



**Odemba & 7 others v Laico Hotels & Resorts Management Co. Ltd t/a Laico Regency Hotel
Nairobi (Cause 930 of 2018) [2023] KEELRC 2099 (KLR) (18 September 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2099 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 930 OF 2018
JK GAKERI, J
SEPTEMBER 18, 2023**

BETWEEN

**BONIFACE OCHIENG ODEMBA 1ST CLAIMANT
MARK LWEGABO LIFUREZE 2ND CLAIMANT
CLEMENT MUCHEKE NYIMAH 3RD CLAIMANT
LILIAN OTIENO ADHIAMBO 4TH CLAIMANT
DUKE ATUYA NYAKUNDI 5TH CLAIMANT
LUKA KIRUI KIMUTAI 6TH CLAIMANT
NELSON KIPROTICH 7TH CLAIMANT
GEORGE P. OCHUNG 8TH CLAIMANT**

AND

**LAICO HOTELS & RESORTS MANAGEMENT CO. LTD T/A LAICO REGENCY
HOTEL NAIROBI RESPONDENT**

JUDGMENT

1. The Claimants initiated this claim by a Memorandum of Claim filed on 12th June, 2018 alleging that their dismissal from employment was unfair.
2. The Claimants aver that they were employed by the Respondent as follows;
 1. Odemba Boniface Ochieng 2/2/2009 at Kshs.15,710/=
 2. Mucheke Clement Nyim 16/11/2008 at Kshs.11,645/=
 3. Otieno Lilian Adhiambo 16/11/2008 at Kshs.19,125/=



4. Duke Ataya Nyakundi 17/01/2011 at Kshs.11,587/=
 5. Kurui Luka Kimutai 16/11/2008 at Kshs.12,000/=
 6. Nelson Kiprotich 15/11/2008 at Kshs.9,700/=
 7. Ochung George P. 16/11/2008 at Kshs.12,899/=.
3. The appointment letter of one Mr. Mark Lwegado Lifureze was not attached.
 4. The Claimants allege that their employment was unlawfully terminated on 6th June, 2018.
 5. The Claimants aver that there was a recognition agreement and a Collective Bargaining Agreement (C.B.A) between Kenya Hotel Keeper and Caterers Association (KHKCA) and Kudheihia registered on 11th January, 2017.
 6. It is the Claimants case that on 12th April, 2018, they requested for a meeting with the General Manager as a follow-up to an earlier meeting on wage increment and salary arrears but the Human Resource Manager walked in and informed them that there would be no meeting until further notice but as they left the office they were arrested by the police and were taken to the police station and accused of creating disturbance and released on a cash bail of Kshs.5,000/= each.
 7. They further aver that on 13th April, 2018, the Human Resource Manager informed the union Branch Secretary that the Claimants had engaged in illegal activities and they were suspended on 25th April, 2018.
 8. That on 26th April, 2018, the union issued a strike notice to the Cabinet Secretary and on 3rd May, 2018, management cautioned staff not to participate in the strike and the parties agreed to withdraw the notice on 5th May, 2018.
 9. That on 4th June, 2018, the union responded to the notice to show cause dated 31st May, 2018.
 10. It is the Claimant's case that they were invited to a disciplinary hearing on 4th June, 2018 and they responded to the same and were dismissed on 6th June, 2018.
 11. That attempts by the union and management to resolve the issue at a meeting held on 8th June, 2018 fell through.
 12. The Claimants pray for;
 - a. A finding that the summary dismissal by the Respondent was unlawful.
 - b. Unconditional reinstatement or in the alternative;
 - i. 12 months compensation.
 - ii. Pending leave.
 - iii. Off-days.
 - iv. Service gratuity for years served.
 - v. Notice as provided by the C.B.A.
 - vi. Unpaid leave travelling allowance.
 - vii. Service charge.



- viii. 10% wage increment as will be tabulated.
- c. Costs of the suit.

