



**Njihia v Mathare Youth Sports Association & another (Cause  
1048 of 2018) [2024] KEELRC 1435 (KLR) (14 June 2024) (Judgment)**

Neutral citation: [2024] KEELRC 1435 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1048 OF 2018**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**DANIEL MWAURA NJIHIA ..... CLAIMANT**

**AND**

**MATHARE YOUTH SPORTS ASSOCIATION ..... 1<sup>ST</sup> RESPONDENT**

**BOB MUNRO ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Court Assistant: Emmanuel Kiprono

Okubasu & Munene Advocates for the Claimant

Munyao- Kayugira & Company Advocates for the Respondents

1. The Claimant filed a Statement of Claim, dated 22<sup>nd</sup> June 2018.
2. He describes the 1<sup>st</sup> Respondent as a registered non-profit organization, which is dedicated to sports, community outreach and development activities, with offices at Komarock, Nairobi County.
3. The 2<sup>nd</sup> Respondent is the founder and chairman of the 1<sup>st</sup> Respondent.
4. The Claimant was employed by the Respondents as project officer, group officer and environment manager, between the years 2007 and 2017.
5. He was employed on 2<sup>nd</sup> July 2007 on an annual contract, which was renewed in subsequent years.
6. He was summarily dismissed by the Respondents on 27<sup>th</sup> November 2017. His last salary was Kshs. 33,750 monthly.
7. He was suspended on 16<sup>th</sup> October 2017 for 2 weeks, over what was indicated as the 1<sup>st</sup> Respondent's policy on sexual harassment. Details were not supplied.



8. He was asked to hand over his docket to his immediate supervisor, and submit a written statement, explaining allegations about sexual harassment.
9. While still on suspension, he received e-mail communication from the 1<sup>st</sup> Respondent's Executive Director, alleging that he was threatening staff. He was called by the CEO through a letter dated 24<sup>th</sup> October 2017, which enquired whether he had sexual relationship with any member of the 1<sup>st</sup> Respondent.
10. 2 weeks lapsed and the Claimant was not told about investigations carried out on the allegations. He enquired about the delayed investigations, and was told he would receive communication. On 27<sup>th</sup> November 2017, he was issued the letter of summary dismissal.
11. It was stated that the Claimant had 2 inappropriate sexual relationships with the 1<sup>st</sup> Respondent's girls, contrary to the 1<sup>st</sup> Respondent's policy. It was stated that the 1<sup>st</sup> Respondent, has zero-tolerance policy on sexual harassment.
12. He was not provided with any evidence of inappropriate sexual relationships. His accusers remained unknown.
13. He was defamed. Information about his alleged relationships with underage girls at the 1<sup>st</sup> Respondent, was in Kenya Premier League [KPL] Chat and Mathare Youth Sports Associations [MYSA] Facebook pages. The membership of these social media platforms, comprise nearly all stakeholders in the football world. The information was pulled down, after the Claimant lodged a complaint with the administrators of the respective media.
14. He states that termination was unfair and unlawful. He worked for 10 years. He was not issued a warning. The reasons advanced by the Respondents to justify termination, were not valid. He was not shown the evidence through which he was summarily dismissed. His accusers remained unknown. He was not heard. No complaint against him, on the grave allegations, was ever submitted to the criminal investigation agencies. His Article 41 rights were violated.
15. He was denied annual leave for the year 2017. He prays for: -
  - a. Declaration that termination was unfair and unlawful.
  - b. Declaration that the Respondent violated the Claimant's constitutional rights, in particular, Article 41 rights.
  - c. Declaration that termination was in violation of Sections 45 and 46 [a] of the *Employment Act*.
  - d. The Respondent to pay to the Claimant 2 months' salary in lieu of notice at Kshs. 66,800; 12 months' salary in compensation for unfair termination at Kshs. 480,000; aggravated damages for defamation at Kshs. 3 million; and 24 days of annual. leave.
  - e. Costs and interest.
  - f. Any other suitable relief.
16. The Respondents filed a Statement of Response, dated 3<sup>rd</sup> October 2018. It is conceded that the Claimant was employed by the 1<sup>st</sup> Respondent, on an annual contract, sometime in 2007. He was issued other contracts subsequently, the last which was to expire on 31<sup>st</sup> December 2017.
17. Fixed-term contracts were necessitated by the 1<sup>st</sup> Respondent's limited revenue streams. The 1<sup>st</sup> Respondent as stated by the Claimant, is a non-profit community organization, largely dependent on donor funding.



