



**Omondi & 4 others v Parapet Cleaning Services (Cause 1850 of 2016)  
[2023] KEELRC 2327 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KEELRC 2327 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1850 OF 2016  
JK GAKERI, J  
OCTOBER 3, 2023**

**BETWEEN**

**SEBASTIAN FREDRICK OMONDI ..... 1<sup>ST</sup> CLAIMANT  
JEREMIAH OMONDI ..... 2<sup>ND</sup> CLAIMANT  
PETER NYAKUNDI ..... 3<sup>RD</sup> CLAIMANT  
BENEDICT MUENDO ..... 4<sup>TH</sup> CLAIMANT  
JUSTUS OSEME OLANG'A ..... 5<sup>TH</sup> CLAIMANT**

**AND**

**PARAPET CLEANING SERVICES ..... RESPONDENT**

**JUDGMENT**

1. The Claimants initiated this claim by a Memorandum of Claim alleging that their dismissal by the Respondent was unfair.
2. The Claimants were employed by the Respondent as stewards on diverse dates between 1<sup>st</sup> June, 2011 and 9<sup>th</sup> September, 2013 as
3. The Claimants allege that the Respondent accused them of desertion and were issued with show cause letters dated 13<sup>th</sup> May, 2016 and responded in writing and were suspended vide letter dated 24<sup>th</sup> May, 2016 which concomitantly invited them for a disciplinary hearing on 26<sup>th</sup> May, 2016 but the suspension was extended to 30<sup>th</sup> May, 2016 when they were dismissed from employment.
4. The Claimants pray for;
  - a. Declaration that termination of the Claimants employment was unlawful and/or wrongful and be awarded damages.



- b. Order directing the Respondent to pay terminal dues as follows;
  - i. 12 months salary as compensation.
  - ii. Unpaid leave.
  - iii. Salary in lieu of notice.
  - iv. Unpaid house allowance.
  - v. Certificate of service.
  - vi. Costs of this suit.
  - vii. Any other relief the court deems fit to grant or order.

### **Respondent's case**

5. In its defense filed on 17<sup>th</sup> September, 2018, the Respondent admitted that the Claimants were its employees employed as follows;
  1. Sebastian Omondi 1<sup>st</sup> Claimant 21/10/2012 3 years 8 months
  2. Jeremiah Omondi 2<sup>nd</sup> Claimant 12/3/2014 2 years 3 months
  3. Peter Nyakundi 3<sup>rd</sup> Claimant 21/4/2012 2 years 2 months
  4. Benedict Muendo 4<sup>th</sup> Claimant 30/7/2012 3 years 11 months
  5. Justus Oseme 5<sup>th</sup> Claimant 21/10/2012 3 yrs 8 monthsas evidenced by the contracts of service on record which the Claimants did not deny having signed.
6. The Respondent avers that the Claimants were accorded a fair opportunity to be heard but failed to respond to the final notice to show cause which occasioned the dismissal.
7. That despite a warning on 31<sup>st</sup> May, 2016, the Claimants went on authorised leave only for the Respondent to receive a letter from their advocate alleging that they had been dismissed which occasioned the last notice to show cause.
8. It is the Respondent's case that the Claimants had a poor performance record marred by absenteeism and they absconded duty.
9. The Respondent prays for dismissal of the suit with costs.

### **Claimant's evidence**

10. The standard statements of the Claimants dated 8<sup>th</sup> October, 2016 rehash the contents of the Memorandum of Claim.
11. All the Claimants testified in court.
12. CWI, Mr. Sebastian Omondi, confirmed that he was employed on 1<sup>st</sup> June, 2011. That the contract dated 1<sup>st</sup> February, 2014 was the second one and he had provided a copy, yet he had not.
13. That he was notified the reason for termination but was not heard. He admitted having received a notice to show cause but did not respond and did not proceed on leave on 31<sup>st</sup> May, 2016 despite a letter on record showing that he applied for leave.



