



**Murimi v Mini Bakeries (Nairobi) Limited (Cause 2 of 2022)
[2024] KEELRC 2604 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2604 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MACHAKOS
CAUSE 2 OF 2022
MA ONYANGO, J
OCTOBER 24, 2024**

BETWEEN

PATRICK WACHIRA MURIMI CLAIMANT

AND

MINI BAKERIES (NAIROBI) LIMITED RESPONDENT

JUDGMENT

1. Vide his Memorandum of Claim dated February 15, 2022 the Claimant seeks the following reliefs against the Respondent:
 - a. A declaration that the termination of the Claimant by the Respondent was unfair and unlawful.
 - b. An order compelling the Respondent to pay the Claimant his terminal benefits amounting to Kshs 4,364,300.28
 - c. Costs of the suit
 - d. Interests on (b) and (c) above at court rates from the date of filing of suit till payments in full.
2. The Claimant avers that pursuant to an oral agreement, he was employed by the Respondent in November 1995 at the bread packing department of the Respondent as a parker and was confirmed as a permanent employee in 2008. That he was thereafter transferred to Akida Langata Mini Bakeries, a sister company of Mini Bakeries, the Respondent herein, as a Branch Manager.
3. He states that in 2014, he was promoted to the position of Assistant Operation Manager and transferred to Pangani. Thereafter he was transferred to several branches where he worked until 2019 when he was transferred to Machakos and Kitengela in the same capacity as an Assistant Operations Manage. His last monthly salary was Kshs 187,565.



4. It is the Claimant's case that on 23rd May 2019 he was issued with a show cause letter by the Legal & Administration Manager of the Respondent on accusations of negligence of duty, given 4 days to prepare a response and directed to appear before the Respondent's Disciplinary Committee on 31st May 2019.
5. The Claimant contends that he responded to the show cause letter on 28th May 2019 and attended the disciplinary committee session in the company of a fellow employee. He states that on 6th June 2019, he was issued with a termination letter.
6. According to the Claimant, the said termination was unlawful and unfair for want of valid reasons and fair process.
7. The Claimant claimed for payment as follows:
 - a. Salary arrears for May, June, July and August 2019 Kshs 750,260
 - b. 3 months' salary in lieu of notice Kshs 562,695
 - c. Leave due 108xKshs 6,252.16 Kshs 675,233.28
 - d. Leave travelling allowance Kshs 49,500
 - e. Unlawful deductions Kshs 75,832.00
 - f. 12 months compensation for unfair termination Kshs 2,250,780Total Kshs 4,364,300.28
8. In response to the Memorandum of Claim, the Respondent filed a Memorandum of Reply on 15th March 2022 in which it denied the allegations made by the Claimant regarding the termination of his employment.
9. The Respondent also denied that the Claimant was earning a monthly salary of Kshs 187, 565 and maintained that he was earning a monthly gross salary of Kshs 159,265 with effect from 1st November 2017.
10. In rebuttal to the Claimant's averment that he worked well until 23rd May 2019, the Respondent stated that the Claimant severally breached the terms and conditions of his employment contract by engaging in misconduct that included negligence in the manner of handling his lawfully assigned duties which occasioned him a warning and a suspension on 5th May 2014 and 4th October 2018 respectively.
11. According to the Respondent, the Claimant was issued with a Notice to Show Cause letter as part of management's policy and invited to a disciplinary hearing on 3rd June 2019 and not on 31st May 2019 as alleged by the Claimant. Further, the Respondent averred that the disciplinary hearing for the Claimant was conducted in compliance and observance of due process as required under section 41 of the *Employment Act*.
12. It was the Respondent's contention that the termination of Claimant's employment was procedural, lawful and for fair and valid reasons pursuant to sections 44(4)(g) and 45 of the *Employment Act*.
13. It was therefore averred that the Claimant is not entitled to any of the damages he is seeking. The Respondent prayed that the claim be dismissed.



