



**Nakuru Teachers Training College v Shikopo (Appeal E021 of 2022)  
[2024] KEELRC 2859 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELRC 2859 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
APPEAL E021 OF 2022  
DN NDERITU, J  
NOVEMBER 14, 2024**

**BETWEEN  
NAKURU TEACHERS TRAINING COLLEGE ..... APPELLANT  
AND  
MOSES MUDAVADI SHIKOPO ..... RESPONDENT**

*(Being an appeal from the judgment and decree issued in Nakuru Chief Magistrate's Court  
ELRC Cause No. E137 of 2021 by Hon. R. Kefa (PM) delivered on 12th October, 2022)*

**JUDGMENT**

**I. Introduction**

1. In a decree issued on 2<sup>nd</sup> November, 2022 arising from a judgment delivered on 12<sup>th</sup> October, 2022 the appellant (the respondent in the lower court) was ordered to compensate the respondent (the claimant in the lower court) as follows –
  1. One-month salary in lieu of notice Kshs8,366.35
  2. Underpayment (4 months) Kshs7,865.40
  3. House allowance (3 months) Kshs46,972.40
  4. Off duties (27 days) Kshs50,599.70
  5. Annual leave-8,366 x15 Kshs4,183.18
  6. Public holidays 30 Kshs49,796.60
  7. Overtime Kshs531,358.10
  8. Compensation for unfair termination



Kshs8,366.35 x 6 Kshs50,198.10

Total Kshs749,339.83

The respondent will also pay costs of this suit plus interest at court rates with effect from the date of this judgment.

2. Dissatisfied with the judgment and decree, the appellant through Gitonga Mureithi & Co. Advocates commenced this appeal by way of a memorandum of appeal dated 27<sup>th</sup> October, 2022 raising the following grounds of appeal –
  1. That the trial magistrate erred in law and fact in finding that the respondent's employment was unfairly terminated.
  2. That the trial magistrate erred in law and fact in awarding compensation under the heads of unfair termination, one month's salary in lieu of notice, house allowance, off duties, annual leave, public holidays, and overtime which finding was against the applicable law, the weight of evidence on record and excessive.
  3. That the trial magistrate erred in law and fact in failing to take into consideration the appellants pleaded case in its memorandum of response, its evidence on record and submissions filed thereby arriving at an erroneous decision.
  4. That the trial magistrate erred in law and fact in failing to take into consideration matters that had been admitted by the respondent in its memorandum of claim.
  5. That the trial magistrate erred in law and fact by introducing extraneous and unpleaded matters in her judgment.
3. The appellant is seeking the following reliefs –
  1. That the appeal be allowed.
  2. That the Judgment of the trial court be set aside and it be substituted with an order for dismissal of the respondent's claim.
  3. That costs of the appeal and costs in Nakuru ELRC CM No. E137 of 2021 be awarded to the appellant.
4. The respondent opposed the appeal through Ndeda & Associates Advocates.
5. By consent the appeal was canvassed by way of written submissions. Counsel for the appellant, Miss Alwala, filed written submissions on 13<sup>th</sup> March, 2024 and the respondent's counsel, Miss Awour, filed on 5<sup>th</sup> April, 2024.

## **II. Submissions by Counsel**

6. On the one hand, counsel for the appellant submitted on one ground of appeal – Whether the award in respect of house allowance, public holidays, and overtime was consistent with the law.
7. It is submitted that the trial court erred in fact and law in awarding the respondent reliefs on underpayment, house allowance, off-duty, annual leave, public holidays, and overtime for the period from 1<sup>st</sup> May, 2017 to 31<sup>st</sup> December, 2020. It is submitted that the aforementioned claims are continuing injuries under Section 89(formerly Section 90) of the *Employment Act* (the Act), which mandates that a claim for continuing injury be filed within twelve months after cessation thereof. It is submitted that while the trial court correctly addressed itself on the limitation of time when addressing



