



**Kimemia v East African Breweries Limited & 2 others (Cause
212 of 2020) [2023] KEELRC 1837 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELRC 1837 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 212 OF 2020
BOM MANANI, J
JULY 27, 2023**

BETWEEN

JAMES KANG'ARA KIMEMIA CLAIMANT

AND

EAST AFRICAN BREWERIES LIMITED 1ST RESPONDENT

KENYA BREWERIES LIMITED 2ND RESPONDENT

UNITED DISTILLERS VENTURES LIMITED 3RD RESPONDENT

JUDGMENT

Introduction

1. This is a dispute regarding the legitimacy of the decision to terminate the Claimant's contract of service. Whilst the Claimant contends that the decision was unjustified and should be declared as such, the Respondents, whom the Claimant has sued as his employers, deny the accusation.

Claimant's Case

2. The Claimant avers that he was employed by the Respondents on 2nd April 2018 in the position of a Process Clerk. His starting salary was Ksh. 111,420.93 per month. The Claimant contends that he worked in this position until 2nd December 2019 when his contract was terminated.
3. According to the Claimant, the Respondents issued him with a letter dated 3rd September 2019 suspending him from work following an incident of attempted theft at the workplace. This suspension was followed with a letter of show cause dated 15th November 2019 asking the Claimant to explain why disciplinary action should not be taken against him for the alleged infraction.
4. The Claimant states that he responded to the letter of 15th November 2019 explaining that he was not on duty on the night that the attempted theft happened. Despite this explanation, the Claimant states



- that the Respondents convened a disciplinary session on 28th November 2019 at which a decision was taken to terminate his services.
5. The Claimant indicates that upon receiving the letter of termination of employment, he lodged an appeal against the decision. However, the appeal was not considered. The Claimant contends that the Respondents only issued him with a letter purporting to have rejected the Appeal after he issued them with a demand for compensation for unfair termination.
 6. The Claimant avers that the entire disciplinary process against him was flawed. He contends that the decision to suspend him from duty was taken without the benefit of proper preliminary investigation. He further contends that the suspension period was unnecessarily protracted.
 7. The Claimant further avers that the process to terminate his employment was pre-determined. According to him, the fact that the Respondents had already taken a position on the matter is self evident from the letter of notice to show cause in which they asserted that the Claimant was guilty of the alleged breaches and that his conduct had exposed them in the various ways as indicated in the said letter.
 8. The Claimant further avers that he was not given sufficient time to prepare for the disciplinary session. He asserts that due to the short notice given for the disciplinary session, he was unable to procure the attendance of his witnesses.
 9. The Claimant indicates that the charges against him were unfounded. He denies having been on duty on the night of 22nd August 2019 when the attempted theft occurred. He asserts that contrary to the position expressed by the Respondents, he had been on duty on day shift on the material date but for purposes of standing in for his immediate supervisor who had requested him to do so. In effect, it is the Claimant's case that he was on duty during the day on 22nd August 2019 but undertaking the responsibilities of his immediate supervisor as a Materials Supervisor. He denies that he was present on duty in his position as a Process Clerk.
 10. The Claimant further avers that his immediate boss had distributed her functions to various individuals for the duration that she was away. He was only assigned some of her duties. Other duties were assigned to one Roy Radido and other Team Leads.
 11. The Claimant denies that the responsibility of supervising the Process Clerks who were on duty that day was entrusted with him. It was his case that his immediate boss did not ask him to undertake this function and that he was unaware who, from the other delegates, had been left with this task. Further, the Claimant denies that his immediate supervisor had entrusted him with the task of recording of movement of closures to the processing sections and back to the user stores.
 12. The Claimant denies that he had been given the Respondents' Standard Operating Procedures Manual (SOP) that was allegedly contravened. It was his case that the first time he interacted with the SOP was when it was shown to him during the disciplinary session.
 13. The Claimant contends that the Respondents' accusations against him were false thereby precipitating his unfair discharge from employment. It is his case that this entire process and the fact of his dismissal from employment damaged his image and caused him emotional anguish.

