



Okere v Kakamega Public Service Board & another (Employment and Labour Relations Cause 17 of 2023) [2024] KEELRC 1391 (KLR) (13 June 2024) (Judgment)

Neutral citation: [2024] KEELRC 1391 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA
EMPLOYMENT AND LABOUR RELATIONS CAUSE 17 OF 2023**

**JW KELI, J
JUNE 13, 2024**

BETWEEN

ISMAEL ANGI OKERE CLAIMANT

AND

KAKAMEGA PUBLIC SERVICE BOARD 1ST RESPONDENT

COUNTY GOVERNMENT OF KAKAMEGA 2ND RESPONDENT

JUDGMENT

1. The Claimant upon retirement from service of the Respondent, on the 18th November 2022 filed the claim dated 17th November 2022 supported by the verifying affidavit of an even date seeking: -
 - a. Total Unpaid Basic Salary (Section 4& 6 of the C.B.A) Kes. 331,202.70;
 - b. Total unpaid leave allowance (section 4 C.B.A) Kes 16,560.10;
 - c. Total Unpaid leave allowance on house Allowance, Kes 138, 600;
 - d. imprest erroneously deducted in February 2016- 77,939.30;
 - e. Medallion awards (section 51 C.B.A) Kes 50,000;
 - f. Pension that was to be contributed by Employer Kes 49, 680.40;
 - g. unpaid Acting Allowance as an auditor of Kes. 1,545,000/-;
 - h. Certificate of Service;
 - i. unremitted contribution to the Pension scheme by employer out of the underpaid basic salary amounting to Kes 49,680/-; and
 - j. Any other and or further relief this Honourable Court deems fit to grant.



2. The Claim was accompanied by the Claimant's list of witnesses dated 17th November 2022 and the Claimant's witness statement and list of documents of even date and his bundle of documents (a-jj).
3. The Respondents in response to the Claim filed a Memorandum of Defence dated 27th December 2022 and received in court on 5th January 2023. The Respondents also filed a list of witnesses dated 6th June 2023, a witness statement of CPA David Mboya, the List of documents of even date and its bundle of documents received in court on 7th June 2023.
4. The Claimant filed a Reply to the Respondents' Memorandum of Defence dated 26th January 2023 and filed on an even date.
5. Vide an application dated 14th July 2023 and filed on 20th July 2023, the court on 24th July 2023 allowed the amendment of the Memorandum of Defence dated 14th July 2023.

Preliminary Issue

6. Subsequently, the Respondents filed a Notice of Preliminary Objection dated 30th June 2023 and received in court on the 3rd July 2023, seeking to strike out the Claimant's claim on the following grounds: -
 - a. That Honourable Court lacks jurisdiction to hear and determine this claim by virtue of Section 77 of the County Government Act, and Section 87 of the *Public Service Commission Act*.
 - b. The suit is incompetent, bad in law and is otherwise an abuse of the due process of the court pursuant to Section 90 of the *Employment Act*.
7. Through a Ruling dated 18th October 2023, the Preliminary objection was partially successful and the court found that the claims that were not statute-barred and within the court's jurisdiction as per the Claim were as follows: -
 - d. imprest erroneously deducted in February 2016 - 77,939.30;
 - e. Medallion awards (section 51 C.B.A) Kes 50,000;
 - g. unpaid Acting Allowance as an auditor of Kes. 1,545,000/-; and
 - h. Certificate of Service.
8. The Claimant on 5th December 2023, filed a list of witnesses dated 30th November 2023, his statement dated on an even date, his list of Documents dated 30th November 2023 and a bundle of documents. The new list of documents substituted the list filed with the Claim.

Hearing

The Claimant's case

9. The Claimant's case was heard on 25th January 2024, when Ismael Angi Okere (CW1) testified on oath, adopted his written witness statement dated 30th November 2023 as his evidence in chief and produced the documents under his list of documents of an even date as the Claimant's Exhibits C-Exhb-A-Z(a) to (jj). He was cross-examined by the Respondent's counsel Luyali.