18. The 1<sup>st</sup> Respondent, through the 2<sup>nd</sup> Respondent, received anonymous reports of sexual harassment, implicating the Claimant. When word reached the Claimant that the 1<sup>st</sup> Respondent was investigating the allegations against him, he attempted to interfere with the investigations, which necessitated his suspension.
19. Investigations took longer than expected, in part because of the interference and intimidation of witnesses by the Claimant.
20. It was not possible for the Claimant to face his accusers, as none was willing to give a written statement or even have their identity revealed, for fear of retaliation.
21. The 1<sup>st</sup> Respondent nonetheless instituted an ad hoc committee to investigate the misconduct. The committee gave the Claimant an opportunity to defend himself. It was concluded that the Claimant was involved in inappropriate sexual relationships, contrary to the 1<sup>st</sup> Respondent's Healthy Relationship Policy.
22. Information relating to the investigations was only shared with responsible members of the ad hoc committee. The Respondents did not share the information with any social media.
23. They posit that termination was fair and lawful. There was no obligation to bring the complaints to the attention of the police. The Respondents were satisfied, following their own internal investigations, that the Claimant was involved in 2 separate and recent inappropriate sexual relations with girls who were members of the 1<sup>st</sup> Respondent. He was summarily dismissed, based on the 1<sup>st</sup> Respondent's zero-tolerance policy on sexual misconduct.
24. He never applied for annual leave. The 1<sup>st</sup> Respondent's human resource policy required he makes an application for leave, failing which annual leave was forfeited.
25. The Respondents urge the Court to look into the allegations against the Claimant, in the right context. They explain that the allegations were made at a time when prominent sports personalities, worldwide, were being accused of predatory sexual behaviour. They could not take the allegations lightly.
26. They further urge the Court to take into account that the Claimant directed his acts of sexual misconduct, against vulnerable and easily impressionable young girls. He knew that none of the girls would have the courage to report or take necessary action against him. He made sure that potential witnesses did not step forward, to enable the Respondents conduct a fair hearing. The Respondents state that they were left in a catch 22 situation. They implore the Court to dismiss the Claim, with costs.
27. The Claimant and his witness, retired football referee and match commissioner, Crispin Oduor, gave evidence on 29<sup>th</sup> September 2022. The Claimant closed his case on 20<sup>th</sup> September 2023 after his intended last witness, failed to show up. The Respondents' witness, Maqulate Onyango, who at the time the dispute arose, served as the 1<sup>st</sup> Respondent's Human Resource Manager and Manager Human Rights Protection, gave evidence for the Respondents on 20<sup>th</sup> September 2023, closing the hearing.
28. The Claim was last mentioned on 29<sup>th</sup> February 2024, when the Parties confirmed filing and exchange of their closing submissions.
29. The Claimant adopted his witness statement and documents [1-5] in his evidence-in-chief. He emphasized that he was not told who he had sexually harassed. There was no communication after he was suspended, on the investigations carried out by the Respondents. It was alleged that he harassed 2 female footballers. He never did so, and never knew who they were, or shown their evidence.



