



Irungu v RMA Motors [Kenya] Limited (Employment and Labour Relations Cause 1005 of 2016) [2024] KEELRC 13231 (KLR) (26 November 2024) (Judgment)

Neutral citation: [2024] KEELRC 13231 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1005 OF 2016**

K OCHARO, J

NOVEMBER 26, 2024

BETWEEN

KENNETH NDUATI IRUNGU CLAIMANT

AND

RMA MOTORS [KENYA] LIMITED RESPONDENT

JUDGMENT

Introduction

1. Before me is a claim by an employee [the Claimant] seeking remedy for an alleged unfair and unlawful summary dismissal, payment of entitled commissions, compensations for unfair dismissal and various unpaid benefits, and a counterclaim by the employer [the Respondent] for loss and damage against the Claimant.
2. The Claimant’s claim was initiated through a Statement of Claim dated 19th May 2016, which was resisted by the Respondent by a Memorandum of Defence and Counterclaim &Set Off dated 13th July 2018. As the Rules of Procedure required, the Claimant filed a Reply to the Memorandum of Defence, Counterclaim and Set-Off dated 5th November 2012. At the close of pleadings, the matter became ripe for hearing on merit.
3. At the hearing, the parties adopted their witness statements filed herein as their evidence in chief and tendered as documentary evidence the documents they filed under the various lists of documents in this matter.

The Claimant’s case

4. It was the Claimant’s case that he came into the employment of the Respondent through a contract of employment dated 8th May 2015 as a Sales Executive. According to the contract, his tenure was to



- commence on 2nd June 2015 and he was to work under a probationary period of three months. He completed the period successfully and was confirmed into employment by operation of the law.
5. His contractual remuneration was made up of a salary of KSHS. 45,000, and an airtime allowance of KSHS. 5000. In addition, he was entitled to payment of commissions on account of every unit sold at the rate of 1% of the transaction price. The Respondent not only dealt with cars but also spare parts and accessories. The reference “unit” in clause 7.1 of the contract of employment covered both cars, spare parts and accessories.
 6. He worked diligently for the Respondent until 14th March 2016, when he was summarily dismissed from employment. The dismissal was unfair as it was not preceded by any hearing. He was not notified of the reason[s] for the dismissal. As such, the Respondent’s action was contrary to the terms of his employment contract and the requirements of the law. Subsequently, the Respondent placed an advertisement in the Daily Nation alleging that his employment had been terminated on account of breach of contract on his part.
 7. At the time of the dismissal, the Respondent owed him;
 - a. Commission on accessories for December 2015 and January 2016..... KSHS. 111, 425.
 - b. Commission on accessories for February 2016 KSHS. 36, 779.
 - c. Commission on vehicle unit for February 2016
 - i. Range Rover Sport..... 70,000.
 - ii. Discovery Sport.....50, 000.
 8. Without any justifiable reason the Respondent refused to pay him his terminal benefits.
 9. Cross-examined by Counsel for the Respondent, the Claimant testified that the salary of KSHS. 45,000 was his consolidated gross salary. According to clause 7.4, the salary was subject to statutory deductions. The commissions were payable on each unit sold. The commission wasn’t paid on only vehicles sold. The contract provided for sale of units. It didn’t provide for accessories. The units that he sold were the Range Rover sport and Discovery.
 10. As a sales executive, he could only sell those cars that could be pointed to him for sale.
 11. He testified further that he knew Lucy Kanji. She had been her boss. After she left the Respondent’s employment, she asked him to remove her vehicle from a parking lot at Delta House where the offices of the Respondent were to a private yard. She intended to sell it elsewhere. He contacted the car dealer and released the vehicle to them. Later on, the car dealer called and informed him that the motor vehicle had been involved in an accident. Further, he had reported the occurrence to the police and the Insurers of the Vehicle. Thereafter, he wasn’t involved in the matter anymore.
 12. He didn’t make any arrangements to have the motor vehicle repaired at the Respondent’s workshop. The email dated 9th November 2015, by the Body Shop Manager was addressed to him. He didn’t protest this in any manner.
 13. Through an email dated 11th March 2016, the Respondent asked him to show cause why disciplinary action couldn’t be taken against him for contravening its Code of Conduct. Further, to show cause by 14th March 2016. He obliged and gave an explanation.