14. The witness testified that his employment was terminated on 20<sup>th</sup> May, 2016, yet he received the notice to show cause dated 23<sup>rd</sup> May, 2016 and responded on 24<sup>th</sup> May, 2016 and admitted having attended a disciplinary hearing but his written statement states that he was not heard.
15. He admitted that he was being paid house allowance and overtime on and off and did not respond to the second notice to show cause.
16. On re-examination, the Claimant maintained that he was employed on 1<sup>st</sup> June, 2016, suspended on 24<sup>th</sup> May, 2016 and attended a hearing on 26<sup>th</sup> May, 2016 but was not given time to present his case and after that he was told to go away.
17. CWII, Mr. Jeremiah Omondi, on cross-examination confirmed that he was employed on 9<sup>th</sup> September, 2013 and had provided evidence yet the contract on record states that he was employed on 1<sup>st</sup> March, 2014, following an application and interview. He admitted having signed the contract on 1<sup>st</sup> March, 2014.
18. It was his testimony that he was dismissed on 20<sup>th</sup> May, 2016 yet his written statement states 30<sup>th</sup> June, 2016. He then changed to 30<sup>th</sup> June, 2016. That he could not recall when he instructed counsel but it was in June 2016 yet the counsel's letter to the Respondent is dated 30<sup>th</sup> May, 2016 and signed the suspension letter on 24<sup>th</sup> May, 2016 and the witness statement on 8<sup>th</sup> September, 2016 and admitted that the signatures were not the same.
19. The witness repeated that he was dismissed in May 2016 and was not given a letter of termination or warning letter dated 28<sup>th</sup> May, 2016 and did not proceed on annual leave nor apply for the same in May 2016.
20. The witness testified that he did not respond to the notice to show cause yet he did on 24<sup>th</sup> May, 2016 but testified that he was unaware that he responded and admitted having written the letter and signed the suspension letter on 24<sup>th</sup> May, 2016 and the signature was his and attended a hearing on 26<sup>th</sup> May, 2016 and was advised to proceed on leave despite not having applied.
21. He admitted that his statement made no reference to hearing, letter of suspension or reason for termination of employment.
22. But admitted that he had indeed left his work station for the Head Office.
23. On re-examination, the witness stated that he was employed on 7<sup>th</sup> September, 2013 yet his statement stated 9<sup>th</sup> September, 2013 and was dismissed in May 2016 and had several signatures.
24. It was his testimony that he had insufficient time to attend the hearing as the notice was short and was dismissed because of enquiring about SACCO deductions and was reporting to work from 6 am and leave at 4 pm yet the statement states 7 am to 7 pm.
25. CWIII, Mr. Peter Nyakundi confirmed that he was employed on 2<sup>nd</sup> February, 2012 yet the written contract states 2<sup>nd</sup> April, 2012.
26. That he received the notice to show cause dated 23<sup>rd</sup> May, 2016 and responded the following day and was invited and attended a hearing and accorded the opportunity to be heard.
27. That at the hearing, he met his supervisor, the employer and attended with a friend.
28. He admitted that his statement did not state that he attended a hearing.



29. He testified that he was neither given a second notice to show cause nor letter of dismissal. That he was told to go home on 20<sup>th</sup> May, 2016 yet he signed the suspension letter on 26<sup>th</sup> May, 2016.
30. On re-examination, the witness testified that he was employed on 2<sup>nd</sup> February, 2012 and dismissed on 20<sup>th</sup> May, 2016 because of enquiring about remittances to the SACCO.
31. That he received the suspension letter dated 26<sup>th</sup> May, 2016.
32. That he explained his case to the committee and Mr. Sebastian was his colleague.
33. CWV, Mr. Justus Oseme confirmed that he was employed on 2<sup>nd</sup> April, 2012 but admitted that he had no evidence and signed the contract on record on 10<sup>th</sup> October, 2014.
34. It was his testimony that he received the notice to show cause dated 23<sup>rd</sup> May, 2016 and responded and was suspended on 24<sup>th</sup> May, 2016, was invited and attended a hearing in the company of a colleague and responded to the questions asked for about 30 minutes and was given a termination letter on 20<sup>th</sup> May, 2016.
35. On re-examination, the witness testified that he was employed on 2<sup>nd</sup> April, 2012 and dismissed on 20<sup>th</sup> May, 2016 after enquiring about SACCO deductions.
36. It was his evidence that that he was not heard and was not given a dismissal letter.
37. CWIV, Mr. Benedict Mwendwa confirmed that he was employed on 5<sup>th</sup> July, 2012 as per the contract on record and was dismissed for having enquired about SACCO deductions but could not recall the deductions in question or evidence of the alleged deductions or the amount not remitted.
38. He admitted that the written statement made no reference to the reason for termination.
39. That he received the notice to show cause on 23<sup>rd</sup> May, 2016, responded, attended a hearing with a colleague but was not given time to explain his case.
40. That he was given a termination letter dated 20<sup>th</sup> May, 2016, a copy of which he did not have yet his statement states that he was dismissed on 30<sup>th</sup> June, 2016.
41. On re-examination, the witness maintained that he was employed on 5<sup>th</sup> July, 2012 at a salary of Kshs.12,600/= per month and dismissed on 20<sup>th</sup> May, 2016 and at the same time with other Claimants.
42. The witness admitted having received a notice to show cause on 23<sup>rd</sup> May, 2016 at 12.30 pm and responded on 24<sup>th</sup> May, 2016 and was not given a termination notice.