- the award on underpayments it failed to factor in the same on the other awards. It is submitted that for continuing injuries the awards should have been allowed from 29<sup>th</sup> May, 2020 to 5<sup>th</sup> January, 2021, which is within twelve months.
8. The court is urged to follow its reasoning in *Walter Nyambok Ondiek v Peter Gougus & Alice Chemirmir t/a Nakuru Teachers Training College (Cause 78 of 2015) [2022] KEELRC 1328 (KLR)* where the court cited with approval *Radido J in David Ngala Ochieng' V Hatari Security Guards Ltd (2022) eKLR* and find that denial or contractual benefits accruing to an employee at the end of each month amount to continuing injury for purposes of the law of limitation.
  9. It is submitted that the trial court failed to consider the respondent's admission that he was not in employment from March, 2020 to November, 2020 as the institution had closed due to the COVID-19 pandemic and awarded house allowance from 29<sup>th</sup> March, 2020 to 5<sup>th</sup> January, 2021 at Kshs11,295/= for 9 months at Kshs1,255/= monthly.
  10. On pay for public holidays and overtime it is submitted that the trial court ought to have awarded the same for December, 2020 only. It is submitted that the respondent was not working between March and November, 2020 and the court is urged to award Kshs1,874/= for one holiday (Jamhuri day -12<sup>th</sup> December) as the respondent admitted having not worked on Christmas day, Boxing Day, and New Year. On the award of overtime, the court is urged to disallow the same as the respondent never pleaded for overtime for December 2020 but did so for up to 31<sup>st</sup> August, 2020 when he was not in employment.
  11. On the basis of the foregoing, it is urged that the appeal be allowed as prayed and costs be granted to the appellant.
  12. On the other hand, counsel for the respondent condensed all the grounds raised in the memorandum of appeal into three issues – Whether the trial magistrate fundamentally erred in law and fact by disregarding the evidence on record thereby arriving at the wrong conclusion in awarding reliefs that were not merited; Whether the trial court erred and misdirected itself by ignoring the guiding principles for remedies of wrongful termination thereby making an award of 6 months compensatory damages at Kshs50,198.10 that was inordinately high in the circumstances; and, Whether the reliefs awarded by trial court were for a continuing injury which claim must be instituted within twelve months next after cessation thereof.
  13. On the first issue on reliefs, it is submitted that the respondent's employment commenced on 2<sup>nd</sup> January, 2007 but the same was terminated at the instance of the appellant's principal who told the appellant that there was no more work for him at the college. It is submitted that no notice or hearing was given pursuant to Sections 44(3) & 44(4) of the Act before the termination, and in the absence of such notice or a hearing, the respondent was entitled to one month's gross salary in lieu of notice of Kshs8,366.35. The court is urged to follow the reasoning in *Chengo Kitsao Chengo v Umoja Rubber Products Ltd (Civil Appeal 49 of 2016) [2017] KECA 648 (KLR)* and find that the appellant failed to produce records to rebut the respondent's assertions.
  14. On the award of underpayment, the respondent urges that by dint of Legal Notice No.112 effective 1<sup>st</sup> May, 2017 his monthly pay ought to have been Kshs7,967.95 instead of Kshs5,400/= culminating in an underpayment of Kshs2,569.95 monthly for 9 months. It is further submitted that by dint of Legal Notice No. 2 effective 1<sup>st</sup> May, 2018 the respondent's monthly pay ought to have been Kshs8,366.35/- yet he was earning Kshs6,400/= for one year. It is submitted that while the respondent pleaded for underpayments for 2019 and part of 2020, the appellant did not interrogate the said prayers and chose to mention a basic pay of Kshs9,000/= that was not pleaded by the respondent.