The Respondent's case

10. The Respondent's case was heard on 31st January 2024, when its witness David Owen Mboya (DW) testified on oath as the Respondent's witness of fact. He adopted his statement dated 6th June 2023 as



his defence evidence in chief and produced the documents in the Respondent's list of documents as the Defence exhibits D Exh- 1 to 12. DW was cross-examined by the Claimant's counsel Luchivya.

Claimant's Case in summary

11. The Claimant states that he was first working with the local authority and when the County Governments came, they were absorbed by the Kakamega County Government. He testified that he received his first letter of appointment from the County on 2nd October 2017.
12. He testified that C-Exh-K indicated that his Net Pay was Kshs. 53,546.50, which was the pay he was aware of until July 2021, only that when he appealed to the Public Service Commission, his pay slip changed to C-Exh -L in the system, as the issue was that he had no imprest.
13. The Claimant testified that his pay slips from October 2017 did not have union deductions, and he received his retirement notice, and did not get his last pay, Certificate of Service or the medallion.
14. He testified that, his claim for damages of the CBA of Kshs. 6,090,992.30 arose from the breach of the CBA by the employer and testified that he was deducted union dues except for July 2013(C-Exh-1).
15. He testified that, as an auditor, he received money and would surrender it for the same to be cleared from the system. He testified that the Respondents stated that deductions were erroneous. He testified that an outstanding amount of 19,000 reflected in February 2016 payslip was not deducted from the March 2016 Pay slip.
16. He testified that the employer had threatened him first verbally and later through a letter written by Human Resources to his department dated 11th December 2015 (Doc.3 of Claim) asserting that the Claimant was rude or stubborn. He, however, confirmed that the said letter of 11th December 2015, did not relate to imprest.
17. He testified that he was made to act as an auditor by the CEC, through the letter of 3rd March 2015(transfer letter), although he was aware that one can only act for only 6 months.
18. It was his case that the letter of 2nd October 2017, signed by Lawrence Omuhaka appointed him, although the said letter was silent on what rank. He testified that he made a follow-up on 29th January 2018 and received no response, yet he continued to act as the internal auditor, which was senior to his substantive post of Assistant Chief Accountant by one grade.
19. He testified that there were documents indicating that he was an internal auditor such as the letter of 3rd March 2015 in whose schedule, he was referred to as a Senior auditor (C- Exh-M). He testified that, in the letter of 14th June 2016(C- Exh-U); and Minutes (C-Exh-V) he was referred to as Internal Auditor.
20. He testified that, although the letter of 2nd October 2017 did not indicate his rank, he considered it as his confirmation letter although the same had no salary provision for his new position.

Respondent's Case in summary.

21. DW testified that the imprest recovered was not arbitrary as, imprest is normally requested where one needs to procure or pay for an official activity in cash, and the imprest is to be surrendered within 7 working days.
22. It was his case that where an imprest is not surrendered within 7 days, a person receives a reminder that the imprest will be recovered from the next payroll as supported by an imprest warrant.