30. Cross-examined, he told the Court that he had a contract running for 1 year. It was not indicated to be renewable. He was suspended. He was told that some female footballers had complained against him of sexual harassment. He received e-mail alleging he had threatened staff. He did not interact with other staff, except his supervisor, during suspension. He did not receive the investigations report; just a letter of summary dismissal. It is not true that the Claimant threatened all witnesses, making it impossible to hold a disciplinary hearing.
31. The Investigator Pauline Njeri, was the Claimant's friend. She had not informed the Claimant that she was investigating. The Claimant came to learn that she was investigating after he was summarily dismissed. He did not know who shared the reports of sexual harassment in the social media.
32. Redirected, he told the Court that there was no report, saying that he was interviewed on investigation.
33. Crispin Oduor told the Court he used to be a referee at the 1<sup>st</sup> Respondent. He has known the Claimant for over 20 years. The Claimant was victimized. The allegations against him were untrue. Crispin had seen the Claimant rise through the ranks until he became a Manager. There were many females, at the 1<sup>st</sup> Respondent, over 10,000 of them. Dismissal of the Claimant impacted his personal programmes. Parents who entrusted their children to the 1<sup>st</sup> Respondent and the Claimant, would have concerns.
34. Cross-examined, Crispin told the Court that he was a referee and instructor, from the year 2000. He was not employed by the 1<sup>st</sup> Respondent. He was just a member. He had instructor's licence. He did not have a document to show his relationship with the Respondents. The Claimant was also a volunteer in 2000. Crispin and the Claimant were residents of Kayole estate, Nairobi. There were many girls at Kayole. Crispin never heard of allegations, that the Claimant harassed any of these girls.
35. Maqulate Onyango told the Court that the Claimant had a limited-term contract. Renewal depended on donor funding. Anonymous reports were made about the Claimant sexually harassing underage girls. The girls football team manager, also reported about sexual harassment within her team.
36. There was policy against sexual harassment. Affairs between staff and players had to be declared. The Claimant did not declare his affairs. Some of the girls dropped from the football team on account of sexual harassment.
37. The football team manager Pauline Njeri, lodged complaint. The 1<sup>st</sup> Respondent set up an ad hoc committee to investigate. It was constituted by the 1<sup>st</sup> Respondent's Board and Management.
38. One of the Claimant's victim Mary Njeri, got pregnant. She was contacted by Pauline Njeri and confirmed the affair and pregnancy. She dropped out of the team as a result of the unfortunate sexual relationship with the Claimant.
39. The 1<sup>st</sup> Respondent also took video recording of staff complaining about sexual harassment. The recording was done by Maqulate Onyango's assistant, Okello. This was taken into account in dismissing the Claimant.
40. 6 girls had complained. They were not talking to each other, because they were fighting over the Claimant. The Claimant was issued a letter of suspension. He kept coming back to the workplace and threatening the girls. He was given a chance to defend himself in writing.
41. Some of the girls were above 18 years, others below 18 years. The Claimant was heard through the ad hoc committee.



42. Cross-examined, Maqulate told the Court that there were 2 reports of sexual harassment. The first was anonymous, made to the Board Chair by a whistleblower. The second was made to Maqulate shortly after.
43. Pauline was a volunteer, not Employee of the 1<sup>st</sup> Respondent. She left her position. Maqulate also left in 2019. Maqulate and Pauline however, continue to work together as Trainers.
44. Maqulate was not aware that Pauline had made a statement denying every allegation against the Claimant. Pauline would be lying if she exonerated the Claimant.
45. The Claimant impregnated Mary Njeri. Maqulate was not sure if Njeri was underage. Maqulate did not recall who were the members of the ad hoc committee. Majale was a member. He had made representations before the Board Committee that dismissed the Claimant. The ad hoc committee made the decision to dismiss the Claimant. The Claimant was given an opportunity to defend himself.
46. There was an audio recording made by the 1<sup>st</sup> Respondent's secretary, Mutua. The Claimant's wife was recorded complaining about the Claimant's sexual misconduct.
47. Redirected, Maqulate told the Court that the Claimant kept returning to work, and threatening staff after work. He was given an opportunity to defend himself.
48. The issues are, whether the Claimant was dismissed on valid ground of sexual misconduct; whether procedure was fair; and whether he merits the prayers sought.

**The Court Finds: -**

49. The Claimant describes the 1<sup>st</sup> Respondent as a 'not for profit Organization, which combines sports with community outreach and development activities.'
50. Its registered office is at Komarock, Nairobi, while most of its activities, as denoted in its name, are centred around the sprawling Mathare informal settlements in Nairobi. It is an Organization which is devoted to empowerment of the marginalized.
51. It depends on donor-funding, and it is managed and run through a good number of kind-hearted volunteers, alongside other formally engaged staff.
52. It runs sports activities which include football. It has men and women football teams.
53. The Claimant was formally employed in various positions, including project officer, group officer, environment manager and later, sports manager. He worked between 2007 and 2017, a period of 10 years.
54. He worked under limited-term contracts. It was explained that owing to its position as a non-profit, community-based Organization, the 1<sup>st</sup> Respondent depended on donor-funding, and engaged staff, guided by the availability of funds. It could not offer long-term contracts.
55. The Claimant was alleged to have engaged in sexual harassment, intimate sexual relationships, and threatening of the 1<sup>st</sup> Respondent's members and volunteers, which was contrary to the 1<sup>st</sup> Respondent's Healthy Relationships Policy.
56. He was suspended for 2 weeks, on 16<sup>th</sup> October 2017, in accordance with the 1<sup>st</sup> Respondent's Human Resource Policy, to enable the 1<sup>st</sup> Respondent investigate the allegations.
57. He was not advised on the progress of the investigations, which outstretched the given period of suspension. He wrote on 11<sup>th</sup> November 2017 seeking the advice of the 1<sup>st</sup> Respondent, on delay in