14. On the 11th of March 2016, he had a meeting with Rose. Apart from this, there wasn't any other meeting between the two or any other person over the matter.
15. On 14th March 2016, he received a letter dismissing him from employment. He was to clear with the Respondent before getting his final dues. This he did on the same day with the Human Resource Manager.
16. In his evidence under re-examination, the Claimant stated that under clause 7.1 of the contract of employment, his commission was paid on units sold, including accessories. There were instances when he was paid for accessories sold.
17. He further stated that he didn't know the arrangement that was between the owner of the vehicle and Lucy. His involvement as regards the motor vehicle was only limited to its removal from the yard.
18. Clarifying on the email dated 9th March 2016, the Claimant stated that the email wasn't addressed to him but one John Oroo.
19. After clearing with the Respondent, his earned Commissions weren't paid to him.
20. On previous occasions, his commissions were paid without any insistence on the part of the Respondent that he describes the sold units.

The Respondent's case

21. The Respondent presented Roselyn Kariuki, its Human Resources Director, to testify in support of its defence and counterclaim. The witness testified that the Respondent is an authorized car dealer of Jaguar Land Rover Limited and is in the business of selling, repairing and maintaining high-end luxury vehicles under the Jaguar Land Rover franchise.
22. The witness stated that as part of his contract of employment, the Claimant's primary objective was to sell the Respondent's cars. He was required to move as much inventory as possible. He earned a gross salary of KSHS. 45,000, fuel allowance of KSHS. 20,000 and airtime allowance of KSHS. 5000, monthly.
23. The witness stated that in addition, the Claimant was entitled to earn a commission on the total volume of the transaction price excluding all duties and taxes. The volume rate applicable was to be determined by the Respondent and communicated to him separately. Further, it was a term of the contract that the commission structure was set at a rate of 1% of the transaction price excluding duties and taxes. The commission structure was based on a policy, not a practice or custom.
24. The witness asserted that sometime in 2015, the Claimant and Lucy Kariuki Kenji, a former employee of the Respondent at the time, purporting to be acting on behalf of the Respondent entered into a verbal agreement with Mr. Micheal Manwaring whereby; the said Manwaring handed over to Lucy Kariuki Kenji his Range Rover Evoque registration No. KBU 212K; Lucy undertook that the motor vehicle would be displayed at the Respondent's premises at Delta House, Westlands for viewing and that she would sell the motor vehicle on his behalf to a third party and eventually hand over the proceeds of the sale to him.
25. In entering into the said agreement, Lucy Kariuki breached her fiduciary and contractual duties. Further, the Respondent's policies and code of conduct. Her employment was terminated.
26. Following the termination, at the end of October 2015, she colluded with the Claimant to continue the performance of the said verbal agreement. She and the Claimant purported to be acting on behalf of the Respondent.



