



**Njiru v Kenya Young Men's Christian Association (YMCA) (Cause 57 of 2015) [2024] KEELRC 13610 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELRC 13610 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 57 OF 2015  
DN NDERITU, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**BENSON MATI NJIRU ..... CLAIMANT**

**AND**

**KENYA YOUNG MEN'S CHRISTIAN ASSOCIATION (YMCA) . RESPONDENT**

**JUDGMENT**

**I. Introduction**

1. The claimant commenced this cause by way of a memorandum of claim dated 24<sup>th</sup> February, 2015 through Muthanwa & Co. Advocates. As it is the procedure, the statement of claim was accompanied with a verifying affidavit sworn by the claimant, a list of witness, a written statement by the claimant, a list of documents, and a bundle of copies of the listed documents. A supplementary list of documents and a bundle of copies of the listed documents was, with the leave of the court, filed on 28<sup>th</sup> February, 2023.
2. The claimant is seeking for the following reliefs –
  - a. An order that the claimant constructive termination is unfair, unlawful, and wrongful and that the respondent be ordered to forthwith pay the claimant dues and the claimant be allowed access to the office and dwelling house,  
Alternatively,
  - b. A declaration that the constructive termination of the claimant is unfair, unlawful, and wrongful and that he is entitled to the following-
    - i. 3 months in lieu of notice 26,490x3 - Kshs79,470/=
    - ii. Days worked February, 2015 - Kshs39,735/=



- iii. Annual leave 26,490x6x2 - Kshs45, 916/=
    - 30
  - iv. Payment for the remainder
    - of the contract 26,490x24 - Kshs 635,760/=
  - v. House allowances 13,245x24 - Kshs317,880/=
  - vi. Gratuity/severance pay 2,649x36 - Kshs95,364/=
  - vii. Compensation 26,490x12 - Kshs317,880/=
  - viii. Certificate of service
3. The respondent appointed Aming'a, Opiyo, Masese & Co. Advocates to act for it and, with the leave of the court, filed a memorandum of response to the claim on 2<sup>nd</sup> September, 2022. In the said response to the claim the respondent denies liability and prays that the claimant's cause be dismissed with costs for want of merits.
  4. The respondent filed a list of documents and a bundle of copies of the listed documents on 27<sup>th</sup> October, 2022 alongside a witness statement by Joel Shikanga Obaye. A further list of documents and a bundle of copies of the listed documents was filed on 21<sup>st</sup> March, 2023 alongside a witness statement by Jared Musima (RW1).
  5. The claimant filed a reply to the defence on 11<sup>th</sup> October, 2022 dismissing the response/defence and reiterating that judgment be entered against the respondent as prayed in the memorandum of claim.
  6. The claimant's case came up for hearing on 22<sup>nd</sup> February, 2022 when the claimant (CW1) testified and closed his case. The respondent had been served but did not show up for the hearing on that day. However, the claimant was recalled following an application by the respondent to be allowed to cross-examine him. The claimant was thus recalled and testified further on 28<sup>th</sup> February, 2023 and on 28<sup>th</sup> March, 2023. The claimant's case was further heard on 4<sup>th</sup> May, 2023 when Martin E. Papa (CW2) testified and the claimant's case was closed.
  7. The defence was heard on 4<sup>th</sup> May, 2023 with Jared Musima (RW1) and Joel Shikanga Obaye (RW2) testifying and the respondent's case was closed.
  8. Counsel for both parties addressed the court by way of written submissions. Mr. Muthanwa for the claimant filed his written submissions on 21<sup>st</sup> June, 2023 and Miss Wambua for the respondent filed on 26<sup>th</sup> June, 2023.

## **II. The Claimant's Case**

9. The claimant's case is expressed in the memorandum of claim, the oral and documentary evidence adduced by the claimant (CW1) and CW2, and the written submissions by his counsel.
10. In the statement of claim, it is pleaded that as at the time of filing the claim in court the claimant was an employee of the respondent, a non-governmental organization, as the unit branch manager, Naivasha. It is further pleaded that the claimant was so engaged vide a letter of appointment dated 1<sup>st</sup> March, 2014 on a three-year contract reporting directly to the head-office in Nairobi.
11. It is further pleaded that on 16<sup>th</sup> February, 2015 the claimant was issued and served with a notice of non-renewal of the contract and another letter dated 5<sup>th</sup> February, 2015 directing him to handover the



operations and management of the branch. It is pleaded that this move by the respondent amounted to constructive dismissal of the claimant. It is pleaded that the dismissal was wrongful, unfair, and unlawful.