15. On the award for house allowance, it is submitted that the respondent was entitled to 15% house allowance by dint of [LN 112 of 2017](#) as he was not provided with a house in the college. It is submitted that the trial court correctly directed itself in awarding the same.
16. On the award for off-duty, it is submitted that the appellant's witness admitted that employees were awarded only 21 days' off when schools closed in April, August, and December, yet the respondent was entitled to 48 off-days. It is submitted that the trial court was fully justified and acted within the law in awarding 27 days unutilized off duties. It is further submitted that no record was produced to prove that the claimant took any annual leave and hence the court arrived at the correct finding in awarding the same. It is submitted that the appellant having failed to produce records as obligated by Sections 10 & 74 of the Act, the trial court arrived at the correct finding in awarding for annual leave. It is submitted that the Protection Security Wages Order produced by the appellant has no bearing in the cause relating to a school as it applies to a security firm.
17. On the second issue on compensation, it is submitted that having arrived at the right decision that the termination was unfair and unlawful, the trial court ought to have awarded the maximum 12 months gross salary in compensation.
18. The court is urged to find that the respondent had worked for the appellant for 13 years and he could not have absconded duty without a reasonable cause and that his alleged desertion was not proved. The court is urged to uphold the position that the appellant's principal informed the respondent that there was no more work for him as that evidence was not rebutted.
19. On the third issue on continuing injury, it is submitted that termination of employment does not extinguish payment of emoluments and terminal benefits owing to an employee pursuant to Section 90 of the Act (now Section 89 of the Act). The court is urged to consider the reasoning in [Kathra Hussein Noor & Bishar Hussein Noor v Kaderdina Hajee Essak Limited \(Cause 111 of 2014\)](#) [2016] KEELRC 509 (KLR) where the court cited [David Wanjau Muhoro v Ol Pejeta Ranching Limited](#) [2014] eKLR and find that an employee's salary which remains unpaid is not defeated by limitation under Section 90 of the Act (now Section 89 of the Act). The time of accrual resets in regards to the cumulative obligation and, as long as the claim is not barred, there should be no bar to a claim for arrears on salary, salary discrimination, and underpayments occurring during employment. It is further submitted that the trial court arrived at the proper finding relating to continuing injury as the respondent filed his suit on 31<sup>st</sup> March, 2021 after his termination on 5<sup>th</sup> January, 2021.
20. It is submitted that the reliefs on house allowance, underpayment, annual leave and off duties that accrued prior to 2018 could be entertained by the court if they were filed within three years and the court is urged to consider the reasoning in [Vipingo Ridge Limited v Swalehe Ngonge Mpitta](#) [2022] eKLR where the court cited the decision by the Court of Appeal in [G4S Security Services\(K\)Limited V Joseph Kamau & 468 Others](#) (2018) eKLR to the effect that an employees' outstanding benefits that had accrued for more than three years before termination could be lodged in the Employment and Labour Relations Court within three years after termination.
21. The court is urged to uphold the decision of the lower court and dismiss the appeal with costs.

### III. Issues for Determination

22. The court has perused the record of appeal, including the proceedings in the lower trial court, the memorandum of appeal, and the submissions by counsel for both parties as summarized above. The following issues commend themselves to the court for determination –
  - a. Was the respondent terminated or did he desert duty?



- b. If the respondent was terminated, was the termination unfair and unlawful?
- c. Did the trial court arrive at the correct decision in regard to the termination and reliefs awarded?
- d. What are the appropriate orders for this court make in regard to the above issues and on costs?

#### **IV. Dismissal**

- 23. As the first appellate court this court is obligated to evaluate the evidence and arrive at its own conclusions but bearing in mind that it neither heard nor recorded the evidence in the trial – See *Selle V Associated Motor Boat Co. Ltd* (1968) E.A 123.
- 24. It is not in dispute that the respondent was engaged by the appellant, a college, as a cook. The employment relationship was regulated and governed by a formal contract exhibited at pages 15 -16 of the record of appeal. This contract was produced by the respondent during the trial in the lower court and the same is duly signed by the parties. The production of the same was not objected to during the trial and as such the court shall rely on the same as the foundation of the employment relationship between the parties.
- 25. The contract commenced on 2<sup>nd</sup> January, 2007 and amongst the terms was a consolidated monthly salary of Kshs5,400/=. The contract provided for a one month's notice or one month's pay in lieu of notice by either party in terminating the same. According to the respondent the relationship ended when he was informed by the appellant's principal that his services were no longer needed as he had been replaced. There was no notice issued or disciplinary hearing conducted. According to the appellant the respondent was called to report to work but stated that he had obtained alternative employment. During the trial it was conceded that the respondent had no disciplinary issues and there was no notice issued to the labour office indicating that the respondent had resigned or deserted duty. – See pages 69-70 of the record of appeal.
- 26. The law and more so the Act does not allow or cordon whimsical and or capricious termination of a contract of employment. The court finds and holds that the termination was unfair and unlawful for lack of both substantive and procedural fairness. In that regard the trial lower court arrived at the right decision and the court has no reason(s) for disturbing that finding and holding.