23. He testified that the medallion claim was only payable under the defunct local authority and the county government remuneration is controlled by Salaries Remuneration Commission (SRC) which does not support payment of Medallion allowance.
24. He asserted that all the former employees of the local authority were issued appointment letters by the Respondent, which did not provide for a medallion allowance.
25. He testified that the Public Service Commission (PSC) procedures and the County Government's acting period is six months and there was no requisition for the Claimant to act in an acting capacity.
26. He stated that a CEC (County Executive Committee) has no authority to appoint staff in an acting capacity, as the said role is a reserve of the County Public Service Board.
27. He testified that the Public Service Board can only delegate the authority to appoint an acting capacity to the Chief Officer. He testified that as per the letter dated 5th August 2021(D-Exh-6), the Claimant had not been appointed to an Acting capacity neither did the letter of 2nd October 2017.
28. He testified that the Claimant was by letter of 31st March 1989 appointed as a clerical officer, and on 20th February 2012 appointed as an Assistant Chief Accountant.
29. It was his case that the position of internal auditor does not exist in the organizational structure of the county, and the internal audit function was from 2013 to 2019 headed by a deputy internal auditor.
30. He testified that the certificate of service is only issued after one clears and the Respondent on its part complied with requirements as per the Retirement letter dated 26th July 2018.
31. On cross-examination, DW testified that there was no evidence to show that the Claimant had applied for any imprest as is procedure.
32. He testified that as per the pay slip for February 2016(C-Exh-6), the amount of imprest recovered was Kshs. 40,950 and Kshs. 36,989, with Kshs. 19,01.70 having been deferred to be deducted in the following month. He testified that the said outstanding imprest was not deducted in the pay slip of March 2016(C-Exh-1).
33. DW testified that he was the author of the Audit Report(D-Exhi-3) where he referred to the Terms and conditions of service of officers of local authorities.
34. He testified that the letter of 2nd October 2017, was the Claimant's appointment letter and the terms of service were to remain the same. DW asserted that the Claimant was appointed as Assistant Chief Accountant and he had not seen evidence that he had been appointed as an internal auditor.
35. He confirmed that the Letters C-Exh-S, the letter of 4th December 2015, and the letter of 14th June 2016, all addressed the Claimant as an internal auditor. He testified that for one to act in an acting capacity beyond six months is illegal.
36. He testified that he was not aware whether the former staff of the local authority were appointed by the County Public Service Board, and he was not aware of how they had been absorbed into the county.
37. He testified that there was no evidence in court to show that the Claimant had not cleared to prevent him from getting a certificate of service.
38. He testified that, as he was the author of the Audit report of 24th July 2021, he referred to a letter after the date of the audit report as they received the same letter in response to their letter dated 5th July 2021 as they were conducting their audit.



39. He testified that the letter was received from the Acting CEO of the Board and the same was on a letterhead and did not need to have a stamp of receipt as it was an internal letter.
40. He testified that a town administrator has no appointing authority and reference to an internal auditor was to the office and not to an individual. He testified that the Claimant retained his position as an Assistant Chief Accountant(C-Exh-O).
41. He further testified that the deductions to the Claimant could not be effected in March 2016, as the same would have resulted in a negative salary which could offend the Public Service rules.
42. It was his case that the position of the internal auditor was non-existent, therefore there could not be a vacancy declared on the same.

Written Submissions

43. The court gave directions for the filing of written submissions after the hearing. The parties complied. The Claimant's written submissions dated 19th February 2024 were filed by Marisio Luchivya & Company Advocates on an even date. The Respondent's written submissions dated 18th March 2024 were filed by Makokha Wattanga & Luyali Associates Advocates on the 5th April 2024.

Determination

Issues for determination

44. The Claimant identified the following issues for determination in the claim: -
 - a. Whether the Claimant is entitled to a refund of imprest of Kes.77,939.30 that was erroneously deducted from his salary of February 2016.
 - b. Whether the Claimant is entitled to Medallion Award of Kes.50,000/-
 - c. Whether the Claimant is entitled to Acting Allowance as an Internal Auditor of Kes. 1,545,000/-.
 - d. Whether the Claimant Is entitled to Certificate of Service
 - e. Whether the Claimant is entitled to any other reliefs arising from the Respondent's breach of Collective Bargaining.
 - f. Whether the Claimant is entitled to the costs of this suit.
45. The Respondent identified the following issues for determination in the claim: -
 - a. Whether the Claimant Is Entitled to Refund of Imprest of Kshs. 77,939.30 that was erroneously deducted from his salary of February 2016.
 - b. Whether the Claimant is entitled to Medallion award of Kshs. 50,000/-
 - c. Whether the Claimant is entitled to Acting Allowance as an internal auditor of Kshs.1,545,000/-
 - d. Whether the Claimant is entitled to Certificate of service.
 - e. Who should pay costs of the suit.