12. In his testimony in court the claimant relied on his filed written statement as his evidence-in-chief. He stated that his “pre-test” contract was to run from 6<sup>th</sup> June, 2013 to 5<sup>th</sup> March, 2014 and upon expiry of the same he was engaged on a three-year contract which was to run from 6<sup>th</sup> March, 2014 to 5<sup>th</sup> March, 2017. He stated that however on 16<sup>th</sup> February, 2015 he was served with a notice of non-renewal of his contract and directed to handover the camp-site to one Vincent Gichamba. He stated that he requested for time to consult with the head office but he was kicked out and locked out of the office and his house. Further, he was reported to the police for various alleged crimes as shall be seen hereunder.
13. The claimant stated that it is only upon obtaining an order from the court in this cause that he was able to pick up his belongings from the house allocated to him by the respondent.
14. The claimant further stated that he was later on charged with the offence of forging the second contract that extended his initial contract for three years to March, 2017. However, he was acquitted of the criminal charges in 2021.
15. He stated that the respondent unfairly and unlawfully terminated his contract without notice with 24 months left and that his last basic salary was Kshs26,490/=. He produced copies of all his listed documents as exhibits.
16. On cross-examination, the claimant insisted that he signed the extension contract that he produced in court dated 30<sup>th</sup> April, 2014 which was also signed by Jared Musima in the presence of a secretary by the name Susan. He denied signing the contract produced by the respondent in court of even date and termed the same a forgery. He stated that he was a camp-site manager which to him is the same as camping-site manager.
17. He insisted that he was terminated 24 months ahead of the date of expiry of his contract and that the criminal charges against him of uttering a false document were dismissed by the criminal court. He insisted that while the first contract was for one year the second one was for three years and not for one year as alleged by the respondent. He stated that the contract for one year produced by the respondent dated 30<sup>th</sup> April, 2013 is a forgery and false as the pages clearly show that the typing prints are different.
18. CW2, a retired chief-inspector of police and a trained and licensed document examiner, stated that on 15<sup>th</sup> March, 2016 he was instructed by the claimant to examine the two contested contracts both dated 20<sup>th</sup> April, 2013. The assignment was to establish if the signatures on the two contracts were made by the alleged persons, the claimant and Mr. Jared Musima. He confirmed that indeed the two documents bore the signatures of the said two persons.
19. Responding to a clarification sought by the court he stated that forensic examination on writings are generally over 75% accurate.

### **III. The Respondent’s Case**

20. The respondent’s case is expressed in the filed response to the memorandum of claim, the oral and documentary evidence adduced through RW1 and RW2, and the written submission filed by its counsel.
21. In the filed response it is pleaded that the claimant was at first on a contract for one year running from 6<sup>th</sup> March, 2013 to 5<sup>th</sup> March, 2014. Further, it is pleaded that the claimant was offered a second one-year contract that was to run from 6<sup>th</sup> March, 2014 to 5<sup>th</sup> March, 2015 and that the same is dated 30<sup>th</sup>



- April, 2014. It is vehemently denied that the claimant was offered and or given a three-year contract. It is pleaded that the contract relied upon and produced by the claimant in court purporting to extend his contract for three years was a forgery.
22. It is pleaded that it is upon the terms and conditions agreed by and between the parties that the respondent issued the notice dated 5<sup>th</sup> February, 2015 reminding the claimant that his contract was coming to an end on 5<sup>th</sup> March, 2015 and that the respondent did not intend to renew the same. It is further pleaded that the claimant was neither constructively dismissed nor terminated in any other manner whatsoever.
  23. It is pleaded that as at the time of expiry of the contract the claimant was paid all his dues and benefits and that this cause is without merits and for dismissal with costs.
  24. In his testimony in court RW1, the national secretary general of the respondent, relied on his filed written statement dated 21<sup>st</sup> March, 2023 as his evidence-in-chief and produced the documents filed by the respondent as exhibits 1 to 12.
  25. He stated that the claimant was engaged as a camping site manager for one year from 1<sup>st</sup> March, 2013 to 8<sup>th</sup> March, 2014. He stated that he signed the contract dated 1<sup>st</sup> March, 2013. He stated that the contract was renewed for a further one year as per the contract dated 30<sup>th</sup> April, 2014. He stated that the claimant had a poor disciplinary record and as such a notice was issued dated 25<sup>th</sup> February, 2014 to the effect that his contract was not to be renewed.
  26. He stated that it is only after the claimant filed this cause in court that the respondent established that the claimant had forged a contract allegedly giving to himself a three-year contract running to March, 2017. He alleged that the three-year contract relied upon by the claimant in court was a forgery describing the claimant as a camp-site manager yet the only position known and established by the respondent is a camping- site manager. He denied signing the three-year contract to the claimant. He stated that the forgery by the claimant was reported to the police and the claimant charged in a criminal court.
  27. On cross-examination, RW1 stated that in the notice of non-renewal of contract dated 25<sup>th</sup> February, 2014 the claimant was directed to handover to one Vincent Gichamba. He stated that all contracted employees were on one-year contract and none was on a three-year contract and the claimant's alleged three-year contract was a forgery. He stated that he testified against the claimant in the criminal case but also admitted that the claimant was acquitted of the charges. He stated that the claimant left employment in February, 2015 one month ahead of expiry of his contract.
  28. RW2, the finance manager of the respondent, stated that the claimant was employed as a camping-site manager based at Lake Naivasha. He stated that the claimant left employment upon expiry of his contract in March, 2015.
  29. In cross-examination, he stated that the claimant was a camping-site manager as there was no position of camp-site manager. However, no supporting document was availed in that regard.