Respondent's case

13. In its response filed on 26th June, 2018, the Respondent admits that the Claimants were its former employees and that it had a CBA with Kudheihia and the Claimants were shop stewards.
14. That the management of the Respondent and Kudheihia were in active engagement on a number of employee issues arising from the CBA and the Claimants had prior to 12th April, 2018 constructively engaged the Respondent.
15. That on 12th April, 2018, the Claimants left their work stations, without permission, during a busy service hour and assembled at the General Manager's Office at 11.30 am demanding an immediate meeting and had not booked an appointment with the General Manager through the Human Resource or referred their issues to the Human Resource Office.
16. That the Claimant's acted in an unruly manner demanding an immediate meeting and the General Manager requested that they meet at 14.30 pm but they shouted at him and stormed his office threatening to call a strike and security had to be called to enable the General Manager leave the office.
17. The Respondent avers that even after having agreed to a meeting at 14.30 pm, the Claimants did not resume work but engaged in a prolonged and animated shouting near the General Manager's office and the corridors leading to the office to the lobby in full glare of other staff and hotel guests, making derogatory insulting and disrespectful statements.
18. That security summoned the police to avert violence and the Claimants were arrested and taken to the Central Police Station where the General Manager was also present.
19. That the Claimants conduct was considered as misconduct and culminated in their suspension from duty.
20. That in response to the suspension of the Claimants, the union issued a strike notice on 25th April, 2018.
21. That none of the Claimants denied the facts or responded to the notice to show cause but on 4th June, 2018, Mr. George Ochung wrote indicating that the union was handling the matter and it was a police matter under investigation.
22. That the union's letter threatened a strike if the employees were disciplined.
23. That despite invitation to the disciplinary hearing, neither the Claimants nor the union representatives attended the hearing scheduled for 5th June, 2018 and were dismissed by letter dated 6th June, 2018.
24. It is the Respondent's case that even after the Respondent agreed to a meeting with the union on 8th June, 2018, the union remained adamant on its demand for reinstatement or a strike on 11th June, 2018 and refused to advise the Claimants to appeal the decision and filed the instant suit on 12th June, 2018.
25. The Respondent prays for dismissal of the suit with costs.

Claimant's evidence

26. On cross-examination, the witness testified that as a shop steward, he worked closely with the management of the Respondent and was aware of the grievance resolution procedure.



27. He denied that the Claimants had stormed the General Manager's Office on 12th April, 2018, and according to him it was a planned meeting which went on well until the Human Resource Manager came in and stopped it.
28. The witness had no evidence of any planned meeting.
29. The witness admitted that the procedure of engaging the Respondent was not followed.
30. That he received the notice to show cause and responded by letter dated 4th June, 2018.
31. It was his testimony that the letter of dismissal enumerated the reasons for termination.
32. That he appealed the decision and the appeal was heard on 22nd August, 2018 and all the Claimants attended.
33. The witness testified that the Respondent dismissed them from employment before the police had concluded their investigation.
34. The Claimant contradicted himself by testifying that he was not paid terminal dues but admitted that they all received money in their bank accounts.
35. On re-examination, the witness testified that all documents were sent to the union.
36. That the Office of Director of Public Prosecution recommended that disciplinary action be taken against the Claimants.
37. The witness stated that he appeared at the hearing alone and had no witnesses.
38. That the Respondent had not provided evidence of payment.

Respondent's evidence

39. On cross-examination, RWI testified that he was the Caretaker Manager of the Respondent whose business closed down.
40. That on 12th April, 2018, there was a commotion at the General Manager's Office caused by shop stewards and police had to be called in.
41. That the Claimants wanted a meeting on matters he was unaware of though there were pending salary arrears which were paid in 2018/2019.
42. That the dismissal was in accordance with the prescribed procedure and the letters were served on the Claimants individually but the witness had no record or evidence of service.
43. That the Claimants letter dated 4th June, 2018 revealed that they had received the notice to show cause.
44. The witness testified that although it had been agreed that the complaint be withdrawn, he had no evidence whether it was indeed withdrawn.
45. That the Respondent's processes begun on 30th May, 2017 and the Office of Director of Public Prosecutions closed its file on 31st August, 2018 and it did not communicate with the Respondent
46. The witness was unaware as to whether the Claimants received their monies.
47. It was his testimony that the Claimant did not attend the disciplinary hearing but attended the appeal hearing.