Defense Case

14. In response, the Respondents aver that the Claimant was an employee of the 1st Respondent. They deny that the Claimant was hired as their joint employee.



15. The Respondents aver that the decision to suspend the Claimant from duty was triggered by an attempted theft incident at the 1st Respondent's plant in Nairobi. As the incident was being investigated by both the police and the 1st Respondent, a decision was taken to temporarily keep the Claimant away from the workplace to enable the process. Consequently, the Respondents deny that the Claimant's suspension from work was without basis as asserted by him.
16. The Respondents deny that the notice to show cause issued to the Claimant was unjustified. According to them, the notice was based on sufficient grounds which pointed to the Claimant's culpability in respect of the accusations leveled against him. Therefore, it was only sensible that the Claimant clears his name on the issues that had been raised.
17. It is the Respondents' case that the notice to show cause gave the Claimant a chance to offer his response to the allegations that he faced. Further, the letter assured the Claimant of the opportunity to clarify any grey areas in his response at a meeting in the event that this became necessary.
18. The Respondents aver that the Claimant was subjected to a disciplinary session on 28th November 2019 during which, he was informed of his right to be accompanied by a fellow employee or call a witnesses. That the Claimant was permitted the opportunity to ventilate his case fully.
19. The Respondents contend that after the disciplinary session, a decision was reached to terminate the Claimant's services. Consequently, he was issued with a letter of termination of his contract dated 17th December 2019.
20. The Respondents admit that they received the Claimant's appeal challenging the decision to terminate his contract of service. It is the Respondents' case that the said appeal was considered on its merits and rejected.
21. The Respondents contend that the Claimant was paid his terminal dues to wit salary for the days worked and pay in lieu of the accrued leave days. They further aver that the Claimant accepted these payments and signed in acknowledgement of them.
22. It is the Respondents' case that contrary to his assertions, the Claimant had been appraised about the SOP during his employment. However, he failed to observe this procedure manual whilst executing his duties.
23. The Respondents deny withholding the Claimant's salary during the time that he was on suspension. On the contrary, they content that the Claimant remained on full salary for the duration of his suspension and was paid up to 17th December 2019 when he was discharged.
24. The Respondents aver that even if the Claimant had specific duties assigned to him as he claims, he still owed them a duty to ensure compliance with the SOP. It is the Respondents' case that the Claimant had a duty to ensure that they did not suffer loss of products under any circumstances.
25. It is the Respondents' case that the decision to terminate the Claimant's employment was well founded. Further, the Respondents aver that the procedure contemplated in law for termination of an employee's contract of service was observed.
26. Contrary to the Claimant's assertion that the Respondents' decision to dismiss him from employment damaged his image, the Respondents state that the disciplinary process was never publicized. As such, they deny that the process damaged the Claimant's reputation as alleged.



Issues for Determination

27. After evaluating the pleadings and evidence on record, it appears apparent that the main issues for determination are the following: -
- a. Whether the parties had an employment relation and if yes, whether the relation was lawfully terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.