46. The court vide Ruling dated 18th October 2023, on the Preliminary objection by the Respondent held that the claims that were not statute-barred and within the court's jurisdiction as per the Claim were as follows: -

imprest erroneously deducted in February 2016 - 77,939.30;
Medallion awards (section 51 C.B.A) Kes 50,000;
unpaid Acting Allowance as an auditor of Kes. 1,545,000/-; and
Certificate of Service

47. It is the said claims that the court will proceed to determine in the judgment. The issues are then framed as follows:-

1. Whether imprest of Kshs. 77,939.30 was erroneously deducted from the Claimant's salary in February 2016
2. Whether the Claimant was entitled to Medallion awards (section 51 C.B.A) Kes 50,000;
3. Whether the Claimant was entitled to unpaid Acting Allowance as an auditor of Kes. 1,545,000/-;
4. Certificate of Service
5. Costs and interest

Whether imprest of Kshs. 77,939.30 was erroneously deducted from the Claimant's salary in February 2016

48. The Claimant pleaded that in the course of employment he was wrongfully deducted a total sum of Kshs, 77,939.30 as imprest whereas he had no outstanding imprest from the Respondent and upon inquiry of the reason for the deduction he was issued with threats of dismissal for his in subordination. In support of this claim he produced two sets of payslips for February 2016 as Exh K and Exb L. He also produced March 2016 payslip(C-Exh L(b)) which did not have the deduction of outstanding imprest balance of Kshs. 19,010.70 as per Exh L and his letter dated 14th March 2022 being a complaint on alteration of details of February 2016 payslip online.

49. In defence the Respondent stated that if the Claimant was deducted the imprest of Kshs, 77,939.30 then the same was due and owing to the Government and put the Claimant to strict proof.

50. During cross –examination the Claimant told the Court that while at work he sometimes took imprest and surrendered. He stated that the employer admitted the deduction was erroneous, that the payslip of February had indicated balance of Kshs. 19010/-and yet there was no deduction in the next month of March 2016. On the alleged threats the Claimant admitted the letter of 11th December 2015 (Claimant's Doc no. 3) which referred to him as stubborn and rude was not about imprest.

51. DW on cross-examination on the imprest claim told the court that an employee gets imprest on application and that he had not produced the application form. He confirmed that the February payslip indicated 19,010.70 as outstanding imprest deferred to next month and confirmed there was no deduction in March 2016. The Defence relied on D-Exh 3 being an audit report done on an underpayment complaint by the Claimant.

52. In re-exam DW told the court that the recovery was not done in March 2016 as the total amount would have led to negative salary offending public service rules.



