit.



84. Stay of 30 days

85. It is so Ordered.

**DATED, SIGNED & DELIVERED IN OPEN COURT AT BUNGOMA THIS 26<sup>TH</sup> DAY OF JUNE 2024.**

**J.W. KELI,**

**JUDGE.**

In the Presence Of: -

Court Assistant: Brenda

For Claimant: Absent

For 1<sup>st</sup> Respondent: - Absent