#### **V. Compensation Awarded**

- 27. The trial court awarded the respondent as enumerated in the introductory part of this judgment.
- 28. The appellant in the submissions by counsel abandoned the other grounds of appeal and dealt with the award of house allowance, public holidays, and overtime.
- 29. The Court of Appeal in *The German School Society & another v Ohany & another* (Civil Appeal 325 & 342 of 2018 (Consolidated)) [2023] KECA 894 (KLR) while addressing what constitutes a continuing injury cited the Supreme Court of India in *M. Siddiq v Suresh Das* (2020) 1 SCC 1 where the court observed –  

“... What makes a wrong, a wrong of a continuing nature is the breach of a duty which has not ceased but which continues to subsist. The breach of such a duty creates a continuing wrong and hence a defence to a plea of limitation.”
- 30. The court has critically examined the above awards and found that the reliefs on underpayment, house allowance, off duties, annual leave, public holidays, and overtime accrued to the respondent at the end



of each month or year (annual leave) and were not paid or the breach remedied. The failure by the appellant to pay the salary on scale, pay for overtime, leave, off duty, and house allowance, constituted continuing injury as rightly held by the trial magistrate. Section 89 of the Act which provides –

“Notwithstanding the provisions of section 4(1) of the *Limitation of Actions Act* (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained or in the case of continuing injury or damage within twelve months next after the cessation thereof”. [Emphasis added]

31. A claim for the above reliefs ought to have been filed in court within 12 months of termination. The court notes that the respondent’s termination was on 5<sup>th</sup> January, 2021 and the cause was filed on 30<sup>th</sup> April, 2021 which is three months and 25 days after termination and within the time limit of 12 months.
32. On the award for underpayment, the trial court awarded underpayments for four months for the months worked of January, February, November, and December 2020. The respondent’s claim dates back to 2017. There were no records by the appellant that the respondent was paid in accordance with the minimum wage orders. The respondent’s claim for underpayment was filed within the statutory limit and the trial magistrate did not provide a reason why the claim for the previous years was not considered.
33. The respondent was entitled to the underpayments as prayed save that for the period from 1<sup>st</sup> May, 2019 to 30<sup>th</sup> April, 2020. However, the respondent conceded that he was on unpaid leave from March, 2020 and resumed working in November, 2020. The underpayment period was thus 10 months instead of the 12 months as prayed.
34. For the period from 1<sup>st</sup> May, 2017 to 30<sup>th</sup> April, 2018, the Regulation of Wages (General) (Amendment) Order, 2017 applied with the basic salary payable, exclusive of housing allowance at Kshs7,967.95. The respondent testified that he was on pay of Kshs5,400/= per month, amounting to an underpayment of Kshs2,569.95 per month for 12 months, totaling to Kshs30,839.40.
35. From 1<sup>st</sup> May, 2018 to 30<sup>th</sup> April, 2019, the Regulation of Wages (General) (Amendment) Order, 2018 applied and the basic salary payable, exclusive of housing allowance, was Kshs8366.35. The respondent testified that he was paid Kshs6,400/= indicating an underpayment of Kshs1,966.35 for 12 months, totaling to Kshs23,596.20.
36. For the period from 1<sup>st</sup> May, 2018 to April, 2020, the respondent conceded to having worked from 1<sup>st</sup> May, 2019 to 29<sup>th</sup> February, 2020, November to December, 2020. The Regulation of Wages (General) (Amendment) Order, 2018 applied during this period and the basic salary payable, exclusive of housing allowance, was Kshs8,366.35. The respondent testified that he was paid Kshs6,400/= indicating an underpayment of Kshs1,966.35 per month for 12 months, totaling to Kshs23,596.20. For the entire period that was pleaded by the respondent, the appellant did not adduce evidence to rebut the assertion. Consequently, the respondent was entitled to a cumulative underpayment of Kshs30,839.40 + Kshs23,596.20 + Kshs23,596.20 = Kshs78,031.80. However, there is no cross appeal on record by the respondent and as such the award by the trial lower court of Kshs7,865.40 shall remain undisturbed.
37. On house allowance, The Regulation of Wages (General) (Amendment) Orders for 2017 and 2018 is applicable for the period between 2017 and 2020. The respondent testified that he was not provided with a house or paid housing allowance by the appellant under the consolidated salary. The trial magistrate allowed the claim as prayed. The trial magistrate failed to consider the period from March,



2020 to October, 2020 when the respondent was on unpaid leave. The payable housing allowance was 15 % of the basic salary under the Wages orders as follows –

1<sup>st</sup> May, 2017 to 30<sup>th</sup> April, 2018(12 months)

Basic Salary =Kshs7,967.95

House allowance per month = 15% x Kshs7,967.95=Kshs1,195

=12 months' x Kshs1,195.20=Kshs14,342.40

1<sup>st</sup> May, 2018 to 30<sup>th</sup> April, 2019(12 months)

-Basic salary -Kshs8,366.35

-House allowance per month - 15% x Kshs8,366.35=Kshs1,255

=12 months x Kshs1255=Kshs15,060/=

1<sup>st</sup> May, 2019 to 29<sup>th</sup> February, 2020(10 months)

=Basic salary -Kshs8,366.35

=House allowance per month - 15% x Kshs8,366.35=Kshs1,255

=10 months x Kshs1,255=Kshs12,550/=

1<sup>st</sup> November, 2020 to December, 2020(2 Months)

=Basic salary -Kshs8,366.35

=House allowance per month - 15% x Kshs8,366.35=1,255

=2 months x Kshs1255=Kshs2510

=Total = Kshs44,462.40.