14. At the hearing, the Claimant testified as CW1. He adopted his witness statement recorded on 15th February 2022 as his evidence in chief and relied on the documents he filed in court on 15th February 2022 and 30th September 2022 in support of his claim.
15. On cross examination, the Claimant stated that he was issued with the letter of appointment and confirmation by the Respondent in 2011 and that his last salary was Kshs 159,265.
16. He admitted that he was issued with warning letters for misconduct on 15th May 2014 and on 4th October 2018.
17. He confirmed that he was invited to a disciplinary hearing on 3rd June 2019 vide the show cause letter and informed to attend the hearing with a colleague of his choice as a witness. That he was thereafter issued with a termination letter which gave reasons for the termination of his employment.
18. The Claimant stated that he was a member of the Respondent's pension scheme and also a member of both NSSF and NHIF.
19. The Claimant stated that his employment contract provided for two months' notice for an employee who had served for between 5 to 10 years, and 3 months for employees who had served for 10 years and above. It was the Claimant's case that as at the time he was signing his contract of employment he had served the Respondent for more than 10 years.
20. With regard to the issue of leave days, the Claimant disagreed with the tabulation made in the termination letter and the leave application form dated 4th June 2019 showing that he had a balance of 12 days as at the time his employment was terminated. He stated that he had a balance of 76 days and was entitled to an additional 38 days for the year. That he only took 6 days leave and therefore had a balance of 108 days leave at the time of termination of his employment.
21. On his prayer of unlawful deductions from his salary the Claimant stated that in the letter of termination it was stated that the Respondent would make deductions to compensate for the losses the company had incurred which he did not agree with.
22. In re-examination, the Claimant maintained that he was employed in 1995 orally by the Respondent and was transferred to work for Akida Bakeries, the Respondent's sister company in 2008.
23. The Claimant stated that prior to the disciplinary hearing, he was issued with a Notice to show cause letter which he responded to denying the accusations levelled against him.
24. On the issue of leave days, the Claimant denied the Respondent's averment that he was only entitled to 12 leave days and maintained that his annual leave entitlement was 38 days as at 1st August 2018 and that as at the time of termination he had a leave balance of 108 days.
25. With regard to the issue of deductions referred to in the termination letter, the Claimant stated that he did not agree to have 35% of his dues deducted.
26. The Respondent called Mr Jack Otieno, its Operations Manager who testified as RW1. He adopted his witness statement recorded on 14th March 2022 and relied on the documents filed by the Respondent.
27. According to RW1, the Claimant's employment was terminated because of embezzlement of funds at Machakos Branch where he was in charge. It was his testimony that there were documents the Claimant was supposed to check in which the daily sales and daily production was recorded which he was required to seal and send to the head office but he did not.



28. According to RW1, after checking the documents, the Claimant left them with the clerks at the branch who took advantage and altered the sales by reducing the figures to reflect low sales and pocketed the rest of the money. The Respondent's witness stated that an audit was conducted which showed that the documents had been altered on a daily basis leading to a loss amounting to Kshs 190,383.
29. RW1 stated that the Claimant was subjected to a disciplinary process because it was established that he did not go through the production and sales to confirm that they were in order. It was further stated that the Claimant as the final signatory of the documents had a duty to ensure that the clerks did not manipulate the sales.
30. RW1 maintained that the termination of the Claimant's employment was fair due to his negligence. RW1 maintained that the Claimant was taken through due process as required by law.
31. During cross examination RW1 testified that he was employed by the Respondent in 2007 as a receptionist and rose through ranks to the position of Operations Manager. He denied that the Claimant was employed in 2001 and stated that the Claimant was employed in 2011. The Respondent's witness confirmed that the Claimant's employment letter provided that an employee could work in any of the sister and associated companies.
32. RW1 further testified that it was not the Claimant who defrauded the Respondent but it was his juniors whose employment and that the said employees had since been terminated. He also stated that the audit report for the period 1st January to 31st April indicated that the Respondents systems were weak.
33. The Respondent's witness stated that the Claimant was paid his terminal dues at the time of termination of his employment.
34. At the close of the Respondent's case, the court directed parties to file written submissions. The Claimant's submissions were filed on 16th November 2022 while the Respondent's submissions were filed on 18th November 2022. I have duly considered the submissions of both parties.

Analysis and Determination

35. From the pleadings on record, the evidence of the parties and the submissions, the issues that arise for determination in this case are as follows: -
 - i. When was the Claimant employed by the Respondent?
 - ii. Whether there was valid reason for termination of the Claimant's employment,
 - iii. Whether the Respondent followed fair procedure in terminating the Claimant's employment,
 - iv. What reliefs should issue.