#### **IV. Submissions**

30. The claimant's counsel identified the following issues for determination –
  - i. Was the contract of the claimant for one year or for three years?
  - ii. If the contract was for three years was the Respondent entitled to terminate the said contract in the manner it was terminated.



- iii. Is the claimant entitled to the prayers sought?
31. On the first issue, it is submitted that the claimant was on a second three-year contract that was terminated unfairly and unlawfully by the respondent who purported to issue a notice of non-renewal dated 25<sup>th</sup> February, 2014. It is submitted that while the respondent alleged that the second three-year contract was a forgery and caused the claimant to be charged with the offences of uttering a false document and forgery the claimant was acquitted of those charges. It is further submitted that CW2, a document examiner, confirmed that the second three-year contract availed and produced as an exhibit by the claimant was not forged and that the same was signed by the claimant and CW1.
32. It is submitted that while the claimant produced the original copy of his second three-year contract the respondent did not avail the original of the alleged second one-year contract. It is submitted that there is no difference between the two job descriptions of camping-site manager and camp-site manager and in any event the two terms were used interchangeably by RW1 and RW2 in court. Further, it is submitted that the usage and the application of the two terms is a matter of semantics without substantive difference.
33. It is submitted that with malice and caprice the respondent whimsically terminated the claimant by purporting to not renew a contract that had two more years to expire and then forcefully, wrongfully, unfairly, and unlawfully evicted the claimant out of the workplace.
34. It is on the basis of the foregoing that the court is urged to allow the claim and grant the reliefs as sought.
35. On the other hand, the respondent's counsel identified the following five issues for determination –
- i. Whether the parties were bound by the claimant's contract or the fixed term contracts by the respondents.
  - ii. Whether the employment contract was a fixed term contract.
  - iii. The evidence of the document examiner.
  - iv. Whether the claimant is entitled to the reliefs sought in the memorandum of claim.
  - v. Who should bear the cost of this suit.
36. On the first issue, it is submitted that there is no way that the respondent may have issued two conflicting second contracts one for one year and the other for three years. It is submitted that the claimant forged the three-year contract. It is further submitted that if indeed the claimant was on a three-year contract there is no way that the respondent could have issued him with a notice of non-renewal. It is submitted that if the three-year contract was valid the respondent was free to issue the claimant with notice of termination. It is thus submitted that the claimant was issued with the notice of non-renewal of the contract because the contract was coming to an end by effluxion of time. It is submitted that the respondent had no reason to be malicious or discriminatory against the claimant and that there is no way that the respondent could have complained to the police about the forgery if it had issued the claimant with the three-year contract. It is submitted that as stated by RW1 in court the respondent only came across the purported three-year contract after it was served with the pleadings in this cause.
37. It is submitted that the respondent through RW1 demonstrated and proved that the purported three-year contract was a forgery. The court is urged to find and hold as such and dismiss the claim with costs.
38. On the second issue, it is submitted that the contract came to the end through effluxion of time and the notice of non-renewal of the contract was based on the second one-year contract. It is submitted



that the respondent was under no obligation to justify the non-renewal of the contract. Counsel cited *Trocaire V Catherine Wambui Karuno* (2020) eKLR, *Margaret A. Achieng V National Water Conservation & Pipeline Corporation* (2014) eKLR, and *Registered Trustees of the Presbyterian Church of East Africa & Another V Ruth Gathoni Ngotho* (2017) eKLR in support of that position.