38. For that reason, the award of Kshs46,972.40/= as house allowance is hereby set aside and substituted with the award of Kshs44,462.40.

39. On the award for off days for 3 years, the trial court awarded Kshs50,599.70 for 27 days of unattended off days. The trial court did not consider the off days for the previous years as pleaded. The appellant did not provide records that the respondent had taken off days save for the respondent's own admission that he had taken 21 off days in a year during school closure in April, August, and December. The trial court did not indicate which year the off days awarded related to. The respondent pleaded for off days from May, 2017 to September, 2020. The trial magistrate therefore misdirected herself by failing to consider the pleaded claim for the entire period. The off days were thus calculated as below –

1<sup>st</sup> May, 2017 to 30<sup>th</sup> April, 2018(12 months)

=4 days rest x 12 months = 48 rest days

=21 days' rest days taken

=Remainder (48 days -21 days) = 27 days

=27 days x 14 hours (4am to 8.00pm) =378 hours

=7,967.95 x 378 hrs x 2 = Kshs48,190.16

125

1<sup>st</sup> May, 2018 to 30<sup>th</sup> April, 2019(12 months)



=4 days rest x 12 months = 48 rest days  
=21 days' rest days taken  
=Remainder (48 days -21 days) = 27 days  
=27 days x 14 hours (4am to 8.00pm) =378 hours  
=8366.35x 378 hrs x 2 = Kshs 50,599.69

125

1<sup>st</sup> May, 2019 to 29<sup>th</sup> February, 2020(10 months)

=4 days rest x 10 months = 40 rest days  
=7 days rest days taken(less April & August 7 off-days each)  
=Remainder (40 days -7 days)= 33days  
=33 days x 14 hours(4am to 8.00pm)=462 hours  
=8366.35x 462 hrs x 2 = Kshs 61,844.06

125

The cumulative award for off days was thus (Kshs48190.16 + Kshs50,599.69 + Kshs61,844.06) = Kshs160,633.91

40. However, the respondent did not file a cross-appeal and hence the award of Kshs50,599.70 by the trial court shall not be disturbed.
41. On the award for leave of Kshs4,183.18 the trial magistrate did not set out the basis for the award. An employer is obligated to keep employment records pursuant to Sections 10 & 74 of the Act. The respondent pleaded that he did not go on leave for three years and did not specifically plead the amounts he claimed. This prayer was ambiguous bearing in mind that the respondent had worked for 13 years. The claim for leave was not properly pleaded and the respondent was not entitled to the same. For that reason, the award of Kshs4,183.18 as annual leave is hereby set aside.
42. On the claim for public holidays the respondent pleaded and testified that he worked on all public holidays save for 25<sup>th</sup> and 26<sup>th</sup> of December every year. He claimed 9 public holidays for three years each from 1<sup>st</sup> May, 2018 to September 2020. Section 74(f) of the Act obligates an employer to keep records of employment including attendances. The appellant did not exhibit such records during the trial court.

Therefore, the pay for public holidays was to be calculated as follows –

1<sup>st</sup> May, 2017 to 30<sup>th</sup> April, 2018(12 months)  
=9 holidays  
=9 hours x 14 hours =126 hours in a year  
=Kshs7697.95 x 126 hours x 2=Kshs. 16,063.40

125

1<sup>st</sup> May, 2018 to 30<sup>th</sup> April, 2019(12 months)

=9 holidays  
=9 hours x 14 hours =126 hours in a year



=Kshs8366.35 x 126 hours x 2=Kshs. 16,866.60

125

1<sup>st</sup> May, 2019 to 29<sup>th</sup> February, 2020(10 months)

=7 holidays

=7 hours x 14 hours =98 hours in a year

=Kshs8366.35 x 98 hours x 2= Kshs13,118.44

125

43. There was no claim for the period of 1<sup>st</sup> November 2020 to December 2020. The cumulative award was thus Kshs16,063.40 +Kshs16,866.60 + Kshs13,118.44= Kshs46,048.44. For that reason, the award of Kshs49,796.60 for public holidays is hereby set aside and substituted with Kshs46,048.44.