48. The witness testified that there was a disciplinary hearing but he had no evidence or record of the proceedings.
49. That the appellate committee upheld the decision of the Disciplinary Committee although the witness had no evidence of the outcome.
50. On re-examination, the witness testified that the Claimants dues were paid as tabulated in the dismissal letter and evidenced by voucher and account details on record.

Claimant's submissions

51. The union isolated no specific issue for determination but alluded to the facts of the case urging that the Respondent failed to comply with the provision of Clause 10 of the CBA relating to suspension.
52. That the Respondent did not honour the agreement signed on 5th May, 2018 on resolution of the dispute by the Respondent's board and the union and withdrawal of the complaint to the police.
53. It was submitted that the Respondent commenced the disciplinary process while aware that the matter was still under investigation by the police and dismissed the Claimants while under investigation.
54. Reliance was also made on the findings of the Director of Public Prosecution to urge that the office recommended that the file be closed and the matter resolved administratively. (A copy of the report was not attached).
55. It was further submitted that the Claimants did not breach any law.
56. That neither the notice to show cause nor the invitation to the hearing disclosed any mistake on the part of the Claimants and were thus unaware of the misconduct.
57. Finally, it was submitted that the Respondent failed to comply with the provisions of Sections 41 and 45 of the Employment Act, 2007.

Respondent's submissions

58. Counsel for the Respondent identified two issues for determination namely;
 - i. Whether the summary dismissal by the Respondent was unlawful/wrongful.
 - ii. Whether the Claimants are entitled to the prayers sought.
59. On termination of employment, counsel relied on the provisions of Section 44(3) of the Employment Act on summary dismissal and Section 41 on procedural aspects.
60. Counsel urged that the Claimants were suspended after the management of the Respondent and the union reviewed the Claimants conduct.
61. That the Claimants received the notice to show cause and responded that the matter was being handled by the union.
62. According to counsel, the Respondent's decision to review the conduct of the Claimants was lawful and within its mandate.
63. Counsel submitted that in his opinion, due process was followed and the Respondent's decision to summarily dismiss the Claimants was legal.
64. Reliance was made on the decision in Lawrence Nyamichaba Ondari V National Hospital Insurance Fund (2018) eKLR to urge that the question as to whether the employer had a reason to terminate the



employees' employment depended on whether a reasonable person would have terminated the services of the employee.

65. The decision in *Anthony Mulaki V Addax Kenya Ltd* was also cited to reinforce the submission that in this case, the employer had a valid reason to dismiss the Claimants.
66. Counsel urged that the fact that the Claimants stormed the General Manager's Office without notice and demanded audience gave the Respondent a genuine and valid reason to dismiss them from employment.
67. Reliance was also made on the holding in *British American Tobacco (K) Ltd V Kenya Union of Commercial Food and Allied Workers (2019) eKLR* to urge that the Respondent had reasonable grounds to dismiss the Claimants from employment.
68. As regards reliefs sought, counsel submitted that the Claimants were not entitled to the prayers sought as their dues were fully paid as evidenced by documents on record and the dismissal letter.
69. That CWI did not dispute the payments made by the Respondent and certificates of services were forwarded to the union.
70. Counsel submitted that reinstatement was unavailable as the hotel has since closed down.