27. She further stated that sometime in November 2015, the Claimant and Lucy Kenji arranged to deliver the Motor vehicle to a used car sale yard for display and marketing. This was done with a view of concealing the fact that the Claimant had brought the motor vehicle into the Respondent's premises and had been trying to re-sell it on behalf of Mr. Manwaring, from the Respondent.
28. It turned out that the delivery of the Motor Vehicle to the above-mentioned yard was done without the knowledge and approval of the owner, who had been led to believe that the vehicle was being displayed for sale by the Respondent at its premises.
29. The witness further stated that on or about 14th November 2015, the Claimant and Lucy Kenji arranged to deliver the vehicle from the used car sale yard to the Respondent's premises. This was being done because that Mr, Manwaring had informed the Claimant that he intended to send his agent to collect it from the Respondent's premises. This was arranged without Mr. Manwaring's knowledge.
30. In the course of the delivery of the motor vehicle to the Respondent's premises, the motor vehicle was involved in a road traffic accident with another motor vehicle Reg. No. KBB 755M. Resultantly, the motor vehicle was considerably damaged. Following this, the Claimant and Lucy Kenji caused the motor vehicle to be delivered to the Respondent's workshop at the industrial area and booked it for repair. In booking the Motor vehicle for repair, it was indicated that John Oroo Ongwae had undertaken to pay the repair costs of the motor vehicle.
31. On 30th November 2015 John Oroo Ongwae sent an email to the Respondent by which he instructed the Respondent to proceed with the repairs of the motor vehicle under the Respondent's Estimate dated 19th November 2015. According to the Estimate, the approximate cost of repairing the Motor vehicle was KSHS. 1,219,127.
32. The Claimant and Lucy Kenji caused the Respondent to expend its labour, materials and equipment in the repairs of the motor vehicle in the belief that the same would be paid by or on behalf of John Oroo Ongwae. Following the repair, the Respondent prepared invoice No. 1207350 for a total of KSHS. 1,134, 219 being the total cost of repairs.
33. In the course, Mr. Manwaring passed on. His family's frantic efforts to contact the Claimant proved futile. In March 2016, Mrs. Annabelle Manwaring, the widow of Mr. Manwaring approached the Respondent's Chief Executive Officer. It is in the meeting between the two that the clandestine agreement between the Claimant, Lucy Kenji and Manwaring came to the fore.
34. Between March and May 2016, various email correspondences were exchanged between Mrs Manwaring and the Respondent's representatives. In the said correspondences, Mrs. Manwaring made various claims against the Respondent, including:
 - a. That the Respondent had failed to provide a professional service;
 - b. That the Respondent was responsible for the accident as it had happened while the Motor Vehicle was in the Respondent's care;
 - c. That if the accident had negatively affected the value of the Motor Vehicle, the Respondent would be held responsible;
35. Following an investigation of the background facts and the circumstances under which the Motor Vehicle was damaged and subsequently repaired, the Respondent unearthed the collusive actions of the Claimant and Lucy Kenji.



36. The witness stated that the Claimant's employment was fairly and lawfully terminated in accordance with the contract and the Employment Act, 2007 and the Respondent has paid all the Claimant's terminal dues. Through a letter dated 14th March 2016, the Respondent informed the Claimant of the termination of his employment. The termination was by payment in lieu of notice. The termination was with a valid, fair, and provable reason. Further, carried out in a procedurally fair manner.
37. The Claimant's claim is therefore scandalous, frivolous and a blatant abuse of the court process.
38. During the period of his employment with the Respondent, the Claimant owed the following fiduciary duties to the Respondent as stipulated in her contract:
- a. A duty to act in good faith and in the best interests of the Respondent;
 - b. A duty not to act for a purpose collateral to the purposes for which she was employed;
 - c. A duty not to act so as to place himself in a position in which his personal interests would or could conflict with the interests of the Respondent;
 - d. A duty not to make any secret profit or receive any secret payment from any third party with whom he was dealing whether in her capacity as an employee or otherwise.
39. The witness stated that:
- a. John Oroo Ongwae had no authority to request for the repair of the Motor Vehicle, whether on behalf of its owner or the owner of the Toyota Prado registration number KBB 755M;
 - b. the repair costs and storage charges relating to the Motor Vehicle were not lawfully recoverable from Mr Manwaring's estate or his putative family as there was no contractual relationship between the Respondent and Mr Manwaring;
 - c. it had no basis to exercise a lien over the Motor Vehicle;
 - d. since the Respondent was not the owner of the Motor Vehicle, it had absolutely no standing to make claims against the owner of the Toyota Prado registration number KBB 755M;
 - e. the Respondent had absolutely no standing to make claims against the insurer of the Motor Vehicle and/ or the insurer of the Toyota Prado registration number KBB 755M.
40. The Motor Vehicle is still lying uncollected at the Respondent's Workshop and the above-mentioned repair costs have not been settled. Storage charges are accruing on the Motor Vehicle at the Respondent's normal rate of KShs. 1000/= per day.
41. The actions of the Claimant and Lucy Kariuki-Kenji have caused the Respondent to suffer great loss and expense, including the following:
- a. Loss of KShs.1,134,219/= on account of labour, materials and equipment expended in the repair of the Motor Vehicle, the same having been repaired without the authority and/ or knowledge of its owner and his putative family and no security whatsoever having been taken for settlement of the repair costs by a third party;
 - b. Storage charges arising from the storage of the Motor Vehicle at the Respondent's premises at the rate of KShs. 1 per day as from 19th January 2016. These charges will continue to accrue until the Motor Vehicle is eventually collected from the Respondent's Workshop;
 - c. Loss to the Respondent's reputation.