When was the Claimant employed by the Respondent

36. From the evidence on record, it is not disputed that the Claimant was until the time of termination of his employment, an employee of the Respondent. The bone of contention is when the Claimant was employed. The Claimant has stated that he was employed by the Respondent in 1995 as a packer on an oral agreement and worked until 2008 when he was transferred to the Respondent's sister company, Akida Langata Mini Bakeries before being transferred back to the Respondent on 1st September 2011 as a Branch Manager at South C Branch.
37. The Respondent's witness denied that the Claimant was employed in 2001 and insisted that the Claimant was employed in 2011.



38. I have perused the Claimant's further list of documents filed in court on 7th October 2022, and particularly the letter of appointment dated 31st March 2008 and the letter of confirmation and salary adjustment dated 1st July 2008 issued by the Respondent's sister company, Akiyda to the Claimant. The two letters are drawn and signed by Mr Thomas Mwaura, the Legal and Administration Manager of the Respondent herein confirming that the Claimant was working for the Respondent's sister company in the year 2008 at the behest of the Respondent.
39. The Claimant's NSSF statement shows that he started contributing in July 2001. Thereafter he paid contributions every month until July 2003. The contributions again started in April 2008 until July, 2019. The contributions are in respect of both the employee and employer. The employer is Mini Bakeries Ltd. The Claimant also filed a certificate of registration from NSSF which states that he was registered as an employee of Mini Bakeries and started contributing in June 2001. The documents are contained in the Claimant's Further List of Documents dated 30th September, 2022 and received by the court on 7th October, 2022.
40. There is also a letter dated 1st July, 2008 addressed to the Claimant from Akiyda (2000) Limited with the title: Confirmation and Salary Adjustment. The letter confirms the Claimant's contract from 1st July, 2008. The first paragraph reads: "Management is pleased to advise you that having completed the probationary period satisfactorily; your appointment is hereby confirmed with effect from 1st July 2008...."
41. The import of the above is that the Claimant was in the employment of the Respondent continuously from July 2001 up to July, 2003. After that there is a break in the contributions to NSSF until April, 2008 when the contributions resumed and continued to the date of termination of his employment.
42. Section 74. (1) of the *Employment Act* provides
- "an employer shall keep a written record of all employees employed by him, with whom he has entered into a contract under this Act which shall contain the particulars"
43. Section 10(6) and (7) of the Act further provide as follows:
- (6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.
- (7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.
44. From the above provisions, it is clear that it is the responsibility of an employer to keep employment records of all employees showing when such employee was hired and where an employer fails to do so, it is the burden of the employer to rebut the employee's averments.
45. The Respondent did not produce any evidence disproving the Claimant's allegation regarding when he was employed and as such, the court takes the position that the Claimant was employed by the Respondent in 1997 orally before the terms of the employment contract were reduced into writing in 2008 and 2011.



Whether there was valid reason for termination of the Claimant's employment

46. It is trite law that before an employer terminates an employee's employment, the employer must not only prove that it had valid reasons for the said termination but also ensure that the laid down procedure has been followed.
47. In Court of Appeal observed in *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR as follows:

"The onus was really on the appellant to show that the dismissal was justifiable after the response made by the respondent both in his documentary and oral evidence. In the case of *Pius Machafu Isindu v Lavington Security Guards Limited* [2017] eKLR this Court had the following to say on the burden of proof:-

"There can be no doubt that the Act, which was enacted in 2007, places heavy legal obligations on employers in matters of summary dismissal for breach of employment contract and unfair termination involving breach of statutory law. The employer must prove the reasons for termination/dismissal (section 43); prove the reasons are valid and fair (section 45); prove that the grounds are justified (section 47 (5), amongst other provisions. A mandatory and elaborate process is then set up under section 41 requiring notification and hearing before termination. The Act also provides for most of the procedures to be followed thus obviating reliance on the *Evidence Act* and the *Civil Procedure Act*/Rules. Finally the remedies for breach set out under section 49 are also fairly onerous to the employer and generous to the employee. But all that accords with the main object of the Act as appears in the preamble:

"..to declare and define the fundamental rights of employees, to provide basic conditions of employment.."

Those provisions are a mirror image of their constitutional underpinning in Article 41 which governs rights and fairness in labour relations.

14. Section 47 (5) of the Act provides for the procedure to be followed in matters of complaints of unfair termination as follows:

"(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer." [Emphasis added].