Decision

53. The Claimant alleged that he was irregularly deducted imprest in February 2016. He also alleged that he complained and produced as exhibit letter of 14th March 2022 (as the complaint). The court examined the letter and found the complaint was about alterations of the paylip online and there was no complaint on imprest deductions. The defence produced an audit report by the internal auditor on claim of underpayment by the Claimant. In letter of 14th March 2022 as regards payslip of February 2016 the Claimant raised issue of deduction of Kshs. 26,240.80 which he complained was deducted and not remitted to Bukhungu Sacco. The internal auditor (DW) stated there was no such recovery (see D-Exh-3).
54. The case by the Claimant was based on the fact that the balance of imprest recovery Kshs. 19,010.70 reflected in February 2016 payslip was not deducted in March 2016 payslip. The court finds that there was no history of the complaint on the imprest deduction during the period of employment. That the Claimant had complained on the February 2016 payslip earlier but not on the issue of irregular imprest. The court finds the claim was an afterthought and on balance of probability not true as the Claimant had complained of underpayment before and this claim was not there. The fact that there was no deduction in March 2016 was not evidence that the imprest deducted in February 2016 was not valid.
55. The court holds that the claim on the imprest was not proved on balance of probabilities. Whether the Claimant was entitled to unpaid Acting Allowance as an auditor of Kes. 1,545,000/-;
56. The Claimant testified that he was made to act as an auditor by the CEC, through the letter of 3rd March 2015 (transfer letter), although he was aware that one can only act for only 6 months.
57. It was his case that the letter of 2nd October 2017, signed by Lawrence Omuhaka appointed him as internal auditor following the transfer letter, although the said letter was silent on what rank. He testified that he made a follow-up on 29th January 2018 and received no response, yet he continued to act as the internal auditor, which position was senior to his substantive post of Assistant Chief Accountant by one grade.
58. He testified that there are documents indicating that he was an internal auditor such as the letter of 3rd March 2015 in whose schedule, he was referred to as a Senior Internal Auditor (C- Exh-M). He testified that, in the letter of 14th June 2016 (C- Exh-U); and Minutes (C-Exh-V) he was referred to as Internal Auditor.
59. He testified that, although the letter of 2nd October 2017 did not indicate his rank, he considered it as his confirmation letter although the same had no salary provision for his new position.

Response

60. DW testified that the letter of 2nd October 2017, was the Claimant's appointment letter and the terms of service were to remain the same. DW asserted that the Claimant was appointed as Assistant Chief Accountant and he had not seen evidence that he had been appointed as an internal auditor.
61. He confirmed that the Letters C-Exh-S, the letter of 4th December 2015, and the letter of 14th June 2016, all addressed the Claimant as an internal auditor. He testified that for one to act in an acting capacity beyond six months is illegal.



62. He testified that a township manager had no appointing authority and reference to an internal auditor was to the office and not to an individual. He testified that the Claimant retained his position as an Assistant Chief Accountant(C-Exh-O).
63. He further testified that the deductions to the Claimant could not be effected in March 2016, as the same would have resulted in a negative salary which could offend the Public Service rules.
64. It was his case that the position of the internal auditor was non-existent, therefore there could not be a vacancy declared on the same.
65. In submissions the Claimant relied on a decision by Justice Rika in Mombasa ELRC Case No. 449 of 2015 Riahcrad Abiero v Nyali Golf and Country Club Limited where the court upon finding there was no letter of appointment as acting but there was evidence of reference by other staff in correspondence of the officer as acting manager, as well as a letter by the employee asking for payment of acting allowance stated: ‘acting appointment is a form of variation of contract . It is not vitiated only by the fact that it is not given in writing. The law recognises oral, as well as written contracts of employment . There is no reason why an oral variation cannot be upheld by the court of law”. The court then awarded the acting allowance for period of 8 months as sought in the claim.
66. In submissions the Respondent submits that under section 59 (1) of the *County Governments Act* it is the County Public Service Board with the mandate to appoint persons to hold or act in offices of the county public service including boards of the cities and urban areas within the county and to confirm the appointments.
67. That the Claimant was vide letter dated 20th February 2012 promoted to the position of Assistant Chief Accountant at salary scale 6 and there was no other letter by the board stating he was appointed as senior internal auditor. That the letter of 21st sept 2015 by Gabriel Kinaiya the then town manager referring to the Claimant as the internal auditor does not qualify the Claimant as duly appointed. That all payslips before the court referred to him as Assistant Chief Accountant. That one in civil service can only act for 6 months and in this case it was a claim of acting 4 years and 9 months,
68. That letter of the Board of 5th august 2021 (R-Exh- 6) was categorical that the Board never appointed or approved the Claimant in acting position. The Respondent distinguished the authority in Nyali Club(supra) as not applicable that being a private entity.

Decision.