- the investigation process, and underscoring his right to be heard. The Executive Director wrote back apologizing for the delay, and promising that the 1<sup>st</sup> Respondent would revert.
58. On 27<sup>th</sup> November 2017, the Executive Director Henry Majale wrote to the Claimant a letter of summary dismissal.
  59. The Claimant was told that an ad hoc committee of the 1<sup>st</sup> Respondent had convened, and reviewed evidence, which included video recording, and confirmed the accusations against the Claimant. He was told that he had inappropriate sexual relationships, with 2 of the 1<sup>st</sup> Respondent's girls, contrary to the 1<sup>st</sup> Respondent's Health Relationship Policy, which was based on zero-tolerance of sexual harassment.
  60. Validity of reason: It was never clear from the evidence of the Respondent, who were the complainants, in the very grave allegations against the Claimant.
  61. The letter of dismissal refers to 2 girls. They are not named even under pseudonyms. The Court has not been shown their witness statements, or any statement by their guardians, parents or other responsible persons who witnessed sexual misconduct, on the part of the Claimant.
  62. The Respondents' witness, Human Resource Manager Maqulate Onyango, who would have been expected to have evidence of sexual harassment or other form of sexual misconduct against the Claimant at her fingertips, was not persuasive.
  63. She told the Court that the complaints were anonymously received, which is acceptable in complaints of sexual harassment. The girls team manager who was Pauline Njoroge, also received and reported the complaints. Maqulate told the Court that Pauline Njoroge traced one of the girls, Mary, and confirmed that she had dropped out of the team, after being impregnated by the Claimant.
  64. Maqulate told the Court that Pauline was also the investigator. The problem with Pauline, is that she appears to have been the kind of a witness who speaks from both ends of her mouth, and in the end, backed off from giving evidence before the Court, for the Respondents or the Claimant.
  65. She had recorded a statement which was filed by the Claimant, exculpating him from the allegations. Although she did not attend Court to be cross-examined on her statement on record, Maqulate told the Court that she was aware that Pauline recorded a statement, denying that the Claimant was involved in sexual harassment. It is not likely that Pauline, who was also the child protection officer, would take a position that was against protection of the 1<sup>st</sup> Respondent's girls.
  66. The statement by Pauline, states that 6 girls, not 2 complained. This is supported by Maqulate's own evidence, which is that 6 girls had complained. Maqulate told the Court that the 6 girls were not on speaking terms with each other, because they were fighting over the same man, the alleged villain, the Claimant herein.
  67. This does not sound like evidence of vulnerable girls who were sexually accosted by their team manager; it sounds more like evidence of consenting partners.
  68. There was no evidence that the Claimant was involved with any girl at all, or that if he was, the girls were underage. Maqulate told the Court that, "some were above 18 years." She did not state if the 2 girls were underage. The statement of Pauline, which Maqulate states she was familiar with, was that none of the 6 girls, complained about unhealthy sexual relationship, with their team manager.
  69. Retired referee and match commissioner, a man whose sense of judgment and veracity, the Court found unimpeachable, gave persuasive character evidence of the Claimant herein. He had known the Claimant for almost 22 years. He assisted the Claimant with footballing activities at the 1<sup>st</sup> Respondent. He vouchsafed for the Claimant. He saw the Claimant rise through the ranks. There were many girls



at the 1<sup>st</sup> Respondent, over 10,000 of them, none of whom referee and match commissioner, heard making suggestions or complaints of a sexual nature, regarding the Claimant.

