



Ambogo v Sameer Agriculture and Livestock (Kenya) Limited (Employment and Labour Relations Cause 199 of 2022) [2023] KEELRC 2257 (KLR) (29 September 2023) (Judgment)

Neutral citation: [2023] KEELRC 2257 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 199 OF 2022
BOM MANANI, J
SEPTEMBER 29, 2023

BETWEEN

ENOS AMBOGO CLAIMANT

AND

**SAMEER AGRICULTURE AND LIVESTOCK (KENYA)
LIMITED RESPONDENT**

Section 42(1) of the Employment Act does not deprive employees serving on probationary contracts of the right to be heard before their contracts of service can be terminated

The case revolved around the termination of the claimant's contract of employment for failure to meet the performance expectations of the respondent. The court noted that section 42(1) of the Employment Act sanctioned differential treatment of employees serving on probationary terms. The court held that the section was not only discriminatory against employees on probation but also offended their right to fair labour practice. Further, in so far as it purported to sanction their release from employment without giving them the reasons for the decision, the section was inimical to those employees' right to fair administrative action.

Reported by Kakai Toili

Statutes – interpretation of statutory provisions – interpretation of section 42(1) of the Employment Act – where section 42(1) deprived employees on probationary contracts the protection granted to employees on confirmed contracts of service during termination of employment - whether section 42(1) violated the right of equality and freedom from discrimination, the right to fair labour practices and the right to fair administrative action – Constitution of Kenya, 2010, articles 27, 41 and 47; Employment Act, Cap 226, section 42(1).

Labour Law – employment - employees serving on probation contracts – re-assignment of employees serving on probation contracts - whether the re-assignment of an employee on serving on a probation contract affected the probation duration.

Labour Law – employment – termination of employment - whether the termination of employment without subjecting the employee to a disciplinary session was procedurally flawed - whether an employee whose contract of service was unfairly terminated was entitled to be paid salary for the employee's unexpired term of the contract - Employment Act, Cap 226, sections 41 and 49.



Brief facts

According to the claimant, the respondent hired his services in the position of sales manager as from April 5, 2018. The claimant averred that he was thereafter deployed to serve in the position of business development manager. The claimant further averred that on January 23, 2019, the respondent's management implored him to resign from employment. According to the claimant, there was no valid reason for that request. As a result, he declined to resign from his position.

The claimant stated that on January 24, 2019, the respondent issued him with a letter terminating his services. According to the letter, the reason for the decision to terminate the claimant's contract was that he had failed to meet the performance expectations of the respondent. It was the claimant's case that he met all the performance targets that had been set for him. The claimant stated that he was not subjected to the disciplinary process that was prescribed in law before he was relieved of his employment.

Issues

- i. Whether section 42(1) of the Employment Act which deprived employees on probationary contracts the protection granted to employees on confirmed contracts of service during termination of employment violated;
 1. the right of equality and freedom from discrimination;
 2. the right to fair labour practices; and
 3. the right to fair administrative action.
- ii. Whether the re-assignment of an employee on serving on a probation contract affected the probation duration.
- iii. Whether the termination of employment without subjecting the employee to a disciplinary session was procedurally flawed.
- iv. Whether an employee whose contract of service was unfairly terminated was entitled to be paid salary for the employee's unexpired term of contract.

Held

1. Section 42(1) of the Employment Act deprived employees serving on probationary contracts the protection that was granted to employees serving on confirmed contracts of service when it came to termination of employment. Whilst an employee who was serving under a confirmed contract of service could not be dismissed from service without cause, an employee who was serving on probation was not entitled to similar protection.
2. The Employment Act was enacted in 2007, that was well before the Constitution of Kenya, 2010 was promulgated. Article 41 of the Constitution protected the right to fair labour practice. Article 47 of the Constitution protected the right to fair administrative action, that right also applied to employment relations. Article 27 of the Constitution prohibited discrimination including at the workplace. Similarly, the article guaranteed everyone the right to equal benefits of and protection by law.
3. Section 42(1) of the Employment Act sanctioned differential treatment of employees serving on probationary terms. The provision denied those employees equal protection and benefit of the law. The section was not only discriminatory against employees on probation but also offended their right to fair labour practice. In so far as it purported to sanction their release from employment without giving them the reasons for the decision, the section was also inimical to those employees' right to fair administrative action. Section 42(1) was contrary to the Constitution.
4. In order to remain relevant in the statute books, section 42(1) of the Employment Act must be read with the necessary adjustments as directed by section 7(1) of the Sixth Schedule to the Constitution. That meant that the section must be understood as not depriving employees serving on probationary contracts of the right to be heard before their contracts of service can be terminated. The suggestion