Findings and determination

71. The issues for determination are;
 - i. Whether the summary dismissal of the Claimants by the Respondent was lawful.
 - ii. Whether the Claimants are entitled to the reliefs sought.
72. On the first issue, the provisions of the Employment Act, 2007 prescribe the attendant substantive and procedural requirements of a lawful termination of employment.
73. Section 45 provides;
 1. No employer shall terminate the employment of an employee unfairly.
 2. A termination of employment by an employer is unfair if the employer fails to prove –
 - a. that the reason for the termination is valid;
 - b. that the reason for the termination is a fair reason –
 - i. related to the employee's conduct, capacity or compatibility; or
 - ii. based on the operational requirements of the employer; and
 - c. that the employment was terminated in accordance with fair procedure.
74. Evidently, for a termination of employment to pass the fairness test, it must be shown that the employer had a valid and fair reason to terminate the employment and conducted it in accordance with fair procedure.



75. The twin requirements were aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR as follows;

“ . . . For a termination to pass the fairness test, it must be shown that there was not only substantive justification for the termination but also procedural fairness . . . ”

76. The Court of Appeal expressed similar sentiments in *Naima Khamis V Oxford University Press (EA) Ltd* (2017) eKLR.

77. Similarly, in the *Barclays Bank of Kenya Ltd & another V Gladys Muthoni and 20 others* (2018) eKLR, the Court of Appeal stated as follows;

“The rationale is that any termination of employment must be based on genuine, valid and fair reasons. Such reasons must be proved by the employer, otherwise, the termination is unfair. Where such reasons do not exist, the termination, by whatever reason(s) stated by the employer without proof, this amounts to unfair termination of employment in terms of Section 45 of the Employment Act . . . ”

Reason(s) for termination

78. On this issue, while the Claimants urge that the employer had no valid and fair reason to terminate their employment, the Respondent maintains that it had a reasonable ground to do so.

79. The Claimants argue that the Respondent dismissed them while the matter was still under investigation by the police and the Respondent’s response is that the police were investigating the criminal aspect only.

80. Equally, the Claimants argued that the findings of the Office of the Director of Public Prosecutions on review of the file and CCTV footage was that there was no commotion at the General Manager’s Office on 12th April, 2018 and recommended that the file be closed.

81. RWI testified that the Respondent never received the alleged report. The Claimants filed a copy of a letter dated 31st August, 2018 addressed to the OCS Central Police Station allegedly from the Office of the Director of Public Prosecutions.

82. Neither party could vouch on the authenticity of the letter or how it was obtained.

83. The court finds the letter unreliable as neither the author or recipient nor the witnesses testified on the circumstances in which it was obtained.

84. From the evidence on record, it is clear that on 12th April, 2018, the Claimants went to the General Manager’s Office between 11.00 am and 12.00 pm without an appointment and demanded audience which was declined but were given a timing in the afternoon which they were unhappy with and shouting ensued and police had to be summoned and arrested the Claimants who were later released on a cash bail of Kshs.5,000/= . Contrary to the Claimants assertion that a meeting took place until the Human Resource Manager discontinued it, there is no shred of evidence that any semblance of a meeting took place.

85. The court found it improbable that a Human Resource Manager could discontinue a meeting between the General Manager and shop stewards having not been a party to the meeting in the first place.