42. Lucy Kariuki-Kenji filed proceedings in this Court, being Employment & Labour Relations Court Cause No. 1 19 of 2016: Lucy Kariuki-Kenii vs. RMA Motors (Kenya) Limited in which she has challenged her termination and sought relief. In that case, the Respondent has made a counterclaim against Lucy Kariuki-Kenji based on the same facts set out in the Respondent's counterclaim in this suit.
43. In her evidence under cross-examination the witness stated that the motor vehicle wasn't formally handed over to the Respondent company. The Claimant and his friend, John Oloo Ongwae delivered the motor vehicle to the workshop. Pressed further, she testified that she was not sure whether they delivered it while together.
44. She stated that the statement given by the Claimant during the investigatory process doesn't specifically mention who delivered the motor vehicle to the garage.
45. Instructions for the repairs, were by John Oloo Ongwae. The Respondent company worked following the instructions. Before a vehicle is delivered to the workshop, a gate pass must be issued for it. After security checks, it is then handed over to the supervisor of the relevant section where the work is to be carried out.
46. The witness admitted that the Respondent kept a record as to who handed over a motor vehicle to the workshop and on which date. However, as regards the subject motor vehicle, she wasn't able to state when it was delivered to the workshop. However, the record shows John Oloo Ongwae as the customer, doesn't bear his signature or that of the Claimant.
47. As evidenced by the logs tendered by the Respondent in evidence, in July 2015, the motor vehicle was driven in and off the Respondent's premises on numerous occasions. The document does not however indicate who the driver was during these occasions.
48. The Claimant hasn't been paid his dues including notice pay due to the pendency of this suit.
49. The witness stated that he did a rough estimate of the Claimant's entitled benefits which included salary for the 14 days worked in March 2016, and compensation for 4 earned but untaken leave days. The Respondent intended to verify whether there were any outstanding commissions payable to him.
50. The certificate of service was issued to the Claimant, though she cannot remember when and how it was delivered to him.

Analysis and Determination

51. I have carefully considered the pleadings, evidence and submissions by the parties herein, and the following issues emerge for determination;
 - I. Whether the Claimant's summary dismissal from employment was fair.
 - II. Whether the Claimant is entitled to the reliefs sought.
 - III. Whether the Respondent is entitled to the reliefs sought in its Counterclaim.
 - IV. Who should bear the costs of the suit and the Counterclaim?

Whether the Claimant's summary dismissal from employment was fair.

52. It was common cause that the Claimant was summarily dismissed from employment by the Respondent through a letter dated 14th March 2016. However, the procedural fairness in the process



that culminated in the Respondent's decision, and the substantive justification for the decision were in dispute.