### **Respondent's evidence**

43. RWI, Mr. Dominic Otieno confirmed on cross-examination that he had no documentary evidence that the Claimants proceeded on leave, but had written applications from the Claimants which were not filed. That he had no evidence of a disciplinary hearing.
44. The witness further confirmed that he had no clock in sheets as evidence of attendance.
45. The witness stated that the Claimants were dismissed for absconding duty or desertion.
46. That a notice to show cause dated 28<sup>th</sup> June was issued and hearing was in 24 hours of the notice but the notice had neither a signature nor acknowledgement of receipt by the Claimants.
47. It was his testimony that Sebastian Omondi was a colleague to Jeremiah Omondi and thus the Respondent's employee.



48. On re-examination, the witness testified that Mr. Sebastian Omondi, the 1<sup>st</sup> Claimant had applied for annual leave on 31<sup>st</sup> May, 2016 and signed the suspension letter dated 26<sup>th</sup> May, 2016.
49. That the notice to show cause dated 28<sup>th</sup> June, 2016 required a written response.

### **Claimant's submissions**

50. Counsel isolated 3 issues for determination;
- i. Whether termination of the Claimants employment was fair and lawful.
  - ii. Whether the Claimants absconded duty.
  - iii. Whether the Claimants are entitled to the reliefs sought.
51. On termination, counsel submitted that the Claimants were employees of the Respondent having been employed on 1<sup>st</sup> June, 2011, 9<sup>th</sup> September, 2013, 2<sup>nd</sup> February, 2012, 5<sup>th</sup> June, 2012 and 2<sup>nd</sup> April, 2012 respectively and were all terminated from employment on 30<sup>th</sup> May, 2016.
52. According to counsel, the Claimants sought permission to proceed to the Respondent's office to enquire about deductions to Metropolitan National Sacco Ltd and were dismissed for that reason.
53. Counsel relied on the provisions of Section 47(5) of the *Employment Act*, 2007 to urge that the Respondent had not discharged the burden of proof.
54. Counsel urged that the Respondent did not comply with the requirements of the contract or the *Employment Act* on notice and the dismissal of the Claimants was unfair for non-compliance with the provisions of Section 45(2) of the *Employment Act*, 2007.
55. As to whether the Claimants deserted, counsel relied on Sections 43 and 45 of the *Employment Act* to urge that the employer bore the burden of proof.
56. Counsel cited the sentiments of Nzioki Wa Makau J. in *Boniface Francis Mwangi V B.O.M Iyego Secondary School* (2019) eKLR to underscore the duty of an employer where an employee deserts the work place.
57. Counsel urged that the Claimants were not accorded a chance to speak at the hearing and their suspension was extended to 30<sup>th</sup> May, 2016.
58. Reliance was also made on the decisions in *Simon Mbane V Inter Security Services Ltd* (2018) eKLR and *Joseph Nzioka V Smart Coatings Ltd* (2017) eKLR to reinforce the submission.
59. On the requirements of fair termination of employment, counsel relied on the sentiments of Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (2013) eKLR to urge the court that the Respondent had neither a substantive justification for the dismissal nor did it conduct it in accordance with a fair procedure.
60. Counsel invited the court to find and hold that termination of the Claimants' employment was unfair.
61. On reliefs sought, counsel submitted that the Claimants were entitled to all the prayers sought in the Memorandum of Claim.