86. Similarly, the Claimants evidence that they were arrested as they were leaving the General Manager's Office having done nothing sounded untruthful/analogous to his evidence that they had a pre-arranged meeting with the General Manager.
87. Even if his testimony on the events of the day is to be believed, the witness did not explain what occasioned the summoning of the police, if there was a cordial meeting with the General Manager.
88. Although the witness testified that they had notified the General Manager that they would have a meeting, he did not explain who notified the General Manager, how and when, bearing in mind that the shop stewards had a meeting with staff on 11th April, 2018 according to the witness.
89. Relatedly, the witness adduced no evidence to show that the General Manager had confirmed availability for the meeting.
90. Puzzlingly, the witness testified that he was not paid terminal dues but in a similar vein acknowledged that they received money in their bank accounts, which they never queried.
91. In the absence of credible oral evidence as to what transpired on 12th April, 2018, the court will place reliance on the documents on record, such as the Respondent's letter to the Branch Secretary KUDHEIHA dated 13th April, 2018 reporting the Claimants conduct on 12th April, 2018 to their union officials.
92. The court is persuaded that this letter was a reasonable attempt to capture the occurrences of the day before and appears truthful.
93. It identifies the persons involved, timing, which all parties were agreeable to and the alleged misdeeds by the Claimants.
94. The union did not respond to this letter which was received on the same day.
95. According to the letter, the Claimants left their work stations without permission, proceeded to public areas in private clothes, used threatening language of a strike, engaged prolonged shouting in the General Manager's Office and generally disturbed the peace at the Respondent's premises.
96. None of the Claimants controverted these allegations by the Respondent.
97. It is common ground that the Claimants were subsequently suspended on 25th April, 2018 which precipitated a strike notice dated 26th April, 2018 but withdrawn on 5th May, 2018 after the Respondent communicated to staff on the issue.
98. Equally not in contest is the fact the Respondent issued a notice to show cause to all the Claimants dated 30th May, 2018 which catalogued the events of 12th April, 2018.
99. The notice demanded a written explanation by 10.00 am on 4th June, 2018.
100. Intriguingly, none of the Claimants responded to the notice. CWI testified that they responded through the union.
101. Regrettably, the union's letter dated 4th June, 2018 addressed issues other than the conduct of the Claimants on 12th April, 2018. Indeed, none of the accusations or charges were responded to.
102. Although the union's letter reveals that there were outstanding issues, it did not respond to the specific accusations or deny that they happened or provide a different version of the events.



103. It is also common ground that the Claimants received the invitation to attend the disciplinary hearing and responded.
104. According to the Claimants, the matter was still under police investigation and Respondent's board of directors and the union was handling the issue.
105. Finally, the termination letter dated 6th June, 2018 details the conduct complained of including the failure to respond to the notice to show cause.
106. The Claimants appealed the dismissal but did not receive the outcome.
107. A copy of the alleged minutes dated 22nd August, 2018 provided by the Respondent are unauthenticated and thus unreliable as a true record of the alleged proceedings.
108. Similarly, the Claimant testified that he appeared for the hearing alone, yet the alleged minutes appear to show that all the eight (8) Claimants were present.
109. Does the evidence on record show that the Respondent had reasonable grounds to summarily dismiss the Claimants?
110. The unchallenged evidence on record reveals that on the material day, the Claimants congregated at the General Manager's Office, sought audience, were given a timing in the afternoon which they were unhappy with, shouted down the General Manager and behaved in a manner that was disrespectful to all and sundry and police had to be called.
111. Section 43 (2) of the Employment Act, 2007 provides that;
The reason or reasons for termination are the matters that the employer at the time of termination of the contract genuinely believed to exist and which caused the employer to terminate the services of the employee.
112. In determining whether the employer had a valid and fair reason to terminate employment, courts are enjoined to apply the test of a reasonable employer as explained by Lord Denning in *British Leyland UK Ltd V Swift* (1981) I.R.L.R 91 as follows,

"The correct test is; was it reasonable for the employer to dismiss him, if no reasonable employer would have dismissed him, the dismissal was unfair, but if a reasonable employer might reasonably have dismissed him, the dismissal was fair. It must be remembered in all these cases that there is a band of reasonableness within which an employer might reasonably take one view; another quite reasonably take a different view . . .

If it was quite reasonable to dismiss him, then the dismissal must be upheld as fair though some other employers may not have dismissed him."
113. Applying the foregoing provisions and proposition of law to the facts of the instant case, the court is persuaded that the Respondent has established on a balance of probabilities that it had a fair and valid reason to terminate the Claimants employment.
114. The fact that the matter was being investigated by the police would not in law prevent the Respondent from proceeding with its disciplinary procedures as the two processes are different. Police investigations are restricted to offences while the Respondent is bound by internal disciplinary procedures.