Analysis

28. The issues regarding the Respondents' relationship with the Claimant and their involvement in the process that resulted in this dispute have, in my view, been convoluted. I note that the position pleaded by the Respondents in the Memorandum of Reply to the claim is that the Claimant was not an employee of the 2nd and 3rd Respondents. As a matter of fact, through the witness statement of Pascaline Njoroge, she goes further to not only affirm what is in the Memorandum of Reply but also state that the 3rd Respondent is unknown to the 1st and 2nd Respondents and that she was only an employee of the 1st and 2nd Respondents for whom she was to give evidence.
29. Yet, during her oral testimony in court, this very same witness took a new turn on the subject and stated that the 3rd Respondent was an affiliate and subsidiary of the 1st Respondent. She further testified that she was an employee of the three Respondents serving as their Human Resource Officer.
30. The averment by the Respondents that the Claimant was an employee of the 1st Respondent and not the 2nd and 3rd Respondents may as well find support in the documentary evidence on record. For instance, the letter of appointment dated 27th March 2018 indicates that it is the 1st Respondent who hired the Claimant's services.
31. It is unclear whether reference to United Ventures Distillers Ltd in the Memorandum of Claim was intended to be reference to UDV (Kenya) Ltd, an entity whose name features prominently in the documents produced in evidence by both parties. However, and on the face of it, the two entities may perhaps be distinct.
32. Although the Claimant was, on the face of it, an employee of the 1st Respondent as contended by the Respondents, it appears from the record that the disciplinary process that led to the termination of his contract of employment was undertaken by entities other than the 1st Respondent. For instance, the letters suspending the Claimant from employment were issued under the hand of an individual who was shown to have been acting for Kenya Breweries Ltd, the 2nd Respondent. Similarly, the notice to show cause dated 15th November 2019 was issued under the hand of an individual who was acting on behalf of Kenya Breweries Ltd, the 2nd Respondent.
33. On the other hand, the cover page on the minutes of the disciplinary proceedings dated 28th November 2019 shows that the disciplinary cause was between the Claimant and UDV (Kenya) Ltd and not East African Breweries Ltd, the 1st Respondent. Similarly, the letter dismissing the Claimant from employment dated 17th December 2019 was issued on behalf of UDV (Kenya) Ltd and not East African Breweries Ltd, the 1st Respondent. In effect and if this letter counts for anything, the decision to terminate the Claimant's employment was by UDV (Kenya) Ltd and not East African Breweries Ltd, the 1st Respondent.



34. Although in her written witness statement, Pasculine Njoroge stated that the Claimant was an employee of the 1st Respondent, it is clear that the letters suspending the Claimant from employment and asking him to show cause were issued on behalf of the 2nd Respondent. Apart from the fact that the Respondents are said to be affiliate companies, there was no explanation why the 2nd Respondent was issuing the Claimant with correspondence that was meant to have come from the 1st Respondent. Therefore, and absent evidence that the 2nd Respondent was acting as an agent for the 1st Respondent in the process, it is not legally acceptable to conclude that the said letters were by the 1st Respondent.
35. Further, it is apparent that the disciplinary proceedings were conducted on behalf of UDV (Kenya) Ltd. As well, the letters for summary dismissal from employment and rejection of the Claimant's appeal were issued on behalf of UDV (Kenya) Ltd. This is a distinct entity from East African Breweries Ltd, the employer of the Claimant and 1st Respondent in these proceedings. This reality casts aspersions on the legitimacy of the process that led to the termination of the Claimant's contract of service.
36. That said, the important ingredients to interrogate when evaluating the validity of a decision to terminate an employee from employment are: whether there was a valid reason to terminate the contract; and whether due process was followed in arriving at the decision. These requirements are engrained in sections 43 and 45 of the [Employment Act](#). The duty to prove that these ingredients were considered lies with the employer.
37. Section 41 of the [Employment Act](#) requires an employer who wishes to terminate a contract of service of an employee to notify the employee of the reasons that inform his decision to terminate the contract. Further, the employer ought to allow the employee the opportunity to offer his defense. During this process, the employee is entitled to have in attendance a fellow employee or a trade union official of his choice.
38. In order to determine whether the 1st Respondent or the Respondents for that matter, have demonstrated that there was a valid reason to terminate the Claimant's employment, it is necessary to evaluate the record that informed the decision to terminate the contract. This includes the suspension letter, the notice to show cause letter, the Claimant's response to the show cause, the minutes of the disciplinary session, the Claimant's letter of appeal and the Appeal's Committee decision.
39. According to a majority of these documents, the reason why the Claimant's employment was terminated is that he failed to discharge his duties appropriately resulting in a gap that triggered an attempted theft of closures on the night of 22nd August 2019. The defense case is that as a Process Clerk, it was the Claimant's duty to maintain stock movement records to prevent stock theft. The defense contends that the Claimant failed to discharge this duty thereby allowing a gap that led to an attempt by some members of staff to sneak out some closures.
40. The record shows that when he got the letter of show cause, the Claimant did a response dated 18th November 2019. In the response, the Claimant denied that he was on duty on the night of 22nd August 2019 when the attempted theft allegedly happened.
41. Whilst admitting that he was on duty during the day on the said date, the Claimant denied that he was at work as a Process Clerk. It was his case that on that day, he came in to relieve his line manager in the position of Materials Supervisor. The Claimant contended that as a Materials Supervisor, his work did not include that of a Process Clerk which entailed, inter alia, recording stock volumes received from the main store.
42. The Respondents contend that even if he was on duty as a Materials Supervisor, the Claimant was obligated by the Respondents' Standard Operating Procedure Manual (SOP) to supervise the