53. As Counsel for the parties rightly submitted, where the Court is invited to render itself on the fairness or otherwise of a summary dismissal against an employee, it has to consider the two statutory aspects of procedural and substantive fairness, unless the employee has in the suit opted to make only one of the aspects, a subject of controversy.
54. Section 41 of the *Employment Act*, 2007, provides a mandatory procedure that any employer contemplating summarily dismissing an employee or terminating an employee's employment must adhere to. The procedure embodies three components; the notification- the employer must inform the employee of their intention and the grounds spurring the contemplation; the hearing- the employer must accord the affected employee an adequate opportunity to prepare and make representations on the grounds. Conjoined with this right to be heard is the statutory right of accompaniment. The employee should be allowed to be accompanied during the hearing by a colleague of his or her choice or a trade union representative where the employee is a member of a trade union and; the consideration- the representations made by the employee and the person accompanying him or her should be considered before the employer take a final decision. See *Postal Corporation of Kenya v Andrew K. Tanui* [2019] eKLR.
55. Lack of all or any of these components in the process will automatically render the process unfair, and attract the deeming provision under section 45 of the Act to set in. The termination or summary dismissal shall be deemed unfair by operation of the section. The burden to prove that there was adherence to the dictates of procedural fairness in the termination or summary dismissal is always on the employer. See *Cooperative Bank of Kenya Limited v Sammy Kimeli Yator* [2021] KECA 95[KLR]
56. The Respondent argued that there was due adherence to the procedural dictates contemplated under the provisions of section 41 of the *Employment Act*. The Claimant thinks otherwise. I have carefully considered the material placed before me, one could argue and rightfully so that the Claimant was at all material times, notified of the allegations levelled against him and that the final document to bear this was the notice of the show cause letter. There isn't doubt that the Claimant responded to the show cause letter. In my view up to this point, the Respondent was on the right track procedurally. The notification component was satisfied.
57. Having said this then the question that springs up is, was there a hearing as contemplated under the abovementioned provision of the law? Where an employee has responded to a show cause letter and the employer feels that the response regarding all the accusations or part of them is unsatisfactory, then it will behove the employer to communicate that much to the employee and require the employee to appear before any person[s] within their system for a hearing on specific accusations. In my view, the fact that under section 41 of the *Employment Act*, 2007, the statutory right to a hearing is conjoined for purpose with the right of accompaniment, presupposes that the hearing should be physical.
58. The Court isn't told that the Respondent did at any point allow the Claimant to be accompanied by a colleague to a disciplinary hearing, which I hold wasn't, or expressed to him that he had that right to enjoy.
59. At this juncture, it is imperative to state that it won't suffice for the employer to name any meeting "a disciplinary hearing". There must be unequivocal communication to the employee that the meeting to be held on a particular date shall be for a disciplinary hearing. Thus, I am not persuaded by the Respondent's Counsel's submissions that there was a hearing as contemplated under section 41. The Claimant wasn't invited for a hearing. In fact, the termination letter doesn't speak to a disciplinary hearing, but some meetings.



60. By reason of the premises, I hold that the 2nd and 3rd components of procedural fairness were lacking in the process which led to the decision by the Respondent to dismiss the Claimant summarily from employment. The dismissal was procedurally unfair.
61. Section 43 of the Employment Act places a duty on the employer in a dispute regarding the termination of an employee's employment to prove the reason[s] for the termination. Where the employer fails to prove the reason[s] for the termination, the termination shall be deemed unfair by dint of the provisions of section 45 of the Employment Act. In my view, the reason for the termination must be clearly ascertainable from the pre-termination events for instance the investigations carried out if any, the show cause letter, and the invitation to a disciplinary hearing. The reason[s] set out in the termination/dismissal letter, must be seen to align with that obtained at the pre-termination events.
62. It is pertinent to bring forth the contents of the notice to show cause correspondence dated 11th March 2016. The same read in part;

“Subject: Range Rover Registration Number KBU 212K

Our meeting of today attended by Sheilla Sewe, Madam Annabelle, yourself and the undersigned regarding the above matter refers.