70. Is it likely that the Claimant silenced witnesses, and therefore the lack of substantiation of sexual harassment allegations, a position adopted by the Respondents, in acknowledging the paucity of evidence?
71. The Court does not think so. There were other witnesses besides the girls who were allegedly sexually harassed, who interacted with the allegations, from their inception. They could have given statements and even appeared in Court, to show the Court that there was validity, to the allegations of sexual harassment against the Claimant. The lead investigator, Pauline Njeri, appears to have filed a witness statement, negating on all fours, the reason given by the Respondents in justifying termination. Other witnesses who received the complaints and interrogated the facts, including Executive Director Manager, did not come forward and assist in establishing that the Claimant had acted against the 1<sup>st</sup> Respondent's Healthy Relationship Policy.
72. A report compiled by Maqulate, where she identified herself as an investigator also, was a rehash of her unreliable evidence. She charges generally, that the Claimant was in a group which went drinking with the 1<sup>st</sup> Respondent's girls, which resulted in the football team performing poorly. She further states that she had extended her investigation tentacles to Tanzania, where she discovered that when the 1<sup>st</sup> Respondent's football team visited Tanzania, some of the 1<sup>st</sup> Respondent's team staff members, were known for overindulging in inebriation. This led to the football team losing matches.
73. This report is not focussed, and the evidence of sexual harassment is helter-skelter. It sounds more like an audit of the 1<sup>st</sup> Respondent's football team failures, rather than an enquiry into specific complaints of sexual harassment.
74. How would girls who were drinking alcohol and fighting over a man accused of sexually harassing them; and, who routinely cavorted with other men in groups, in Kenya and Tanzania, fit the portrait of victims of sexual harassment?
75. Maqulate did not elaborate anything in her evidence before the Court, on her 'confidential investigation report.' She said little about the contents.
76. It was insufficient for the Respondents, to merely pronounce that their Healthy Relationship Policy, is based on zero-tolerance of sexual harassment. There must be some evidence, to establish sexual harassment. Zero-tolerance does not justify summary dismissal founded on zero evidence.
77. It is illogical for the Respondents to urge the Court to uphold the Claimant's summary dismissal, on the ground that sexual harassment took place at a time when prominent personalities, particularly sports personalities worldwide, were being accused of sexual harassment.
78. Courts are guided by the facts and the law alone, not by sexual harassment advocacy and theories, of such groups as the Me Too Movement, which the Respondents seem to propound, in their Statement of Response. The Court has a mandate under Section 5 of the *Employment Act*, to assist the society in fighting and eradicating sexual harassment at the workplace, but it must not lose sight, of the similarly protected rights of persons accused of perpetrating sexual harassment, to a fair disciplinary process, and termination of employment, based on valid ground.
79. Procedure: Procedure was in stark departure, from the path of fair hearing, carved out by Sections 41 and 45 of the *Employment Act*.



80. The Respondents concede at paragraphs 18 and 19 of their Statement of Response, that the Claimant was not taken through a fair disciplinary hearing. The Court is told that the Respondents were placed in a catch-22 situation, by the Claimant's witness interference, rendering a fair disciplinary hearing against him, impossible.
81. An Employer cannot justify the lack of a fair disciplinary hearing, on the conduct of an Employee. Even where the Employee has kept away and beyond the reach of the Employer, the Employer has an obligation to do all that is reasonably possible, to initiate a fair disciplinary hearing. The Employer must not throw its arms up, and conclude that it is unable to subject the Claimant to a disciplinary hearing. There was no reason, placed before the Court, why the Claimant was not issued a letter to show cause; why he was suspended for an extended period; why he was not kept abreast of, or involved in, the investigations during suspension; and why he was not taken through a disciplinary hearing, as contemplated by the 1<sup>st</sup> Respondent's own Policy on Human Resources. There is no reason why witness statements taken from the complainants, or persons familiar with the complaints, were not shared with the Claimant. If it was not possible to hold a disciplinary hearing against the Claimant, on very grave allegations, why did not the 1<sup>st</sup> Respondent seek the aid of criminal investigations agencies? If the Respondents were not able to protect the girls at the workplace, on account of the Claimant's malevolent omnipresence, why not refer him to the relevant state agencies?
82. It was possible within our legal framework, to protect the rights and interests of the alleged complainants, as well as those of the Claimant. There was room for the Respondents, to achieve the delicate balance, between the rights and interests of the alleged victims, and those of the alleged villain. The Respondents could have recorded the statements of the girls, without exposing them to any threats by the Claimant. The Claimant could have been called upon to show cause in writing, presented with specific accusations, and required to respond, before and during a properly convened disciplinary forum. He need not have been allowed to confront the girls eyeball to eyeball, or cross-examine them in person; but he certainly ought to have been presented with their witness statements, and allowed to comment on such statements. Instead, the Respondents went about recording the Claimant's wife surreptitiously, in an audio that was not presented before the Court, and which to all intents and purposes was likely to be inadmissible, where she was said to have complained about her husband's bullish tendencies and sexual predatory instincts.
83. The law allows for flexibility in recording of evidence of victims of sexual harassment, in planning disciplinary and criminal hearings. There was a way of making the girls tell their own stories, if indeed they had any stories to tell, feeling safe and respected. There was a way for them to give evidence privately and confidentially, without compromising the Claimant's own procedural protections.
84. It was not clear who was the investigator and who eventually was meant to hear the Claimant, and take responsibility over the decision to summarily dismiss him.
85. The Court was told that Pauline Njeri investigated. There is an investigation report, identifying Maqulate as the investigator. In her evidence, she referred to an ad hoc committee, which was to review investigations. Maqulate wrote her report after hearing. She did not know who were the members of the ad hoc committee. She was a member of the ad hoc committee. When the decision was made she was not a member. The Executive Director Majale was also in the ad hoc committee. He made representations before a committee of the Board. The ad hoc committee made the decision to dismiss the Claimant. This recollection of the procedure by Maqulate, discloses an extremely wishy washy manner of execution of termination of the Claimant's contract, by the Respondents.
86. The procedure, as told by Maqulate was jumbled, with no clear demarcation between investigation and hearing, leading to summary dismissal.