44. The trial court awarded Kshs531,358.10 for overtime as pleaded. The respondent pleaded and testified that he worked for 72 hours in 6 days instead of 52 hours thus 20 hours in overtime per week. This translates 80 hours in a month and 960 hours per year. Again, Section 74(f) of the Act obligates an employer to keep records of each employee's work attendance. In the trial the appellant did not exhibit any records to prove that the respondent had worked within the normal working duration. Erroneously or intentionally, the respondent used basic salary of Kshs13,369,50 and Kshs14,038 applicable to a night watchman in the tabulation for the overtime. This scale did not apply to the respondent who was a cook.

Therefore, the allowable overtime was thus calculated as follows –

1<sup>st</sup> May, 2017 to 30<sup>th</sup> April, 2018(12 months)

=Basic pay =Kshs7,967.95

=72 hours- 52 hours = 20 hours overtime in a week

=20 hours in a week x 4 =80 hours a month

=80 hours x 12 months =960 hours

=Kshs7,967.95x 960 hrs x1.5 = Kshs. 88,680.38

125

1<sup>st</sup> May, 2018 to 30<sup>th</sup> April, 2019(12 months)

=Basic pay =8366.35

=72 hours- 52 hours = 20 hours overtime in a week

=20 hours in a week x 4 =80 hours a month

=80 hours x 12 months =960 hours

=Kshs8,366.35x 960 hrs x1.5 = Kshs.96,380.35

125

1<sup>st</sup> May, 2019 to 29<sup>th</sup> February, 2020(10 months)

=Basic pay =Kshs8,366.35

=72 hours- 52 hours = 20 hours overtime in a week



=20 hours in a week x 4 =80 hours a month  
=80 hours x 10 months =800 hours  
=Kshs8,366.35x 800 hrs x1.5 = Kshs.80,316.96

125

Total= 265,377.69

45. For the foregoing reason, the award of Kshs531,358.10 as overtime is hereby set aside and substituted with Kshs265,377.69
46. On the compensation equivalent to 6 months' salary for the unfair and unlawful termination, there are no lawful reasons for the court to interfere with the same as the trial court exercised its discretion rightly. The court reiterates compensation is intended to remedy the loss or damage that an employee suffers upon unfair and unlawful termination which is in the loss of the income or earnings that should have been due and payable to him/her were it not for the termination. This compensation is not an avenue for unjust enrichment.
47. There are no lawful reasons for the court to interfere with the awards for costs and interests as the trial court also exercised its discretion rightly and correctly in awarding the costs of the trial to the respondent following the event.
48. The trial court did not address itself as to the prayer for a certificate of service as pleaded in the memorandum of claim. The issuance of the same should be unconditional and the court orders that the certificate of service be issued by the appellant in the respondent's name and the same be delivered to his counsel on record within 30 days of this judgment.

## VI. Orders

49. Flowing from the foregoing, the court makes the following orders –
  - a. The appeal shall succeed to the extent in the substituted awards as listed below.
  - b. In substitution for the judgment for Kshs749,339.83/= by the lower trial court a judgment be and is hereby entered in favour of the respondent in the sum of Kshs472,918.08/= plus interest from the date of judgment of the lower court, 12<sup>th</sup> October 2022, till payment in full. The said sum is made of-
    - i. One month's salary in lieu of notice.....Kshs8,366.35
    - ii. Underpayment.....Kshs7,865.40
    - iii. House allowance.....Kshs44,462.40
    - iv. Off duties (27 days).....Kshs50,599.70
    - v. Public Holidays.....Kshs46,048.44
    - vi. Overtime.....Kshs265,377.69
    - vii. Compensation for unfair termination  
(Kshs8,366.35 x6).....Kshs50,198.10Total.....Kshs472,918.08



- c. Certificate of service be issued by the appellant to the respondent and the same be delivered to his counsel on record within 30 days of this judgement.
- d. Each party shall meet own costs for this appeal.
- e. The order for costs to the respondent (claimant) in the lower court remains and is hereby affirmed.
- f. The award is subject to statutory deductions but shall earn interest from the date of the judgment of the lower court till payment in full.

**DELIVERED VIRTUALLY, DATED, AND SIGNED AT NAKURU THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

.....

**DAVID NDERITU**  
**JUDGE**