39. On the third issue, it is submitted that CW2, the document examiner, admitted that he did not have the signature of RW1 in original as to compare it with the signature on the purported original three-year contract. It is submitted that CW1 did not ask for the original signature of RW1 and that confirms that the document examiner's finding and conclusions were misleading and wrong. It is submitted that the court should not attach any probative value to the evidence of CW2. The court is urged to be persuaded by the finding and holding in *In Re Estate of Gitau Njoroge 'B' (Deceased)* (2018) eKLR to the effect that the evidence of an expert witness is not binding on the court and that as it is with every other evidence the court ought to evaluate such evidence subject to the applicable rules of admissibility and assess its probative value alongside other availed evidence. The Court of Appeal made similar sentiments in *Asira V Republic* (1986) KLR 227. The court is urged to believe and trust the evidence of RW1 that he did not sign on the three-year contract produced by the claimant in court.
40. It is submitted that the claimant was not constructively terminated or dismissed as claimed but that the employment relationship terminated by effluxion of time and as such the claimant is not entitled to the reliefs sought. The court is urged to dismiss the cause with costs.

#### **V. Issues For Determination**

41. The court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The following issues commend themselves to the court for determination -
- a. Whether the employment relationship between the parties came to an end through effluxion of time or that the claimant was constructively, wrongfully, unfairly, and unlawfully dismissed or terminated.
  - b. Whether the claimant is entitled to the reliefs sought.
  - c. Who should bear the costs of the cause?

#### **VI. Termination**

42. The uncontested evidence on record is that the claimant was initially engaged by the respondent as a camping-site or camp-site manager vide a letter of offer/contract dated 1<sup>st</sup> March, 2013. The contract was to run for one year from 6<sup>th</sup> March, 2013 and end on 5<sup>th</sup> March, 2014. However, the parties disagree on what happened upon expiry of this contract. According to the claimant, he was given a second three-year contract vide a letter dated 30<sup>th</sup> April, 2014 which was to run from 6<sup>th</sup> March, 2014 to 5<sup>th</sup> March, 2017.
43. Conversely, according to the respondent the alleged second contract of three years is a forgery and in its place the respondent insists that the claimant was issued with a one-year contract that was to run from 6<sup>th</sup> March, 2014 to 5<sup>th</sup> March, 2015. The respondent's case is that it issued to the claimant with a notice of non-renewal of this contract on 5<sup>th</sup> February, 2015 since the contract was coming to an end on 5<sup>th</sup> March, 2015 which was about a month away.
44. The respondent's case is that after the claimant resisted, failed, and or refused to handover the camping-site as expected they applied reasonable means to evict him so that another appointed manager would



- take up the management of the facility. It is stated that it is only after the claimant filed and served the pleadings in this cause that the respondent came across the allegedly forged three-year contract.
45. The evidence on record is that the claimant was evicted from the premises on or about 25<sup>th</sup> February, 2015. This eviction effectively brought the employment relationship between the parties to an unpleasant ending.
  46. However, the claimant's case is that he was unfairly and unlawfully terminated midway the three-year contract which according to him was to come to an end on 5<sup>th</sup> March, 2017.
  47. Flowing from the foregoing paragraphs, the court has to make an important and fundamental determination - between the two contracts, one for the three years produced by the claimant and the other for one year by the respondent, which one is genuine and binding between the parties? It is only by determining this fundamental issue that the court may proceed to deal with the other issues.
  48. The evidence on record is that once the respondent learnt of the allegedly forged three-year contract it reported and took up the matter with the police. The claimant was charged at Kibera in Chief Magistrate's Court Criminal Case No. 1662 of 2015 with three counts, viz, making a document without lawful authority, uttering a false document, and forgery, contrary to Sections 357(a), 357(b), & 349 of the Penal Code, respectively. While the second count was withdrawn by the prosecution, the accused (the claimant herein) was acquitted of the other two counts on 24<sup>th</sup> February, 2021. However, the court notes that the claimant was acquitted as above due to the failure by the prosecution to properly produce the allegedly forged document as an exhibit in court. This means that the criminal court did not make a conclusive finding as to whether the three-year contract availed by the claimant in this trial, which is vehemently contested by the respondent, is genuine or a forgery and in that regard the said criminal proceedings add no value to this trial in that regard. This court has thus to determine which of the two contracts is genuine and hence binding on the parties.
  49. CW2, a handwriting expert, was of the opinion that the signature appearing on the three-year contract produced in court as evidence by claimant is that of RW1 although he only compared the same to a photocopied sample of the signature.
  50. The claimant availed the original copy of the three-year contract as exhibit 3. On the other hand, the respondent did not avail the original copy of the one-year contract and no explanation was offered as to why the same was not available. Though not binding on the court but could have been highly persuasive, the respondent did not call the evidence of a handwriting expert in support of the one-year contract.
  51. The court also notes that in their testimony in court RW1 and RW2 used the terms "camping-site manager" and "camp-site manager" interchangeably yet the respondent insists that the two terms mean two different things. Counsel for the claimant submitted that it was a matter of semantics and in any event no manual was availed by the respondent to establish the exact description of the position that the claimant held with the respondent. The court takes the considered view that in those circumstances and context the said terms refer to one and the same position held by the claimant.
  52. Further, on a balance of probabilities, the court finds and holds that the claimant proved his case that as at the time of dismissal he was on a three-year contract that was to run from 6<sup>th</sup> March, 2014 to 5<sup>th</sup> March, 2017. Although the court is not bound by the opinion of CW2, the forensic handwriting expert, the court is persuaded by his findings in absence of any other admissible expert opinion on that issue.