### **Respondent's submissions**

62. By 5<sup>th</sup> August when the court retired to prepare this judgement, the Respondent had not filed its submissions.



## Findings and determination

63. Having carefully considered the pleadings, evidence on record and submissions by the Claimants' counsel, the issues for determination are;
- i. When the Claimants were employed by the Respondent and when the employment came to an end.
  - ii. Whether the Claimants deserted or their employment were unfairly terminated from employment.
  - iii. Whether the Claimants are entitled to the reliefs sought.
64. As regards the date of employment, parties have provided conflicting dates in certain cases.
65. According to the Counsels, the Claimants were employed as follows;

Name of Claimant	Claimant's averment	Respondent's evidence	Contract on Record
1 <sup>st</sup> Claimant – Sebastian	01/06/2011	21/10/2012	01/02/2014 (extension)
2 <sup>nd</sup> Claimant – Jeremiah	09/09/2013	12/03/2014	01/04/2014
3 <sup>rd</sup> Claimant – Peter	02/02/2012	21/04/2012	02/04/2012
4 <sup>th</sup> Claimant – Benedict	05/06/2012	30/07/2012	05/07/2012
5 <sup>th</sup> Claimant – Justus	02/04/2012	21/10/2012	01/02/2014 (extension)

66. Based on the evidence on record, the court will resolve the discrepancies as follows.
67. In the case of the 1<sup>st</sup> Claimant, Sebastian Omondi, the contract on record is explicit that it was an extension of an earlier contract which the Respondent did not avail. However, Respondent's date of 21<sup>st</sup> October, 2012 is more reliable and shall be deemed to be the employment date.
68. For the 2<sup>nd</sup> Claimant, Jeremiah Omondi, the contract on record is explicit that he had applied and was interviewed. The date on the contract will be deemed to be the employment date i.e 1<sup>st</sup> April, 2014.
69. In the case of the 3<sup>rd</sup> Claimant, Peter Nyakundi, there is agreement that the year was 2012 but parties do not agree on the month. The court is guided by the date of the contract on record i.e 2<sup>nd</sup> April, 2012.
70. For the 4<sup>th</sup> Claimant, Mr. Benedict Muendo, the parties are in agreement it was 2012 but disagree on the month. The court is guided by the date on the contract on record i.e 5<sup>th</sup> July, 2012.
71. Finally, in the case of the 5<sup>th</sup> Claimant, Justus Oseme, the contract on record is explicit that it was a renewal of an earlier contract.



72. The Respondent did not avail a copy of the contract but parties are in agreement that it was in 2012 but disagree on the date and month. The court shall adopt the Respondent's date of 21<sup>st</sup> October, 2012 which is more reliable.
73. As regards the date of termination of employment, the Claimants evidence on record lack consistency in certain cases.
74. Puzzlingly, neither the Respondent's statement of defence dated 4<sup>th</sup> September, 2018 nor the witness statement dated September 2018 identify the date on which the Claimant's employment came to an end.
75. In their standard written statements, the Claimants allege that it was 30<sup>th</sup> June, 2016 and counsel submitted as much.
76. However, the 1<sup>st</sup> Claimant, Mr. Sebastian Omondi confirmed on cross-examination that he was dismissed on 20<sup>th</sup> May, 2016 but had no evidence and concomitantly attended a hearing on 26<sup>th</sup> May, 2016 having been suspended on 24<sup>th</sup> May, 2016.
77. The 2<sup>nd</sup> Claimant, Mr. Jeremiah Omondi gave a similar explanation and admitted that the demand letter from his counsel was dated 30<sup>th</sup> May, 2016 and admitted having proceeded on leave.
78. Although he testified that he signed his statement dated 8<sup>th</sup> September, 2018, the signature O.J. and his other signatures on record are not the same. He maintained on re-examination that he was dismissed in May 2016.
79. The 3<sup>rd</sup> Claimant, Mr. Peter Nyakundi gave a similar explanation of having been dismissed in 20<sup>th</sup> May, 2016 but received documents thereafter including suspension letter, signed and attended a hearing.
80. The 4<sup>th</sup> Claimant gave similar testimony but added that he was given a termination letter but provided none.
81. The 5<sup>th</sup> Claimant gave similar testimony of having been given a termination letter on 20<sup>th</sup> May, 2016.
82. It is unclear to the court why the Claimants herein gave oral testimony which contradicts their written statements as to the date of termination.
83. Equally, the Claimants adduced no evidence on the date of termination as no letter dated 20<sup>th</sup> May, 2016 nor 3<sup>rd</sup> June, 2016 was availed.
84. Instructively, the Claimants counsel's demand letter dated 30<sup>th</sup> May, 2016 state that the dismissal was "in May 2016". It provides no specific date.
85. Intriguingly, a casual comparison of the signatures on the documents signed by the Claimants and those on the witness statements leave no doubt that the Claimants do not appear to be the persons who signed the witness statements on record.
86. In fact, Justus Oseme did not sign the statement.
87. The court is persuaded that contents of the written statements are unreliable as evidence. The court will rely on the oral testimony on record.
88. It is evident to the court that the Claimants employment was not terminated on 20<sup>th</sup> May, 2016 as they alleged in court which explains the contradictory evidence they gave in court. How for instance could they have been dismissed on 20<sup>th</sup> May, 2016 and were suspended on 25<sup>th</sup> May, 2016 after having