Process Clerks that were on duty on the material day in order to ensure that they maintained proper stock movement records in order to prevent stock loss. Therefore, the Claimant could still not evade responsibility for the incident because the attempted theft demonstrates that he failed to discharge this function.

43. In response to this latter assertion by the Respondents, the Claimant pointed out that when the line manager asked him to temporarily relieve her, she did not entrust him with her entire complement of responsibilities. She only assigned him some tasks with other roles being assigned to one Roy Radido and other Team Leads. The Claimant denied that the line manager had delegated the function of supervising Process Clerks to him. Further, he stated that the line manager did not indicate to whom, among her other delegates, she had assigned this role. Therefore, no Process Clerk reported to him during the day on 22nd August 2019.
44. It is noteworthy from the documents and evidence presented before the Disciplinary Panel that there was no evidence to indicate at what time the stock in issue left the stores. It was therefore not possible for the Panel to verify whether the stock was moved out during the day when the Claimant was at work or at night when he had already left the workplace.
45. There was also no evidence presented to the Panel to controvert the Claimant's assertion that he was not on duty when the attempted theft happened. At paragraph 6(d) of her witness statement, the Respondents' witness states that the attempted theft was noticed by the night security manager suggesting that the incident occurred at night when the Claimant was away from duty. During cross examination, this witness conceded that the Claimant had been on duty during the day on the material day to relieve his line manager.
46. Further, the Claimant stated that although he was on duty during the day on 22nd August 2019 discharging some tasks on behalf of the substantive Material Supervisor, the responsibility of supervising the Process Clerk had not been delegated to him. As such, he was not involved in the supervision of the Process Clerks who were to enter stock movement records that day.
47. The Claimant told the Panel that although the substantive Material Supervisor ordinarily supervises Process Clerks, she did not indicate to him to whom she had delegated this role on the material day. It was his evidence that the line manager had allocated some of her responsibilities to other members of staff and he was unaware who was to do supervision.
48. The record shows that the Respondents did not place any material before the Disciplinary Panel to controvert the evidence by the Claimant in this respect. The substantive Materials Supervisor was not called to controvert the evidence. Similarly, Roy Radido and the other Team Leads on duty on the material day did not appear before the Panel to controvert the Claimant's evidence. This is notwithstanding that the duty to prove the validity of the ground to terminate an employment contract rests with the employer.
49. How then did the Panel reach their conclusion that the Claimant was the one who had been entrusted with the function of supervising the Process Clerks on duty on the material day? On what basis did the Panel conclude that the Claimant had, in the circumstances, occasioned the attempted theft? On what evidence did the Panel rely to reach the conclusion that despite the alleged attempted theft having happened at night when the Claimant was away from duty, he was nevertheless liable for the infraction?
50. An analysis of the record placed before the Disciplinary Panel demonstrates that there was no basis to support the conclusions it reached that the Claimant was responsible for the alleged incident. At best, the decision was arrived at on the basis of conjecture without an iota of evidence.