Procedure

115. It requires no belabouring that the provisions of Section 41 of the Employment Act, 2007 sets out the procedural elements of a fair termination of employment and as held by the Court of Appeal in *Pius Machafu Isindu V Lavington Security Guards Ltd (2017) eKLR*, the elaborate process prescribed by Section 41 of the Employment Act, 2007 is mandatory for a termination of employment or summary dismissal to pass muster.
116. Fortunately, courts have isolated and elaborated the essential procedural elements including explanation of the grounds of termination in a language understood by the employee, the grounds on which termination was being considered, entitlement of a representative of choice or shop floor representative and hearing and consideration of the representations made by the employee and/or the representative. (See *Postal Corporation of Kenya V Andrew K. Tanui (2019) eKLR*).
117. In the instant case, the Claimant testified that they received a notice to show cause, invitation to a disciplinary hearing and the dismissal letter. That they appealed and received no response.
118. From the evidence on record, it is clear that Claimants received a detail notice to show cause which required a response within 5 days. The notice isolated the charges against the Claimants and explained their right to have a representation during the hearing for which they would be invited and a 24 hours notice would be given.
119. The invitation letter is dated 4th June, 2018 and the hearing was to take place on 5th June, 2018 at 10.30 am.
120. The Claimants responded on the same day informing the Respondent that they would not attend unless they received the reports from the police, the Respondent and the union.
121. In the court's view, whatever issues the Claimants had with the Respondent, they should have responded to the notice to show cause and attended the hearing and perhaps raised the concerns they had on the process.
122. The no show bespeaks of rather casual manner in which the Claimants viewed the process or conduct of the Respondent.
123. Although the less than one day notice was patently inadequate to search for a representative and prepare a credible defense, they did not contest the duration and were thus obligated to appear.
124. Intriguingly, there was no disciplinary committee or hearing on the material day. The Respondent availed no scintilla of evidence to show that there was a meeting ready to hear the Claimants. It had neither a list of the disciplinary committee members or evidence of its appointment nor minutes of the meeting.
125. In the absence of the foregoing, it is unclear to the court as to when and by whom and on what grounds the decision to summarily dismiss the Claimants was made.
126. The minutes would have revealed that the Respondent gave the Claimants an opportunity to table their defence and failed to do so.
127. The minutes would have disclosed that none of the Claimants appeared on that day and what the committee resolved in the circumstances based on the options available.
128. In sum, the Respondent tendered no evidence of a disciplinary hearing or that none of the Claimants appeared for the meeting.



129. Similarly, although the Claimants appealed the dismissal, there is no evidence on record to show that the appeals were considered and a decision made by the appellate committee.
130. For the foregoing reasons, the court is satisfied that the Respondent has failed to prove on a balance of probabilities that it complied with the procedural requirements prescribed by Section 41 of the Employment Act, 2007 rendering the summary dismissal of the Claimants procedurally flawed.
131. Having found that the dismissal of the Claimants by the Respondent was unfair for want of procedural propriety, I will now proceed to assess the appropriate remedies.
132. The remedy of reinstatement is undoubtedly unsustainable by virtue of the provisions of Section 12(3) (vii) of the Employment and Labour Relations Court Act, 2011 as the Claimants have been out of employment for more than 3 years.
133. More significantly and as submitted by the Respondent's counsel, the Respondent closed shop due to the challenges occasioned by the COVID-19 Pandemic.
134. I now consider the alternative remedies.
135. Copies of termination letter on record show that the final dues payable to the Claimants were to be computed as follows;
 - i. Basic Salary, House Allowance from April 12th, 2018 to 30th April, 2018 (already paid).
 - ii. Basic salary for May 2018 (already paid).
 - iii. Service charge for May 2018.
 - iv. Basic Salary, House Allowance, Service Charge from 1st June, 2018 to 6th June, 2018.
 - v. Salary arrears at 10% increment of the basic salary and House Allowance effective 1st October, 2017 to 6th June, 2018 as per the current CBA.
 - vi. 12 days pending leave days and public holidays earned upto 6th June, 2018.
 - vii. Termination Gratuity calculated at 19 days pay (salary and house allowance) for every completed year of service.
 - viii. Refund of pension contribution as per the scheme rules and regulations.
 - ix. Less
 - a. Any monies owed to the Hotel (if any).
 - b. All other statutory deductions.
136. The Claimants pray for pending leave, off-days, service gratuity for years served, notice as per the Collective Bargaining Agreement, unpaid leave travelling allowance for the years served, service charge for June 2018 and 10% wage increment as will be tabulated.
137. On cross-examination, the Claimants' witness stated that he was not paid termination dues but admitted that they all received monies in their bank accounts.
138. Surprisingly, none of them returned the money paid or contested the amount paid.