- that the claimant was not entitled to a hearing before his contract was terminated was flawed and was rejected.
5. Termination of the claimant's contract of service happened on January 24, 2019. That was long after the six (6) months probationary period in the contract had lapsed. The respondent's assertion that the claimant's reassignment to a new role in June 2018 reset his probationary period was a misinterpretation of not just the law on the subject but also the documents through which the parties contracted. As a matter of fact, the claimant's letter of reassignment contained no clause that could justify the respondent's conclusion on the subject.
 6. The basis for the respondent's decision to terminate the claimant's contract of service was that he was guilty of poor performance. Although the respondent claimed that the claimant had been cautioned about his poor performance, there was no evidence that he was taken through a formal disciplinary process that was contemplated under section 41 of the Employment Act before his contract of service was terminated. There was no evidence that the respondent formally notified the claimant that it proposed to terminate his contract of service on grounds of poor performance and invited him to respond to the charge in terms of section 41.
 7. Section 41 of the Employment Act required the employer to subject an employee to a disciplinary session before terminating the employee's contract of service on grounds of misconduct, poor performance or physical incapacity. The employer was obligated to notify the employee of the charge, allow the employee the opportunity to respond to the charge and hear the representations of the employee together with his witnesses before making a decision on the matter. The respondent failed to uphold those requirements of law under the misguided belief that the fact that the claimant was allegedly on probation relieved it of that obligation.
 8. The meeting to which the respondent's manager summoned the claimant on the morning of January 23, 2019 to demand that the claimant either resigned or his contract was terminated did not qualify as a disciplinary session contemplated under section 41 of the Employment Act. Consequently, the respondent's decision to terminate the claimant's contract on account of poor performance was procedurally flawed.
 9. Despite the claimant denouncing the signature on the discharge voucher, the respondent did not take steps to authenticate it. In the face of that *lacuna*, the court could not determine the validity of the discharge voucher. The court declined to make any findings on the effect of the discharge voucher in question including whether the signatures on it were procured genuinely or through fraud. Those were matters that the parties did not plead in their respective pleadings.
 10. An employee whose contract of service was unfairly terminated was entitled to claim any of the reliefs under section 49 of the Employment Act. Those reliefs did not include salary for the employee's unexpired term of contract. However, the employee may claim compensation capped at a maximum of twelve (12) months of his salary. Although section 49 set out the main reliefs that the Employment and Labour Relations Court may grant, those were not the sole remedies that the court could grant. In addition to those remedies, the court had power to grant the remedies sanctioned by section 12 of the Employment and Labour Relations Court Act.
 11. It would be speculative for the court to sanction payment of salary for the unexpired term of an employment contract as such order overlooked the reality that some unforeseen occurrences such as death and other acts of God could occasion premature closure of the contract. Consequently, such order would be inimical to justice. The court may only award an employee salary for the unexpired term of his contract of service in instances where the contract between the parties had sanctioned the remedy.
 12. Although the claimant did not plead for compensation capped at twelve (12) months, he had asked the court to grant him any other remedy that it deemed fit. Under section 12(3)(v iii) of the Employment



and Labour Relations Court Act, the court had power to grant a litigant that was before it any other remedy that it considered appropriate having regard to the facts of the case.

Claim partially allowed.

Orders

- i. *The respondent's termination of the claimant's contract of service was declared procedurally irregular and therefore unlawful.*
- ii. *The claimant was awarded compensation that was equivalent to his gross salary for four (4) months, that was to say Ksh. 1,200,000.00.*
- iii. *The award was subject to the applicable statutory deductions.*
- iv. *The respondent was ordered to refund the claimant the sum of Ksh.24,000.00 that was irregularly deducted from the claimant's salary.*
- v. *The above awards attracted interest at court rates from the date of the judgment.*
- vi. *The claimant was granted costs of the case.*
- vii. *Any other relief that had not been expressly granted was deemed as having been declined.*