51. In their closing submissions, the Respondents' advocates have stated that the Claimant confirmed that he was at work on the night of 22nd August 2019 when the attempted theft happened. With respect, I do not think that this represents the evidence on record. Contrary to what counsel states, the Claimant stated in his response to the notice to show cause and reiterated before this court that he was not on duty on the night of 22nd August 2019. It was the Claimant's case that he was at work during the day shift to relieve his line manager.
52. As a matter of fact and as mentioned earlier, the Respondents' own witness confirmed during cross examination that the Claimant had been on duty during the day on the material date. The witness stated that Material Supervisors work during the day. She said that these group of employees can only come to work at night when there is exceptional need to do so. The witness stated that on 22nd August 2019, there was no exceptional requirement that would have forced the Claimant to be at work at night in the position of acting Material Supervisor.
53. The defense has also stated that the test for ascertaining the validity of the reason to terminate a contract of service under section 43 of the *Employment Act* is whether the employer had a reasonable basis to believe that he has a ground to terminate the contract. This is true. Thus, in the case before me, the question to be answered is whether the Respondents had reasonable basis to believe that the Claimant was responsible for the alleged incident. Looking at the evidence that was presented to the Disciplinary Panel on the issue, it is difficult to see how it meets this threshold. There was absolutely no basis to hold the Claimant responsible for an event that took place at the workplace at a time that he was off duty.
54. The next issue for consideration relates to whether the 1st Respondent or the Respondents for that matter observed due process in bringing the Claimant's contract to a close. It is true that the Claimant was issued with a notice to show cause letter setting out the accusations against him. It is also true that he was notified of the right to attend the disciplinary process in the company of an employee of his choice. There is also evidence that a disciplinary session was convened at which the accusations against the Claimant were considered. Further, there is evidence that the Disciplinary Panel rendered its decision following which an appeal was lodged by the Claimant which was subsequently dismissed.
55. On the face of it, there was effort by the Respondents to uphold fair procedure in the process that led to closure of the contract between the parties. However, this endeavour was not flawless.
56. First, whilst the Respondents contend that the Claimant was allowed the opportunity to call witnesses of his choice during the disciplinary hearing, it is evident from the record that there was little chance that the Claimant would have meaningfully exercised this right. The Claimant states that he received the notice convening the session for the disciplinary hearing about thirteen (13) hours before the actual time for the session on 28th November 2019 making it impossible for him to secure the attendance of his witnesses.
57. According to the Claimant, the 1st Respondent's policies require an employee who wishes to be absent from work to seek permission to be away at least twenty-four (24) hours earlier. Therefore, the employees that the Claimant hoped to call as witnesses could not secure permission to be away from work in order to attend the session as this was well outside the twenty-four (24) hour cap aforesaid. Noteworthy, the position expressed by the Claimant in this respect was not disputed by the Respondents.
58. The record before the Disciplinary Panel shows that the Claimant raised the matter of not having been accorded sufficient time to procure the attendance of his witnesses. However, and besides recording the concern, there is nothing on record to demonstrate that the Disciplinary Panel considered the matter and took steps to remedy the grievance. The Panel did not take steps to ensure that the Claimant was



given adequate opportunity to call his witnesses. As a matter of fact, the record shows that the Panel simply proceeded with the hearing without addressing this concern.