139. Similarly, although the Claimants testified that the Respondent tendered no documentary evidence to prove that the Claimants were indeed paid, the Respondent's supplementary bundle of documents dated 21st June, 2022 reveal that the Claimants received monies in their bank accounts as follows;
1. Boniface Ochieng Kshs.234,885.95
 2. Mark Lifureze Kshs.326,154.35
 3. Clement Mucheke Kshs.183,467.33
 4. Lillian Adhiambo Otieno Kshs.233,025.10
 5. Duke Nyakundi Kshs.168,054.46
 6. Luka Kirui Kshs.177,332.75
 7. Nelson Kiprotich Kshs.146,318.25
 8. George Ochung Kshs.156,686.10
140. While copies of the payment vouchers are dated 22nd October, 2018, the Drop Box Transaction Slips, Co-operative Bank, University Way are dated 24th October, 2018.
141. The fact that CWI confirmed that they received monies in their bank accounts and none contested the amount paid is sufficient evidence that the Respondent paid the termination dues as tabulated in the dismissal letter.
142. In a similar vein, it is unclear to the court why the Claimants did not amend the prayers or set out the tabulations as promised, after they were paid in October 2018.
143. This would have focused their prayers to the amounts claimed and why for each person.
144. The claims for pending leave, off-days, service charge for June 2018 and 10% wage increment all fail for want of the relevant particulars and supportive evidence. How many leave or off-days were the Claimants claiming payment for and when did they accrue?
145. Similarly, the prayer for service gratuity fails on account that the sum due was paid as per Clause 27(1) of the CBA as all Claimants had served for a period of less than 10 years.
146. As regards leave travelling allowance, the Claimants are only entitled to the amount due from 1st October, 2016 to 6th June, 2018, a duration of 17 months only.
147. As regards salary arrears, the Respondent paid from 1st October 2017 yet the effective date of the Collective Bargaining Agreement is 1st October, 2016.
148. The Claimants are entitled to salary arrears at 10% increment from 1st October, 2016 to 30th September, 2017.
149. Finally, having found that termination of the Claimants employment was procedurally unfair, the Claimants are entitled to the relief under Section 49(1)(c) of the Employment Act, 2007.
150. The Court has taken into consideration the fact that;
- i. The Claimants wished to continue in employment as evidenced by the prayer for reinstatement and the fact that they appealed the dismissal.



- ii. The Claimants were employees of the Respondent for a reasonable period of time. Other than the 1st and 4th Claimants who were employed in 2009 and 2011 respectively, all the others were employed in November 2008 and had thus served for almost 10 years.
 - iii. The Claimants were paid the bulk of their termination dues.
 - iv. The Claimants had no previous record of misconduct.
 - v. The Claimants refused to respond to the notice to show cause.
 - vi. The Claimants substantially contributed to the summary dismissal.
151. In the circumstances, the court is persuaded that the equivalent of one (1) month's salary is fair.
152. In the upshot, judgement is entered for the Claimants against the Respondent as follows;
- a. Unpaid leave travelling allowance from 1st October, 2016 to 6th June, 2018.
 - b. Unpaid salary arrears at 10% increment in Basic Salary and House Allowance from 1st October, 2016 to 30th September, 2017.
 - c. Equivalent of one (1) month's salary.
 - d. The union is awarded Kshs.70,000/= for the costs expended.
 - e. Interest at court rates from date of judgement till payment in full.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 18TH DAY OF SEPTEMBER 2023

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