So that, the appellant in this case had the burden to prove, not only that his services were terminated, but also that the termination



was unfair or wrongful. Only when this foundation has been laid will the employer be called upon under section 43 (1): "to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45."

48. In the instant case, the Show cause letter dated 23rd May 2019 which initiated the process leading to the termination of the Claimant's employment reads:

To: Patrick Wachira Murimi

Assistant Operations Manager

Machakos Branch

Payroll No: 22XXXXX

From : Legal & Administration Department

Date: 23rd may 2019

RE: Notice to Show cause why disciplinary action including termination/summary dismissal cannot be taken against you

The management makes reference to the above subject matter after receipt of a report from operations about your negligence of duty.

The report indicates that on 15th, 16th and 17th April 2019, there were very high market returns from route markets, in that for three consecutive days, there was high market returns from Wote, Kalawa and Makueni routes. On 15th, 16th and 17th April 2019, the total market returns was 755 pieces, 1318 pieces and 763 respectively. You were notified by the branch manager and the sales representative about the returns but you failed to react by notifying the management for an urgent solution until the mess continued for three ((3) consecutive days. Upon being asked to explain why your routes were not selling and in return posing the company to huge losses, you reacted in an irresponsible way when you started suggesting that the returns were caused by the bread borrowed from Kariobangi branch. Notably, the bread borrowed from Kariobangi was not returned to the branch as required which proved you took the matter lightly and did not seem to care. You failed to investigate the latter and further submit a report to the management for decision making.

Further a routine audit exercise done at Machakos Branch on 10th May 2019, brought forth revelations that sales on dispatches were not tallying with the manager balance book, quards loading book and the dispatch book in the sense that the same had manipulated figures on sales as clearly entered in the cash flow yet you had not noted the same and would pass them as okay. Further upon this realization, the books that were used to establish this anomaly, have suspiciously and mysteriously disappeared from the branch.

With all these events surrounding you and your written admission the Management has determined that you are answerable and considering that this is gross misconduct, you should proceed as follows: -

- i. Prepare your written defence within 4 days from date of receipt of this memo
- ii. Submit the defence to your immediate superior who will constitute a Disciplinary Committee for an oral hearing of your case on 31s May 2019 at Machakos Branch at 11:00 a.m.



- iii. Prepare and attend the hearing with a neutral person/witness of your choice to argue your defence
- iv. Your chosen representative can help you argue your defence at the hearing
- v. The Committee to prepare and submit its findings and recommendations of the disciplinary action after having heard the complaint against you and your defence
- vi. The Management shall then advise you of the action taken upon Committee's recommendation

Meanwhile name sign date and return the attached copy of this memo to acknowledge receipt and for our records.

Signed

Thomas W. Mwaura

Legal & Administration Manager

49. In the show-cause letter above, the Claimant was accused of failing to investigate the high market returns on the 15th, 16th and 17th April 2019 from Wote, Kalawa and Makueni routes and also, for failing to submit a report to the management for decision making.
50. The Claimant was given four days to respond to the show cause letter which he did vide a letter dated 28th May 2019.
51. Thereafter, the Claimant was taken through a disciplinary hearing and his employment terminated vide the termination letter dated 6th June 2019. It reads:

TO : Patrick Wachira Murimi

Assistant Opearation Manager

Machakos Branch

P/No. : 22XXXX

From : Legal & Administration Department

Date : 6th June 2019

Re: Termination of Employment

The Management makes reference to the above subject matter after receipt of your defence dated 28/05/2019 and proceedings of the hearing held on 3rd June 2019 at Dandora.

From your defence and the proceedings of the disciplinary meeting there is no dispute as to the fact that the company lost Kshs 190,833/-through the fraudulent activities spread over a period of about three months and was clearly perpetuated by the cashier and the data clerks. Further it is evident that you spotted the fraud in or about 10th April 2019 through a routine handing over and taking over process as you were taking day off.

That after your handing over, the management detailed the audit department to investigate the fraud and it emerged that same had been going on for a long period yet you had all along been signing all the cash flows, the invoices, the sales documents and the mixing charts as okay. It also emerged that you were signing the cash flows without all the supporting documents and then leaving the cashiers / clerks to attach thereby opened the loop hole that was used to steal from the company. Apparently



only the cashier and the data 'clerks and yourself held the keys to the lockers where the records were locked for safe custody.