59. The fact that the Claimant was invited to the disciplinary session on very short notice is not in dispute. As a matter of fact, the Respondents produced a letter showing that the invite was drafted on 26th November 2019 meaning that it could only have been dispatched thereafter. Given the fact that at the time of the invite the Claimant was on suspension and away from the workplace, his assertion that he got the letter dated 26th November 2019 about thirteen (13) hours to the session of 28th November 2019 is believable.
60. It certainly was not the intention of the law that employers pay lip service to the legal strictures under sections 41, 43 and 45 of the *Employment Act*. They have a duty to give practical meaning to these provisions of law.
61. The second procedural challenge relates to the way the 1st Respondent (or the Respondents for that matter) handled dissemination of the SOP to the Claimant. It is clear to me that the Respondents' case was built around the Claimant's failure to act in accordance with the SOP. Whilst the Respondents claimed that the Claimant failed to adhere to the SOP, the Claimant stated that he was unaware of any SOP that he was to allegedly adhere to whilst at work.
62. The Claimant stated that the SOP that was in contention had been brought to his attention for the first time during the disciplinary hearing session. A perusal of the minutes of the Disciplinary Committee demonstrates that the Claimant told the Committee that he was unaware of the SOP. The Claimant stated that employees of the 1st Respondent were neither aware of the instrument nor had they been trained on it.
63. The Respondents' evidence on the matter was less than desirable. First there was the general assertion that employees had been made aware of the policy without indicating when and how. Then came the suggestion that the SOP was available on the companies' portal and that employees were required to access and acquaint themselves with it. It was expected that the Claimant ought to have done the same.
64. Despite this assertion, the Respondents gave no evidence on when the SOP was uploaded if at all. There was no demonstration of the presence of the instrument on the alleged portal. At best, this was just another naked assertion.
65. Company instruments should ideally be critical documents that should be brought to the attention of employees in a manner that is easily verifiable. Besides, there should be evidence that employees have been trained on these instruments. This evidence was lacking in the case before me.
66. The Respondents want the court to fault the Claimant for not observing the procedures in the SOP. Yet, there is no evidence that the Claimant had been made aware of the existence of this instrument. Absent this evidence, it is not possible for the court to hold the Claimant liable for violating the Respondents' policies in the instrument.
67. There is also a problem with the manner in which the Claimant's appeal against the decision terminating his employment was handled. According to the Claimant, he filed an appeal challenging the decision immediately after he received his letter of termination. However, the appeal was not heard. On the other hand, the Respondents assert that the appeal was heard and a decision delivered.
68. It is true that the record shows that a letter dated 21st February 2020 was issued to the Claimant intimating that a committee had sat to review his appeal and found it lacking in merit. However, it is not clear from the record when this committee sat to deliberate on the appeal and why it found it necessary to proceed in the Claimant's absence. It is also not clear how a committee of persons, in



contradistinction with a single individual, could proceed to deliberate on a matter without preparing minutes as a record of the session. Absent minutes of the Appeal's Committee session, the conclusion that there was in fact no appeal session held becomes inescapable. The letter of 21st February 2020 purporting to communicate the results of the appeal may as well have been, as the Claimant suggests, a reaction to his lawyer's demand that his unlawful discharge from employment be redressed.

69. It is true that internal disciplinary processes conducted by employers are administrative in nature and need not meet the threshold of formal judicial or quasi judicial proceedings. However, the employer has a duty to conduct the sessions in a manner that is transparent and capable of verification given that the decision may become the subject for review by a third party.
70. Importantly, section 4(4) of the *Fair Administrative Action Act* obligates a person who is to make an administrative decision that is likely to impact on the rights of another to give the person likely to be so affected the opportunity to attend (in person) the session at which the decision will be made. As well the person that will be so affected is entitled to be heard before the decision is made.
71. In my view, this provision applies to administrative appeal sessions in much the same way that does to the initial disciplinary hearing sessions. Therefore, the assertion by the Respondents that the appeal before them only entailed a review of the record which did not require attendance by the Claimant does not fly.

Determination

72. Having regard to the totality of the evidence that was placed before me, I am not satisfied that the Respondents had a valid reason to terminate the services of the Claimant. It is not even evident from the record that the decision to end the Claimant's employment was made by the 1st Respondent, the Claimant's actual employer. Yet, it is clear that all the Respondents hold the position that the Claimant's employment was properly terminated. It is for this reason that I indict the 1st Respondent for acquiescing to the irregular termination of the Claimant's contract of service.
73. Equally, I am not convinced that the tenets of fair procedure were sufficiently upheld in the process that resulted in the decision to end the Claimant's employment. The process was evidently flawed.
74. In the end, I reach the conclusion that the decision to terminate the Claimant's employment was neither just nor equitable in the context of section 45(5) of the *Employment Act*. It is so declared.
75. As regards the nature of reliefs that I should grant in the matter, I rely on the provisions of section 49 of the *Employment Act* for guidance. In this respect, I take cognizance of the fact that the parties had hardly worked together for two years under the indefinite term contract before the relation was brought to a close. However, there is nothing on record to suggest that the Claimant's conduct contributed to the decision to terminate his employment. Having regard to the foregoing, I award the Claimant compensation that is equivalent to his gross monthly salary for six (6) months.
76. During cross examination of the Respondents' witness, she stated that the Claimant's exit monthly salary was Ksh. 169,769.00. However, the Claimant has placed his exit salary at Ksh. 156,365.00 per month. As the Claimant has asked for a lesser amount, I will go by the latter figure. Therefore, the cumulative award to the Claimant under this head is Ksh. 156,365.00 x 6 = Ksh. 938,190.00.
77. As this was not a claim under section 40 of the *Employment Act*, I decline to award the Claimant the prayer for severance pay.
78. The Claimant has claimed for extraneous allowance. However, there was uncontested evidence that he was receiving Ksh. 30,000.00 every month to cover inconvenience and overtime allowance as a shift