Citations

Cases

Kenya

1. *Bell & another v IL Matterello Limited* Civil Appeal 72 of 2019; [2022] KECA 168 (KLR) - (Explained)
2. *Gikonyo, Joseph Kareko Gikonyo v County Government of Lamu & 2 others* Petition E007 of 2021; [2022] KEELRC 166 (KLR) - (Followed)
3. *Kenya Agricultural and Livestock Research Organization v Okoko & another* Civil Appeal 36 A of 2021; [2022] KEHC 3302 (KLR) - (Explained)
4. *Kenya Methodist University v Kaungania & another* Civil Appeal 61 of 2017; [2022] KECA 90 (KLR) - (Explained)
5. *Kibuchi, Monica Munira & 6 others v Mount Kenya University; Attorney General (Interested Party)* Petition 94 of 2016; [2021] KEELRC 2310 (KLR) - (Followed)
6. *Mwangi, Charles Muturi v Invesco Assurance Co. Ltd* Citation Cause 270 of 2017; [2019] KECA 946 (KLR) - (Explained)
7. *National Bank of Kenya v Samuel Nguru Mutonya* Civil Appeal 118 of 2017; [2019] KECA 404 (KLR) - (Mentioned)
8. *Otieno, Grace v Salaries And Remuneration Commission* Civil Appeal 418 of 2017; [2020] KECA 177 (KLR) - (Mentioned)
9. *Timsales Limited v Samuel Kamore Kihara* Civil Appeal 111 of 2011; [2016] KECA 487 (KLR) - (Explained)
10. *World Explorers Safaris Limited v Cosmopolitan Travel Limited & Gideon Kipkoech Kimaiyo* Civil Appeal E032 of 2020; [2021] KEHC 4130 (KLR) - (Mentioned)

Statutes

Kenya

1. Constitution of Kenya articles 27, 41, 47; Schedule sixth section 7(1) - (Interpreted)
2. Employment Act (cap 226) sections 41; 42 (1); 44 (3) (4); 49; part IV- (Interpreted)
3. Employment and Labour Relations Court Act (cap 8E) section 12 - (Interpreted)

Advocates

None mentioned



JUDGMENT

Background

1. The parties to this action had an employment relation until January 24, 2019 when the respondent issued the claimant with a letter of termination of the relation. According to the claimant, the respondent hired his services in the position of Sales Manager as from April 5, 2018. The claimant avers that he was thereafter deployed to serve in the position of Business Development Manager. His salary at the time was Ksh. 300,000.00.
2. The claimant avers that on December 18, 2018, the respondent issued him with a performance improvement plan. According to the claimant, this was notwithstanding that his performance was good.
3. The claimant further avers that on January 23, 2019, the respondent's management implored him to resign from employment. According to the claimant, there was no valid reason for this request. As a result, he declined to resign from his position.
4. The claimant states that on January 24, 2019, the respondent issued him with a letter terminating his services. According to the letter, the reason for the decision to terminate the claimant's contract was that he had failed to meet the performance expectations of the respondent.
5. The claimant disputes this assertion by the respondent. It is his case that he met all the performance targets that had been set for him.
6. The claimant states that the only element that remained unfulfilled in the performance targets related to non performing debts in respect of which there was little that he would have done. The claimant states that these non-performing debts had been assigned to the debt recovery unit of the respondent.
7. The claimant states that he was not subjected to the disciplinary process that is prescribed in law before he was relieved of his employment. All that the respondent did was to issue him with the letter of termination on January 24, 2019.
8. On its part, the respondent argues that the claimant's contract of service was lawfully terminated. According to the respondent, the claimant did not meet its performance expectations.
9. The respondent asserts that it held several performance review meetings with the claimant during which the claimant was assisted on how to improve his performance but this did not help matters. In the respondent's view, the claimant lacked enthusiasm for his work.
10. The respondent contends that the decision to terminate the claimant's contract was taken during the probation period. As such, issuance of the requisite notice to terminate without more was sufficient to end the employment relation.

Issues for Determination

11. After scrutinizing the pleadings and evidence, I reckon that the following are the issues for determination:-
 - a. Whether the claimant's contract of service was lawfully terminated.
 - b. Whether the parties are entitled to the reliefs that they seek through their respective pleadings.