In this regard, the management has reasons to believe and hold you liable for negligently performing your duties by signing cash flows in advance without the supporting documents or from circumstantial evidence your involvement in the fraud is not ruled because in your experience/skills it is was not expected of you not to detect this fraud early enough. Accordingly, you have been cited for gross misconduct this renders you liable for summary dismissal; however you are hereby terminated with notice purely on the basis of detecting the fraud but too late and your last working day shall be the 6th August, 2019. You shall serve two months notice simultaneously with your leave.

Please note to return all Company properties in your possession to Mr. Ahmed Ali (the Operations Manager) for computation of your dues that's shall be 35% as per policy i.e. Kshs 66,792/- of the above lost amount but nevertheless made as follows:-

- 1). Salary earned up to the date of termination ie. 6th August 2019
- 2). Leave/Pro-rata leave earned but not utilized
- 3). Leave Travelling Allowance proportionate
- 4). Pension Contribution Refund
- 5). Certificate of service

Further, we take this opportunity to wish you the best of luck in your future endeavors and also advise that it is your right to appeal against this decision within fourteen (14) days from date of this termination. The appeal (if any) to be addressed to the Manager, Legal & Administration for consideration if the same shall have good and new material facts.

Please confirm that you have read and understood the contents of this memo by signing, dating and returning the attached copy of this letter to acknowledge receipt and for our records.

Signed

Thomas W. Mwaura

Legal & Administration Manager

52. Section 45(2) of the *Employment Act* provides that termination of employment by an employer is unfair if the employer fails to prove valid reason and fair procedure. The burden of proof in employment claims as stipulated in Section 43 of the *Employment Act* is on the employer to prove the reason for the termination as valid in any legal proceedings.
53. A perusal of the show cause letter and the termination letter show that the grounds for termination were different in the two letters. For instance, the Show cause letter referred to the failure of the Claimant to investigate the high market returns in Wote, Kalawa and Makueni routes which allegations the Claimant responded to vide his letter dated 28th May 2019. In that response, the Claimant annexed a copy of a letter dated 31st March 2019 requesting for crates and a photo showing returned bread at Machakos branch.
54. In the termination letter the reasons given for termination is negligence. It is stated that the Claimant failed to lock up the Respondent's documents in a secure drawer to avoid risks of the documents being tampered with. This ground was also affirmed by RW1 who in his testimony stated that the termination of the Claimant's employment was as a result of his actions and omissions which led to clerks at the Machakos Branch accessing and altering documents for sales and reconciliations that had been signed



by the Claimant for sales and cash received per day thereby documenting daily transactions that were lower than the actual bread sold and cash received.

55. The reasons given in the termination letter were not raised in the show cause letter and as such, it is clear that the Claimant was never given a chance to respond to the allegations raised therein. The principles of natural justice provide that no one should be condemned unheard.
56. Be that as it may, it is worth noting that the Respondent's witness stated that the Claimant did not participate in embezzling the Respondent's funds but that it was his juniors who had since been terminated from employment. RW1 also stated that the audit report that was conducted at the Respondent's Machakos branch for the period between 1st January 2019 to 31st April 2019 indicated that the system put in place was weak.
57. Noting that the Claimant's employment contract did not specifically outline the duties of the Claimant and also that the Claimant did not participate directly in the alleged tampering of figures and sales or embezzle the Respondent's funds, the reasons advanced by the Respondent for the termination of the Claimant's employment fail the test of valid reason. On this basis, I find that the termination of the Claimant's employment was unfair.

Whether the Respondent followed fair procedure in terminating the Claimant

58. Section 41 of the *Employment Act* describes the procedural fairness to be met by employer contemplating termination of employment as follows:-

Notification and hearing before termination on grounds of misconduct

1. Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
 2. Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.
59. I have considered the process taken by the Respondent. First the respondent sent a notice to show cause letter dated 23rd May 2019 which required the Claimant to put in a defence within 4 days. The show cause letter also invited the Claimant for a disciplinary hearing on 31st May 2019.
 60. The Claimant was given adequate notice to respond to the show cause letter and adequate notice to attend the disciplinary hearing. The disciplinary hearing was therefore done in accordance with a fair procedure as required by to section 45(2)(c) of the *Employment Act*.