53. The court notes that prior to the dismissal and eviction of the claimant, there were unpleasant correspondences between the parties with various allegations made against the claimant. For example, in a letter dated 8<sup>th</sup> September, 2014 the respondent accused the claimant of tampering with the electricity meter within the camping-site. Further, in a letter dated 12<sup>th</sup> January, 2015 the respondent accused the claimant of theft of cash that was in his custody belonging to the respondent. Likewise, in a letter dated 24<sup>th</sup> February, 2015 the claimant was accused of breaking into office and stealing receipt book and petty-cash vouchers.
54. On 5<sup>th</sup> February, 2015 the respondent issued the claimant with a notice of non-renewal of his contract. For ease of reference, the said notice stated that –
- Our Ref: SN.33/91/2015/JNM 5<sup>th</sup> February, 2015
- Mr. Benson Mati Njiru  
C/o Naivasha YMCA Camp  
Box 1006-20117  
Naivasha
- Dear Mr. Njiru,
- Ref: Non-renewal Of Contract
- I wish to inform you that your employment contract with YMCA will not be renewed.
- However, I take this opportunity to thank you for the work and the period you have worked with YMCA and wish you all the best in your future endeavours.
- Yours faithfully,
- Jared N. Musima  
National General Secretary  
CC Human Resources Officer
55. It is important to note that the above notice does not indicate which contract was intended not to be renewed by the respondent. Also, it does not indicate when the alleged contract was coming to an end. The question that arises then is – was the notice referring to the one-year contract that the respondent alleged was coming to an end on 5<sup>th</sup> March, 2015, or, was it referring to the three-year contract that was to expire on 5<sup>th</sup> March, 2017?
56. Vide a letter dated 5<sup>th</sup> February, 2015 the respondent demanded the claimant to hand over the camp-site to one Vincent Gichamba “immediately” “following non-renewal” of the contract. For avoidance of doubt, there was no contract between the parties that was ending on or about 5<sup>th</sup> February, 2015 as to obligate the claimant to handover the camp-site “immediately”. The purported one-year contract that the respondent relied on as governing the relationship between the parties was to expire on 5<sup>th</sup> March, 2015 while the three-year contract that the claimant relied on was expiring on 5<sup>th</sup> March, 2017.
57. The court finds and holds that as a result of the toxic relationship between the parties, as evidenced by the correspondences cited above, the respondent lost patience with the claimant and opted to dismiss him without affording him due process. No matter how much the relationship between the parties had deteriorated, and the respondent as the employer knew or ought to have known this, the claimant was still entitled to due process.



58. The whimsical and capricious manner in which the respondent dealt with the dismissal of the claimant finds no support or place in law and the same is hereby declared wrongful, unfair, and unlawful. There is no evidence whatsoever that the claimant was subjected to due process. No notice was issued, no show-cause was served, no hearing was conducted, and hence no substantive and procedural fairness was accorded to the claimant.
59. The court has said enough in demonstrating that the claimant was wrongfully, unfairly, and unlawfully terminated with over two years to go in his contract.