In reference to your statement, you acted on behalf of ex-employee[s] of RMA in the matter involving the above-mentioned vehicle without notifying the Head of Sales/Sales Administrator or officially authorised RMA representatives [s]. You contravened the company code of conduct and your engagement contract with this company.....”

63. The termination letter dated 14th March 2016, read in part;

“Re: Cessation of Employment- Gross Misconduct

In reference to the meeting held on 11th March 2016 attended by Sheila Sewe, Sales, Product & Pricing Analyst, yourself, the undersigned and a subsequent one held on the same day with Sheila Sewe, yourself, and the undersigned refers. Your explanation given verbally and in writing is not satisfactory. The gravity of the misconduct committed by you is such that it warrants severe punishment and the management has decided to terminate your employment with effect from 14th March 2016 for gross misconduct detailed as follows.

Contravening company code of conduct /engagement contract with this company [details of the subject matter with you.

Your terminal dues will be paid as stipulated in your engagement.....”

64. From the show cause letter, it is clear that the Claimant was accused of failing to make a report on the matter[s] and to the person [s] therein. The letter boldly asserted that the default was a breach of the Respondent's Code of Conduct and the term [s] of the employment contract. Generalised accusations can never be valid and fair, grounds for the termination of an employee's employment. Where the employer alleges that the employee's conduct affronted the stipulations of a Code of Conduct or his contract of employment, it becomes imperative for that employer
65. In my view, the accusation[s] against the Claimant could be a legitimate ground[s] for the summary dismissal only if the Respondent was unambiguous. They needed to set out, with specificity, the clauses of the Code of Conduct and the terms of the contract of employment that, in their view, the Claimant violated. This might appear relevant to the procedural fairness aspect, but it should be borne in mind that sometimes, the two aspects of substantive justification and procedural fairness get interwoven.



66. The termination letter set out the reason for the summary dismissal in a too-generalised way to the extent that one cannot reasonably tell the reason for the termination. No wonder the Claimant asserted that he doesn't know the reason for his dismissal from employment.
67. The Respondent was under a duty to prove the reason[s] for the termination and that the same was valid and fair. I have carefully considered the material before me and note that notwithstanding its assertion that the Claimant breached the Code of Conduct, and the terms of the agreement, the Respondent neither presented the code as evidence nor pointed out to the court the specific clause[s] of the code or the agreement that were breached.
68. I have further analysed the evidence by the Respondent's witness, it does not speak to the infraction of failure to report as brought out hereinabove. It was heavily on some alleged conspiracy between the Claimant and Lucy Kenji, yet the alleged charge as can be discerned from the termination letter had nothing to do with the alleged conspiracy. The statutory rights and protections accorded under the [Employment Act](#) could be rendered to nothingness if the employer were to be allowed to wander away from what it first accused their employee of, through a show cause letter, and spring up with other grounds during the hearing of a controversy surrounding the reason[s] for termination of an employee's employment.
69. In the upshot, I hold that the Respondent didn't prove the reason[s] for dismissal and that the same was fair and valid if there was one.
70. As a result, I conclude that the summary dismissal against the Claimant was procedurally and substantively unfair.

Whether the Claimant is entitled to the reliefs sought.