responded to a notice to show cause on 24<sup>th</sup> May, 2016 and the suspension had been extended when at least 2 claimants applied for leave.

89. If indeed the Claimants employment was terminated on 20<sup>th</sup> May, 2016, how was the decision communicated to them and how were they summoned to receive the notices to show cause after dismissal and why did they bother to respond, after all they were no longer employees after 20<sup>th</sup> May, 2016.
90. Although the Respondent failed to demonstrate that the Claimants received its notice to show cause dated 28<sup>th</sup> June, 2016, the letter would appear to show that the Claimants were still employees of the Respondent. However, the letter lacks authenticity or acknowledgement of receipt by the Claimants.
91. Surprisingly, Mr. Sebastian Omondi and Benedict Muendo Muendo applied for annual leave on 31<sup>st</sup> and 30<sup>th</sup> May, 2016 respectively to resume duty on 28<sup>th</sup> June, 2016. The Respondent's letter dated 28<sup>th</sup> May, 2016 would also appear to buttress the Respondent's case.
92. On the whole, the court found the Claimants not entirely truthful witnesses. The contradictions in their testimony was too glaring and disconcerting.
93. In a nutshell, the Claimants have failed to demonstrate when their employment was terminated by the Respondent.
94. As to whether the Claimants deserted or were terminated from employment unfairly, counsel for the Claimant submitted this was an unfair termination as the Respondent had failed to prove the desertion or demonstrated the action it took to contact them to resume duty.
95. Puzzlingly, it is unclear on what transpired after 30<sup>th</sup> May, 2016. Although the Respondent testified that the Claimants proceeded on duly authorised leave, it did not avail evidence that the Claimants actually went on leave and did not resume duty.
96. The Claimants had no explanation as according to their contradictory testimony they were not employees by that date.
97. According to the Respondent, the Claimants deserted employment after having been on leave. Mr. Sebastian Omondi applied for leave from 2<sup>nd</sup> June to 27<sup>th</sup> June vide letter dated 31<sup>st</sup> May, 2016 as did Benedict Muendo Muema on 30<sup>th</sup> May, 2016. These two letters, which the two Claimants did not fault, together with other evidence on record prove beyond peradventure that the Claimants were still in employment after 20<sup>th</sup> May, 2016 and occurrences thereafter precipitated their dismissal from employment in June 2016 as submitted by counsel.
98. Did the Claimants desert employment?
99. According to *Black's Law Dictionary*, 10<sup>th</sup> Edition, desertion means;  

“The wilful and unjustified abandonment of a person's duties or obligations.”
100. In the often cited South African case of *Seabolo V Belgravia Hotel* (1997) 6 BLLR 829 (CCMA), the court stated as follows;  

“... desertion is distinguishable from absence without leave, in that the employee who deserts his or her post does so with the intention of not returning, or having left his or her post subsequently formulates the intention not to return.”