- employee. In the premises, I reach the conclusion that the claim for extraneous allowance is unmerited. It is declined.
79. The Claimant has claimed for pay for accrued leave for seventy-seven (77) days. According to his letter of appointment, the Claimant was entitled to twenty-eight (28) leave days in any given year. Since the contract of service between the parties was terminated within two (2) years of its commencement, it is not possible that the Claimant had earned seventy-seven (77) leave days over this period. At best, he could only have earned fifty-six (56) days.
 80. In his evidence, the Claimant suggests that the seventy-seven (77) days that he claims include paternity leave days. However, this assertion is not supported by his pleadings before the court.
 81. The Respondents gave evidence that the Claimant's annual leave entitlement was fifty (50) days. This was worked out on pro-rata basis. I agree with this position.
 82. The Respondents further gave evidence showing that the Claimant was paid Ksh. 291,611.00 by the 3rd Respondent on account of accrued leave. This is evident from the pay slip appearing as document number 12 on the Respondents' list of documents dated 1st December 2021.
 83. Although it is denied by the Respondents' witness that the 3rd Respondent was the Claimant's employee, she produced this document as a demonstration that the Claimant was paid for his accrued leave days. Notwithstanding the convoluted nature of the relation between the actors in this cause, I consider that it will be inequitable to hold that the Claimant was not paid for his accrued leave days in the face of evidence of payment of some amount under this head by whichever of the three entities sued as Respondents in the action. Consequently, and for the reasons aforesaid, I decline to award the Claimant's prayer for pay in lieu of accrued leave days.
 84. The Claimant has prayed for notice pay for a period of two months. The clause on termination of employment in the contract of service between the Claimant and the 1st Respondent contemplates a notice period of one month. Alternately, the party terminating the contract is required to pay the other an amount that is equivalent to the Claimant's salary for one month.
 85. As indicated earlier, the decision to summarily terminate the Claimant's employment was without valid basis. As a result, the Claimant was entitled to notice prior to his employment being terminated. Absent the notice, the 1st Respondent was obligated to pay the Claimant an amount that is equivalent to his salary for one month.
 86. There is no evidence that this was done. As a result, I award the Claimant the sum of Ksh. 156,365.00 to cover pay in lieu of notice to terminate his contract.
 87. The Claimant has also prayed for an award of general damages for mental anguish, injury to his reputation and career prospects. I decline to award this prayer for two reasons. First, there is no evidence to demonstrate that the Claimant has been shunned by right thinking members of society as a result of the Respondents' decision to end his contract of service. Second, as a general principle, general damages are not normally awarded to redress breach of a contract (*Peter Umbuku Muyaka v Henry Sitati Mmbasu* [2018] eKLR).
 88. I award the Claimant interest on the amounts ordered at court rates from the date of this decision.
 89. The award is subject to the applicable statutory deductions.
 90. I direct that the 1st Respondent issues the Claimant with a Certificate of Service in terms of section 51 of the *Employment Act*.



91. The Claimant is awarded costs of the case.
92. For the avoidance of doubt, any other relief that the Claimant sought but which has not been granted in this section is deemed as having been declined.
93. Further and for the avoidance of doubt, since the documentary evidence on record demonstrates that the employment relation that was improperly terminated was between the Claimant and the 1st Respondent, the reliefs granted by the court in favour of the Claimant are implementable against the 1st Respondent.

DATED, SIGNED AND DELIVERED ON THE 27TH DAY OF JULY, 2023

B. O. M. MANANI

JUDGE

In the presence of:

..... for the Claimant

.....for the Respondents

ORDER

In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

B. O. M MANANI