69. The Claimant’s first letter of appointment from the County was dated 2nd October 2017. The letter was authored by one Lawrence Omuhaka for chief officer, Public Service & Administration(C-Exh-d). In the said letter of appointment it was stated:” this is to convey the decision of the County Public Service Board that you be and are hereby absorbed as an officer in the County Government of Kakamega. Your terms and conditions of service remain the same.”. The last letter of promotion in the defunct local authority was by the Public Service Commission and dated 20th February 2012 as Assistant Chief Accountant. The court finds that was the position retained in the appointment letter of 2nd October 2017 absorbing the Claimant into the Kakamega County Public Service.
70. On acting the Claimant relied on letter dated 3rd March 2015 on transfer of staff by the CEC member for Public Service and Administration Office of the Governor on transfer of staff into the county and attached a list of the transferred staff. No. 2 on the list was the Claimant designated as senior internal auditor and responsibility as auditor. The court noted contrary to Human Resources practice the letter of 2nd October 2017 did not state the appointment position of the Claimant. The Claimant



having received the letter of 3rd March 2015 was justified to assume he was confirmed into the position of Senior Internal Auditor. Indeed, he raised the concern in letter dated 29th November 2018. The said letter was produced by the defence. The Claimant further produced internal communication addressing his as the internal auditor. In letter dated 4th December 2015 was a memo by the chief officer Marangu to the head of human resources stating the Claimant had been working under the Kakamega Town Manager as the internal auditor township. There were also other internal correspondence addressing the Claimant as internal auditor.

71. The court finds that there was evidence that the Claimant was referred as internal auditor of the Respondent's Kakamega township. There was also evidence that that he was designated in the transfer letter as senior internal auditor. The pay slips consistently addressed him as Assistant Chief Accountant save for July 2013, April 2015 and May 2015 where it was stated the designation was unknown. To the mind of the court the foregoing was unfair labour practice but the Claimant never sought reliefs in respect of that.
72. The employment in the county governments is regulated by the County Governments Act. It is the sole responsibility of the County Public Service Board to appoint employees of the county as stated in Section 59 (1) to wit: "The functions of the County Public Service Board shall be, on behalf of the county government, to— appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;"
73. There was no letter of appointment of the Claimant as the internal auditor of the Kakamega township. The letter by the manager stating he was working as an internal auditor was not backed by any appointment.
74. The defence further produced letter dated 5th August 2021 by one Lucy Kihamba of the County Public Service Board in reference to the Claimant and stated the Claimant had never been approved for acting appointment by the County Public Service Board as per records held in the office.
75. I find that the internal correspondence at the Kakamega Township demonstrate the Claimant was referred as the internal auditor. He was not even stated as acting. In his payslips he was designated as assistant chief accountant which was his last promotion at the defunct local authority. There was no evidence before me of the Claimant having been appointed as acting internal auditor. The law regulates county public service and he could only have been entitled to the acting allowance upon appointment by the authorized body, the County Public Service Board. I agreed with the Respondent that the authority in Mombasa ELRC Case No. 449 of 2015 Richard Abiero v Nyali Golf and Country Club Limited was not applicable in public service.
76. The claim is disallowed.
Whether the Claimant was entitled to Medallion awards (section 51 C.B.A) Kes 50,000;
77. The Claimant states that he was first working with the local authority and when the County Governments came, they were absorbed by the county. He testified that he received his first letter of appointment from the County in 2nd October 2017. The letter was authored by one Lawrence Omuhaka for chief officer, Public Service & Administration(C-Exhb-aa). In the said letter of appointment it was stated:- 'this is to convey the decision of the County Public Service Board that you be and are hereby absorbed as an officer in the county government of Kakamega. Your terms and conditions of service remain the same.'"
78. The Claimant testified that his pay slips from October 2017 did not have union deductions, and he received his retirement notice, and did not get his last pay, Certificate of Service or the medallion.