71. The Claimant sought reliefs anchored on his claim for unfair dismissal and others outside of the claim. The Claimant sought compensation for unfair dismissal pursuant to the provisions of section 49[1] of the [Employment Act](#). This provision bestows on the Court the authority to grant the compensatory relief to the maximum extent of twelve months' gross salary of the employee. However, the authority is exercised discretionarily. It normally depends on the circumstances of each case. I have carefully considered my finding hereinabove that the Respondent inexplicably failed to adhere to the statutory demands for both procedural and substantive fairness; the length of time the Claimant served the Respondent and conclude that he is entitled to the compensatory relief to the extent of four months' gross salary.
72. The Claimant's employment came to an end on the 14th of March 2016. There is no dispute that he worked for the fourteen days and therefore entitled to payment for the service rendered on the days. The Respondent didn't put forth evidence to discount the Claimant's that he wasn't paid. As such, I do not hesitate to grant him compensation for these days worked, for which he was not paid.
73. The Respondent's witness stated under cross-examination that as of the date of separation, the Claimant had four earned but unutilised leave days. However, she didn't have any proof of the dates to controvert the Claimant's position that he had eight days. The employer is deemed under section 74 of the [Employment Act](#), 2007 to be the custodian of employee records. Therefore, in a situation of controversy, as was over the compensation under this head, the Respondent was reasonably expected to tender sufficient evidence to discount the Claimant's position. They didn't. As a result, this Court holds that the Claim for compensation for unused leave days remained uncontroverted. I award him KSHS. 20,000 under this head.



74. The benefit of service pay is a statutory benefit. It isn't enjoyed by the categories of employees set out under section 35 of the *Employment Act*. The Respondent didn't establish that the Claimant falls under any of those categories mentioned in the provision. I award him KSHS. 18,750, considering that he served for 9 months.
75. Per section 51 of the *Employment Act*, an employee whose employment has been determined in any manner is entitled to a certificate of costs. The Claimant is entitled to, too.
76. The Claimant sought for unpaid house allowance. I have carefully considered his contract of employment, it provided for a consolidated salary. Awarding the Claimant, the compensation sought, shall be tantamount to rewriting the contract of employment for the parties and allow him to enjoy more benefits than the contract allows.
77. The Claimant sought for and particularised the commissions that he, in his view, earned but not paid. There isn't a dispute that, besides the salary, the Claimant was entitled to earn commissions on the units sold. Cross-examined by counsel for the Claimant, the Respondent's witness testified that the Respondent was to ascertain the amount in the form of commissions that remained not paid to the Claimant. In essence, she admitted that as at the hearing, the Respondent didn't have evidence to rebut the Claimant's on the amount sought. In light of this, I find, he is entitled to the amount sought.
78. I now turn to the Respondent's Counterclaim. Admittedly, there is another claim pending in Court against Lucy Kenji whereby the sum, the subject matter of the Respondent's Counterclaim herein is also a subject matter therein. Does the Respondent want to be compensated for an alleged same wrong twice? Certainly, this Court cannot allow. As to allow, will amount to unjust enrichment. The Respondent ought to have chosen who to pursue for the alleged loss, specifically.
79. I have carefully considered the material placed before me by the Respondent, including an email dated 12th March 2016, by the widow of the owner of the subject motor vehicle. I take a clear view that it speaks to the fact that the arrangement on the receipt and further dealing regarding the vehicle was between the owner and Lucy. The Respondent didn't through any sufficient evidence establish liability against the Claimant for the alleged loss suffered, therefore.
80. Consequently, I find that the Counterclaim was not proved against the Claimant. It is hereby dismissed with costs.
81. In the upshot, judgment is hereby entered for the Claimant in the following terms.
- I. Compensation pursuant to the provisions of section 49[1][c] of the *Employment Act*, four months' gross salary, KSHS. 200,000.
 - II. Commissions earned but not paid KSHS. 268,204.
 - III. Service Pay, KSHS. 19,730.
 - IV. Compensation for earned but unused leave days, KSHS. 18,750.
 - V. Salary for the days worked in March 2016, KSHS. 35,000.
 - VI. Interest on the sums awarded above, at court rates from the date of this Judgment till full payment.
 - VII. The Respondent to issue the Claimant with a certificate of service within 30 days of this Judgment.
 - VIII. Costs of this suit and the dismissed Counterclaim.



READ SIGNED AND DELIVERED THIS 26TH DAY OF NOVEMBER 2024.

OCHARO KEBIRA

JUDGE

In the presence

..... For the Claimant.

..... For the Respondent.