## VII. Reliefs

60. Flowing from the finding and holding in the foregoing part of this judgment, the court shall consider the reliefs sought as hereunder.
61. Prayer (i) is for an order that the constructive dismissal of the claimant was unfair, unlawful, and wrongful. The other relief, which was dealt with by way of an interlocutory application, was for an order to allow the claimant to access the office and his dwelling house to pick his personal belongings. The court has found in the preceding part of this judgment that the dismissal of the claimant was wrongful, unfair, and unlawful and a declaration shall issue to that effect.
62. Prayer (ii) has several items. Item (a) is for three months' salary in lieu of notice in the sum of Kshs79,470/=. Clause 11 of the contract provided that either party may terminate the contract by issuing a three months' notice or paying salary for equivalent months in lieu of the notice. This item is thus allowed as prayed.
63. Item (b) is for salary arrears for days worked in February, 2015 in the sum of Kshs39,735/=. The court shall not allow this item in view of item (d) discussed below.
64. Item (c) is pay for annual leave earned but not taken in the sum of Kshs45,915/= which is hereby allowed.
65. Item (d) is payment for the salaries for the remainder of the contract being a period of 24 months calculated at Kshs635,760/=. This is the salary earnings that the claimant, ceteris paribus, would have accumulated bar the dismissal. Of course, life is abound with uncertainties and one cannot speculate as to whether the claimant would have seen through his contract in view of the already toxic relationship between him and the respondent. However, the court has no control or magical powers to speculate or ascertain whether the relationship would have subsisted to the end of the contract on 5<sup>th</sup> March, 2017. The court can only go by the agreement and the intentions of the parties and thus overlook and ignore the vagaries of life which are beyond the control of any mortal. In the circumstances, this item is allowed as prayed as the parties as per the contract intended to remain in the employment relationship for three years and the balance thereof was 24 months. The respondent failed to comply with the law in dismissing the claimant as found and held in a preceding part of this judgment.
66. Item (e) is for arrears of housing allowance in the sum of Kshs317,880/= calculated at 50% of the basic salary as per clause 5 of the contract of employment. While the evidence from both sides suggest that the claimant resided near or within his place of work, there is no evidence on whether the said housing was provided by the respondent at its cost. In absence of any conflicting or rebutting evidence this item is allowed as prayed.
67. Item (f) is for gratuity in the sum of Kshs95,364/= based on clause 6 of the contract at 10% of the annual basic salary. This claim is allowed as prayed.



68. Item (g) is for compensation for the wrongful, unfair, and unlawful dismissal equivalent to 12 months gross salary in the sum of Kshs317,880/=. For the umpteenth time the court reiterates that wrongful, unfair, and unlawful termination does not and should not present an opportunity for an employee to make money or take advantage of the situation. The loss or damage that an employee incurs from unlawful termination or dismissal, unless in cases of other special loss or damage or violation of constitutional rights pleaded and proved, is in the earnings or wages or salary that the employee should have earned bar the dismissal or termination. The award in item (d) above takes care of what the claimant lost as a result of the wrongful, unfair, unlawful, and premature termination of his contract with the respondent. No special damage has been pleaded and proved as to entitle the claimant to additional compensation as claimed in item (g). In the circumstances, this claim for compensation is denied and dismissed as allowing the same shall amount to double compensation or even overcompensation.
69. Item (h) is for certificate of service. Section 51 of the Act is to the effect that no matter the circumstances of termination of an employment relationship an employee is entitled to a certificate of service. The court directs the respondent to issue and deliver a certificate of service to the claimant.

### VIII. Costs

70. Costs follow the event and the claimant is awarded the costs of the cause.

### IX. Orders

71. For all the foregoing reasons the claimant's cause succeeds and the court issues the following orders –
- a. A declaration be and is hereby issued that the termination of the claimant by the respondent was wrongful, unfair, unlawful, and premature.
  - b. Consequently, the claimant is awarded the following –
    - i. Three months' salary  
in lieu of notice ..... Kshs79,470/=
    - ii. Annual leave earned .....Kshs45,915/=
    - iii. Salary for the remainder  
of the contract ..... Kshs635,760/=
    - iv. Housing allowance .....Kshs317,880/=
    - v. Gratuity .....Kshs95,364/=

Total ..... Kshs1,174,389/=

This amount is subject to statutory deductions.
  - c. The respondent shall issue and deliver to the claimant a certificate of service within 30 days of this judgment.
  - d. The claimant is awarded the costs of the cause.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 26TH DAY OF SEPTEMBER, 2024.**

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**DAVID NDERITU**  
**JUDGE**