Remedies

61. Having found that the termination of the Claimant's employment was without valid reason and therefore unfair, I now consider if he is entitled to the remedies sought. In his Memorandum of Claim, the Claimant sought for the following reliefs:
 - a. A declaration that the termination of the Claimant by the Respondent was unfair and unlawful



I have already made a finding that the termination of the Claimant's employment was both unfair and unlawful

- b. An order compelling the Respondent to pay the Claimant his terminal benefits amounting to Kshs 4,364,300.28.

The Claimant claimed for:

- i. Salary arrears from May, June, July and August 2019

The Claimant's employment was terminated on 6th June 2019. He was paid his salary for May, June and July as evidenced by the final dues clearance at page 38 of the Claimant's bundle of documents. He is therefore not owed any salary arrears and this prayer is thus declined.

- ii. 3 months' salary in lieu of notice

As at the time of the Claimant's termination, the Claimant had served the Respondent for over 10 years. His employment contract provided that an employee who had served for over 10 years is entitled to 3 months' salary in lieu. From his pay slip for the month of July 2019, the Claimant salary was Kshs 159,265. The Claimant's employment was terminated on 6th June 2019. He was paid salary for the months of June and July 2019. The Claimant is therefore entitled to Kshs 159,265 being the balance of the 3 months' salary in lieu of notice, that is, for the month of August 2019.

- iii. Leave dues

The Claimant in his testimony stated that he had a balance of 108 days as untaken leave days. The Respondent on its part maintained that the Claimant had only twelve leave days as at the time of termination of his employment which was tabulated and paid to him in his final dues. The Respondent annexed copies of leave application forms in this regard. I have looked at the leave application form dated 4th June 2019. It is indicated therein that the leave balance is 12 days.

The Claimant testified that his leave entitlement was 38 days a year and his leave balance was 76 balance as at 1st August, 2017. That he took 6 days in 2019. That his leave entitlement for 2019 was 38 days. His leave balance as at the time of leaving service was therefore $76+38-6=108$. That he was paid for 12 days leaving a balance of 96 days.

This information is confirmed by the leave form at page 22 of the Respondent's bundle of documents filed on 15th March, 2022. The leave form is dated 24th June 2019. Part C of the leave form is amended to reflect a balance of 12 days which does not tally with the other figures.

The letter of termination states that the Claimant would serve notice simultaneously with leave. This is not supported by section 28 of the *Employment Act* which provides that an employee is paid leave due at the date of termination of employment. An employee cannot be compelled to take leave during terminal notice to deny them an opportunity to be paid in lieu of leave. There has to be an agreement to that effect. Otherwise that is deemed to be compulsory leave which cannot be deducted from an employee's earned leave.

I accordingly award the Claimant 96 days leave at Kshs 600,207.40

- iv. Leave travelling allowance



The letter of termination of the Claimant's employment lists terminal dues among them "Leave travelling allowance proportionate". The Respondent admitted that the leave travelling allowance was payable at the rate of 4500 per year but only for 2016/2017, 2017/2018 and 2018/2019 leave years being Kshs 13,500 which was included in the Claimant's terminal dues paid to him. It was the Claimant's position that the same was never paid for the entire period he worked for the Respondent. The Claimant did not adduce evidence in support of this averment. During the hearing the Claimant did not testify as to how the sum claimed accrued. I find that the leave travelling allowance was paid. The prayer is dismissed.

Unlawful deductions

From the Claimant's termination letter (supra) the Respondent at paragraph 5 states that the Claimant's dues shall be 35% as per policy of the lost amount. No justification was given for this deduction whatsoever. It is my finding that the said deduction was unlawful and I order that the Claimant be refunded the said amount.

- v. 12 months compensation for unfair and unlawful termination

The Claimant had worked for the Respondent for over 20 years as at the time of termination of his employment. Taking into account all relevant circumstances including the factors set out in section 49(4) of the Employment Act I award the Claimant 10 months' salary in the sum of Kshs 1,911,180 as compensation for the unfair termination.

62. In summary, I award the Claimant the following:

- i. 1 months' salary in lieu of notice.... Kshs 159,265
- ii. Pay in lieu of annual leave not taken Kshs 600,204.40
- iii. Refund of the 35% deductions Kshs 75,832.00
- iv. Compensation (10 months' salary) Kshs 1,592,650
- v. The Respondent shall pay Claimant's costs.
- vi. Interest shall accrue at court rates from date of the Judgment.

60. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 24TH DAY OF OCTOBER, 2024

MAUREEN ONYANGO

JUDGE