79. DW testified that the medallion claim was only payable under the defunct local authority and the county remuneration is controlled by SRC which does not support payment of Medallion allowance.
80. In submissions the Claimant relied on the decision by the court in Kericho cause no. 34 of 2017 Jane Moekira Mogoi v Nyamira County Public Service Board where justice Marete upheld the applicability of the said CBA to the absorbed staff of the former local authority and awarded the medallion of Kshs. 50,000.
81. In submissions the Respondent submits that the medallion award was not one of the allowances sanctioned by the SRC and that the Claimant did not retire from the defunct local authority.
82. It is trite that collective bargaining agreement stands incorporated into the contract of employment of every employee covered by the collective bargaining agreement. It was not in dispute that the Claimant was covered by the CBA while at the defunct local authority. It was also not in dispute that in absorption by the Respondent vide letter dated 2nd October 2017 and authored by one Lawrence Omuhaka for chief officer, Public Service & Administration(C-Exhb-aa) it was provided:” this is to convey the decision of the County Public Service Board that you be and are hereby absorbed as an officer in the County Government of Kakamega. Your terms and conditions of service remain the same.” I do find the terms of service of the Claimant having been retained he was entitled to the Medallion award on retirement as also held in Kericho cause no. 34 of 2017 Jane Moekira Mogoi v Nyamira County Public Service Board where the retired officer was awarded Kshs. 50,000 for the Medallion. The officer in that decision retired from the County Government of Nyamira in December 2019.
83. The claim for Medallion is allowed.

Certificate of Service.

84. The Respondent submits that section 51 of the *Employment Act* only applies to termination.
85. It was not in dispute that the Claimant was not issued with certificate of service upon retirement.
86. The certificate of service is a statutory entitlement of the employee upon termination of service as provided for in the *Employment Act* section 51 to wit:- ‘51. Certificate of service (1) An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.
 - (2) A certificate of service issued under subsection (1) shall contain—
 - (a) the name of the employer and his postal address;
 - (b) the name of the employee; the date when employment of the employee commenced;
 - (c) the nature and usual place of employment of the employee;
 - (d) the date when the employment of the employee ceased; and
 - (e) such other particulars as may be prescribed.
 - (3) Subject to subsection (1), no employer is bound to give to an employee a testimonial, reference or certificate relating to the character or performance of that employee.
 - (4) An employer who wilfully or by neglect fails to give an employee a certificate of service in accordance with subsection (1), or who in a certificate of service includes a statement which he knows to be false, commits an offence and shall on conviction be liable to a fine not exceeding



one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.”

87. The Respondent’s submission was that the Claimant’s services were not terminated but he retired. What is retirement? The black Law dictionary(Garner 10th Ed page 1510) defines retirement as “termination of one’s own employment or career, esp.upon reaching a certain age or for health reasons; retirement may be voluntary or involuntary.”
88. Subsequently, the court holds that the termination referred under section 51 of the Employment Act refers to any mode of separation with the employer and that the retirement of the Claimant was termination of employment on account of retirement age. The Claimant on retirement was subsequently entitled to unconditional issuance of the certificate of service by the Respondent pursuant to the provisions of section 51 of the Employment Act .

Conclusion and Disposition

89. From the above, the court holds that the claim was successful on payment of the retirement medallion under the CBA and issuance of certificate of service and the Claimant is hereby awarded as follows:
- a. The Respondent to pay the Claimant Kshs. 50,000 as retirement medallion.
 - b. The Respondent to issue the Claimant with certificate of service in accordance with section 51(2) of the Employment Act to be forwarded to the Claimant’s Advocate within 14 days of the judgment.
 - c. The Respondent to bear the Claimant’s costs of the suit.
 - d. Interest at court rate from date of judgment until payment in full.
90. It is so Ordered.

DATED, DELIVERED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 13TH DAY OF JUNE 2024.

J.W. KELI,

JUDGE.

IN THE PRESENCE OF:

Court Assistant: -

For Claimant: - Luchivya

For Respondent: - Absent