Analysis

12. The respondent contends that the claimant's contract was terminated during the probationary period. As such, he was not by law entitled to a hearing prior to being released from employment. The respondent argues that all that it was required to do was to issue the claimant with the requisite notice to terminate his contract.
13. The law that anchors the respondent's argument is section 42(1) of the [Employment Act](#) which provides as follows:-

“The provisions of section 41 shall not apply where a termination of employment terminates a probationary contract.”
14. Section 41 of the [Act](#) provides as follows:-

“Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.”
15. In effect, section 42(1) of the [Act](#) deprives employees serving on probationary contracts the protection that is granted to employees serving on confirmed contracts of service when it comes to termination of employment. Whilst an employee who is serving under a confirmed contract of service cannot be dismissed from service without cause, an employee who is serving on probation is not entitled to similar protection.
16. The [Employment Act](#) was enacted in 2007. This was well before the [Constitution 2010](#) as promulgated.
17. Article 41 of the [Constitution](#) protects the right to fair labour practice. Article 47 of the [Constitution](#) protects the right to fair administrative action. This right also applies to employment relations. Article 27 of the [Constitution](#) prohibits discrimination including at the workplace. Similarly, the article guarantees everyone the right to equal benefits of and protection by law.
18. Section 7(1) of the Sixth Schedule to the [Constitution](#) provides as follows:-

“All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”
19. Section 42(1) of the [Employment Act](#) sanctions differential treatment of employees serving on probationary terms. The provision denies these employees equal protection and benefit of the law. Clearly, the section is not only discriminatory against employees on probation but also offends their right to fair labour practice. In so far as it purports to sanction their release from employment without giving them the reasons for the decision, the section is also inimical to these employees' right to fair administrative action.



20. For these reasons, section 42(1) of the *Employment Act* is contrary to the *Constitution*. As a matter of fact, the court has already pronounced itself on this matter in the decisions of *Monica Munira Kibuchi & 6 others v Mount Kenya University; Attorney General (Interested Party)* [2021] eKLR and *Joseph Kareko Gikonyo v County Government of Lamu & 2 others* [2022] eKLR.
21. In order to remain relevant in our statute books, the above provision of law must be read with the necessary adjustments as directed by section 7(1) of the Sixth Schedule to the *Constitution*. That means that the section must be understood as not depriving employees serving on probationary contracts of the right to be heard before their contracts of service can be terminated.
22. The claimant's case must be considered from this viewpoint. As a result, the suggestion by the respondent that the claimant was not entitled to a hearing before his contract was terminated is flawed. It is rejected.
23. But even if I was wrong in my aforesaid views, it is doubtful that at the time of terminating his contract of service, the claimant was still serving on probationary terms. The evidence on record shows that the claimant was hired on April 5, 2018 for a period of three (3) years. Clause six (6) of his letter of appointment indicates that he was to serve on probation for six (6) months. The clause does not provide for extension of the probation period.
24. On June 11, 2018, the claimant was re-assigned from his earlier position to a new position of Business Development Manager. The letter of assignment stated that apart from the change of roles, the terms and conditions of the claimant's contract remained as set out in the letter of appointment. In effect, the commencement date and duration of the claimant's probation was unaffected.
25. Termination of the claimant's contract of service happened on January 24, 2019. This was long after the six (6) months probationary period in the contract had lapsed.
26. The respondent's assertion that the claimant's reassignment to a new role in June 2018 reset his probationary period is a misinterpretation of not just the law on the subject but also the documents through which the parties contracted. As a matter of fact, the claimant's letter of reassignment contains no clause that can justify the respondent's conclusion on the subject. Accordingly, this argument is rejected.
27. It is apparent from the evidence on record that the basis for the respondent's decision to terminate the claimant's contract of service was that he was guilty of poor performance. Although the respondent claims that the claimant had been cautioned about his poor performance, there is no evidence that he was taken through a formal disciplinary process that is contemplated under section 41 of the *Employment Act* before his contract of service was terminated. There is no evidence that the respondent formally notified the claimant that it proposed to terminate his contract of service on grounds of poor performance and invited him to respond to the charge in terms of section 41 of the *Act*. As a matter of fact, the respondent's witness confirmed during cross examination that the claimant was not taken through a disciplinary process.
28. As has been indicated in the earlier parts of this decision, section 41 of the *Employment Act* requires the employer to subject an employee to a disciplinary session before terminating the employee's contract of service on grounds of misconduct, poor performance or physical incapacity. The employer is obligated to notify the employee of the charge, allow the employee the opportunity to respond to the charge and hear the representations of the employee together with his witnesses before making a decision on the matter (*National Bank of Kenya v Samuel Nguru Mutonya* [2019] eKLR).