87. In the end the Respondents opted to enforce its Healthy Relationship Policy against the Claimant, in an evidential vacuum. Fair procedure was thrown out of the window.
88. Termination was unfair under Sections 41 and 45 of the *Employment Act*.
89. Remedies: It is declared that termination was unfair, unlawful and in violation of the Claimant's Article 41 rights and the *Employment Act*, 2007.
90. Clause 11 of the Human Resources Policy Manual provides for termination notice of 30 days. The Claimant has not established that he was entitled to 2- months' notice. He is granted notice of 1 month at Kshs. 33,750.
91. He worked for 10 years. He was not shown to have caused or contributed, to the circumstances leading to termination of his contract. Although he worked on periodic contracts, owing to the 1<sup>st</sup> Respondents dependency on donor funding and inconsistent revenue streams, he had worked in continuity for an aggregate of about 10 years. His record was good, as attested by former colleague and referee, Crispin Oduor. The 1<sup>st</sup> Respondent is a community-based, and as pleaded by the Claimant, non-profit organization. It is not a commercial business. It is an organization devoted to empowerment of the youth, principally within the sprawling informal settlement of Mathare, in Nairobi. While it cannot escape liability for unfairly and unlawfully terminating the Claimant's contract, it ought not to be burdened with unrealistic compensatory award to be paid to the Claimant. The Respondents shall pay to the Claimant equivalent of 2 months' gross salary in compensation for unfair termination, at Kshs. 66,800.
92. He is granted equivalent of 15 days' salary at Kshs. 16,875 as damages for violation of his constitutional rights.
93. His prayer for aggravated damages for defamation, quoted at Kshs. 3 million has not been proved. There was no evidence that either of the Respondents was responsible for publication of any defamatory material in the social media. The Claimant told the Court that he did not know, who shared reports of sexual harassment against him in Facebook. The prayer for damages for defamation is declined.
94. The Respondents told the Court that the Claimant was entitled to at least 24 days of annual leave each year, but that Human Resource Manual required an application to be put forward by an Employee wishing to take annual leave, failing which annual leave was forfeited. The Court has found no support for this forfeiture proposition, under Section 28 of the *Employment Act*. Once an Employee has qualified for annual leave, and it accrues under Section 28, it can only be taken by the Employee, or bought off by the Employer. There is no room for forfeiture under the law, and the policy invoked by the Respondents has no support in law. The Claimant is granted the prayer for 24 days of annual leave, at Kshs. 26,270.
95. There shall be no order on costs and interest.

**In sum, it is ordered: -**

- a. It is declared that termination of the Claimant's contract by the Respondents, was unfair, unlawful and in violation of his Article 41 rights and the *Employment Act*, 2007.
- b. The Respondent shall pay to the Claimant 1-month salary in lieu of notice at Kshs. 33,750; equivalent of 2 months' gross salary in compensation for unfair termination, at Kshs. 66,800; damages for violation of constitutional rights equivalent of 15 days' salary at Kshs. 16,875; and 24 days of annual leave at Kshs. 26,270 – total Kshs. 143,695.



c. No order on the costs and interest.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,  
UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT  
PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