29. The respondent failed to uphold these requirements of law under the misguided belief that the fact that the claimant was allegedly on probation relieved it of this obligation. The meeting to which the respondent's manager summoned the claimant on the morning of January 23, 2019 to demand that the claimant either resigns or his contract is terminated did not qualify as a disciplinary session contemplated under section 41 of the *Employment Act*. Consequently, I arrive at the conclusion that the respondent's decision to terminate the claimant's contract on account of poor performance was procedurally flawed.
30. The next question for consideration is whether the parties are entitled to the reliefs that they seek in their pleadings. First, the respondent has stated, in evidence and submissions, that the claimant was paid his terminal dues and signed a release voucher thereby abandoning the right to pursue further compensation arising from the impugned termination. To support this contention, the respondent produced a discharge voucher showing that the claimant was paid Ksh. 547,334.00. The voucher is signed. It denounces any right by the signatory to pursue further compensation of whatever kind arising from or related to the contract of employment.
31. The respondent argues that the claimant signed the instrument. Therefore, he is precluded from pursuing further compensation through this action.
32. On the other hand, the claimant denies signing the instrument. It is his case that the signature on the instrument is not by him.
33. Despite the claimant denouncing the signature on the discharge voucher, the respondent did not take steps to authenticate it. In the face of this lacuna, the court cannot determine the validity of the discharge voucher.
34. That said, the respondent did not raise the defense relating to the discharge voucher in its statement of defense. There is no plea to the effect that the claimant having executed a release voucher upon payment of his terminal dues was precluded from making further claims in that respect. In effect, what the respondent has done is to lead evidence on a matter that has not been pleaded. By this, the respondent seeks to have the court determine the dispute based on an un-pleaded defense.
35. Save as otherwise permitted, the court is not entitled to return a verdict on a matter that has not been pleaded (*World Explorers Safaris Limited v Cosmopolitan Travel Limited & another* [2021] eKLR). In the case of *Livestock Research Organization v Okoko & another* (Civil Appeal 36 A of 2021) [2022] KEHC 3302 (KLR) (29 June 2022), whilst addressing the same principle, the court observed as follows:-
- “The general rule is that courts should determine a case on the issues that flow from the pleadings and therefore a court may only pronounce judgment on the issues arising from the pleadings or such issue as the parties have framed for the court's determination and therefore it is also a principle of law that parties are generally confined to their pleadings unless pleadings are amended during the hearing of a case.”
36. Having regard to the foregoing, I decline to make any findings on the effect of the discharge voucher in question including whether the signatures on it were procured genuinely or through fraud. These are matters that the parties did not plead in their respective pleadings.
37. An employee whose contract of service is unfairly terminated is entitled to claim any of the reliefs under section 49 of the *Employment Act*. These reliefs do not include salary for the employee's unexpired term of contract. However, the employee may claim compensation capped at a maximum of twelve (12) months of his salary.



38. Although section 49 of the [Employment Act](#) sets out the main reliefs that the Employment and Labour Relations Court may grant, these are not the sole remedies that the court can grant. In addition to these remedies, the court has power to grant the remedies sanctioned by section 12 of the [Employment and Labour Relations Court Act](#) (ELRC Act).
39. The general thread that runs through most decisions by the Court of Appeal on the subject is that a court ought not to grant an employee who has been wrongfully dismissed from employment salary for the remainder of the contract period particularly where the contract contains a termination clause. This is because there is no guarantee that the employee would have served for the entire of the contract period ([Grace Otieno v Salaries and Remuneration Commission](#) [2020] eKLR).
40. It will be speculative for the court to sanction payment of salary for the unexpired term of an employment contract as such order overlooks the reality that some unforeseen occurrences such as death and other acts of God could occasion premature closure of the contract. Consequently, such order would be inimical to justice.
41. The court may only award an employee salary for the unexpired term of his contract of service in instances where the contract between the parties has sanctioned the remedy. For example, in [Charles Muturi Mwangi v Invesco Assurance Co. Ltd](#) [2019] eKLR, the Court of Appeal upheld the employee's plea for damages that were equivalent to his unexpired term because the contract contained a termination clause that provided as follows:-
- “In the event of any termination of this contract by either of the parties herein, otherwise than as stipulated in sub-clause (a) and (b) above, the party thus terminating this employment contract shall pay on demand in writing to the other, an amount equivalent to the aggregate salary value of the remainder of the contract period, that is to say the salary as stipulated in clause 5(1) (a) above multiplied by the number of months remaining in the contract period as at the time of such termination.”
42. It is true that in [Kenya Methodist University v Kaungania & another](#) (Civil Appeal 61 of 2017) [2022] KECA 90 (KLR) (4 February 2022), the court awarded the claimants salary to cover their unexpired terms of four (4) and eight (8) months. However, it is noteworthy that both terms were less than the maximum compensatory period of twelve (12) months that is permissible under section 49 of the [Employment Act](#). In my estimation, the court considered this fact whilst making its assessment.
43. Although the claimant did not plead for compensation capped at twelve (12) months, he has asked the court to grant him any other remedy that it deems fit. Under section 12 (3) (v iii) of the [ELRC Act](#), the court has power to grant a litigant that is before it any other remedy that it considers appropriate having regard to the facts of the case.
44. In a number of decisions, it has been indicated that where a litigant has asked the court to grant him a relief that it deems fit to grant, the court may grant a relief which, though not pleaded, is consequential to the main relief that has been granted. For example, in [Bell & another v I. L. Matterello Limited](#) (Civil Appeal 72 of 2019) [2022] KECA 168 (KLR), the respondent had not pleaded for reimbursement of rent deposit of Ksh.270, 000.00. However, the trial court ordered refund of the sum in exercise of the general powers that permitted it to grant any other relief that was appropriate. The Appellant's plea on appeal that the relief had not been specifically pleaded was rejected on *inter alia*, the ground that it was consequential to the main relief in the dispute.



45. In addressing when a court may grant an un-pleaded relief under the omnibus “such other order as the court may deem fit to grant” plea, the Court of Appeal in *Timsales Limited v Samuel Kamore Kibara* [2016] eKLR observed as follows:-

“In *Rex Hotel Ltd v Jubilee Insurance Co. Ltd* [1972] EA 211 the predecessor of this Court was categorical that a relief that qualifies to be awarded under the above prayer is one that is consequential to the main relief sought.”

46. In effect the court has power to grant a consequential relief where a party has prayed for any other relief that may be appropriate. Indeed, this is *in tandem* with section 12 of the *ELRC Act* which allows the court to grant such relief.

47. In the case before me, the court has found the decision by the respondent to terminate the claimant’s contract of service to have been irregular. This is the primary relief that was sought in the cause consequent upon which the other reliefs for compensation were to follow.

48. Proceeding on the precedent that I have referred to above, section 12 (3) (viii) of the *ELRC Act* and prayer (f) in the Statement of Claim, I award the claimant compensation for unlawful termination of his contract of service that is equivalent to his gross monthly salary for a period of four (4) months. This works out to Ksh. 300,000.00 x 4 = Ksh. 1,200,000.00.

49. In making the foresaid award, I have taken into consideration the fact that the claimant acknowledged having been paid Ksh. 547,330.00. It is however noteworthy that the claimant denied that he signed a voucher to affirm that this payment was in full and final settlement of his dues.

50. The above award is subject to the applicable statutory deductions.

51. The claimant has also prayed for Ksh. 24,000.00 being the amount that the Respondent deducted from him to cover loss arising from some alleged fraud. The respondent did not provide cogent evidence to link the claimant to the alleged loss to enable it effect the impugned deduction. Absent this evidence, it was wrongful for the respondent to have deducted these funds from the claimant. This is particularly in view of the fact that under part IV of the *Employment Act*, an employee’s salary is a protected right. The employer is only permitted to make legitimate deductions from it. Accordingly, the respondent is ordered to reimburse the claimant the said sum of Ksh. 24,000.00.

52. I award the claimant interest on the sum awarded at court rates from the date of this decision.

53. The claimant is granted costs of the case.

54. Any other relief that has not been expressly granted is deemed as having been declined.

Summary of Award

55. The respondent’s termination of the claimant’s contract of service is declared procedurally irregular and therefore unlawful.

56. The claimant is awarded compensation that is equivalent to his gross salary for four (4) months, that is to say Ksh. 1,200,000.00.

57. The award is subject to the applicable statutory deductions.

58. The respondent is ordered to refund the claimant the sum of Ksh.24,000.00 that was irregularly deducted from the claimant’s salary.



59. The above awards attract interest at court rates from the date of this judgment.
60. The claimant is granted costs of the case.
61. Any other relief that has not been expressly granted is deemed as having been declined.

DATED, SIGNED AND DELIVERED ON THE 29TH DAY OF SEPTEMBER, 2023

B. O. M. MANANI

JUDGE

In the presence of:

.....for the Claimant

.....for the Respondent

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