101. As expressed by Onyango J. in *Felistas Acheba Ikatwa V Charles Peter Otieno* (2018) eKLR, the emerging jurisprudence desertion is clear;
- “The law is therefore well settled that an employer claiming that an employee has deserted duty must demonstrate efforts made towards getting the employee to resume duty. At the very least, the employer is expected to issue a notice to the deserting employee that termination of employment on the ground of desertion is being considered.
102. Similar sentiments were expressed in *Boniface Francis Mwangi V B.O.M Iyego Secondary School* (Supra) and *Joseph Nzioka V Smart Coatings Ltd* (Supra) cited by the Claimants’ counsel.
103. In this case, the Respondent has not demonstrated the actions taken or efforts expended to contact the Claimants to resume duty.
104. RWI did not provide the date on which the Claimants deserted or whether they all deserted on the same day.
105. The incomplete notices to show cause dated 28<sup>th</sup> June, 2016 allegedly to the Claimants lack authenticity and acknowledgement of receipt by any of the Claimants.
106. All the Claimants denied having received the notice.
107. Similarly, the letter of dismissal dated 8<sup>th</sup> July, 2016 allegedly to the Claimants has no acknowledgement of receipt by any of the Claimants.
108. In the court’s view, the two letters are not sufficient evidence of the steps the Respondent took to contact the Claimants for purposes of resuming duty. Service of the letters was imperative.
109. The court is further guided by the sentiments of the court in *Judith Atieno Owuor V Sameer Agriculture & Livestock Ltd* (2020) eKLR, that;
- “Further, even if she had absconded, she is by law entitled to a fair disciplinary process set out in Section 41 of the *Employment Act* . . .”
110. As alluded to elsewhere in this judgement, for a termination of employment to pass muster, it must be shown that the employer had a valid and fair reason to terminate the contract and did so in accordance with fair procedure as aptly captured by Ndolo J. in *Walter Ogal Anuro V Teachers Service Commission* (Supra) cited by the Claimants counsel.
111. The employer must have had a substantive justification for the termination and must additionally show that the termination was in accordance with a fair procedure.
112. Although the Claimants admitted having been taken through some semblance of disciplinary process which some of them faulted in various ways, the Respondent’s evidence is that the process culminated in the first warning letter dated 28<sup>th</sup> May, 2016 as opposed to a termination of employment.
113. Although the Claimants alleged that they did not receive the letter, the letter shows that they were still employees of the Respondent on 28<sup>th</sup> May, 2016.
114. Having failed to prove that the Claimants absconded or deserted the work place or that they were taken through a fair hearing before termination of employment, the court is satisfied that termination of the Claimant’s employment by the Respondent was unfair for want of a substantive justification and procedural fairness and are as a consequence entitled to the compensation as provided by the provisions of the *Employment Act*, 2007.



## Reliefs

### a. Declaration

115. Having found that termination of the Claimant's employment was unfair for want of fairness as ordained by Section 45 of the [Employment Act](#), a declaration to that effect is merited.

### b. 12 months compensation

116. Having found that termination of the Claimants employment was unfair and their entitlement to compensation by dint of Section 49(1)(c) of the [Employment Act](#), 2007, the court has taken into consideration the fact;

- i. That the Claimants served the Respondent for periods between 2 years, 2 months and 4 years 4 months which is not long.
- ii. The Claimants had one previous notice to show cause but had been warned.
- iii. Neither of the Claimants appealed the dismissal or demonstrated his or her wish to remain in the Respondent's employment.
- iv. The Claimants substantially contributed to the termination of employment.

117. In the circumstances, the court is satisfied that the equivalent of one (1) month's salary is fair.

### c. Unpaid leave

118. None of the Claimants provided particulars on the pending leave days and when they accrued.  
The prayer is dismissed.

### d. Pay in lieu of notice

119. The Respondent adduced no evidence to prove that it accorded the Claimants the requisite one (1) month's notice or pay in lieu as ordained by Section 36 of the [Employment Act](#), 2007.

The prayer is merited.

### e. Overtime money due

120. The Claimants adduced no evidence of the amount claimed, number of hours and when it accrued and was not paid.

121. The single copy of a payslip belonging to the 3<sup>rd</sup> Claimant, Mr. Peter Nyakundi reveal that over-time was paid as it accrued.

In the absence of particulars, the claim is dismissed.

### f. Unpaid house allowance

122. Copies of the contracts on record reveal that the Claimants monthly salary was inclusive of house allowance.

123. Similarly, the payslip on record contain an entry for housing allowance.

The prayer is dismissed.



**g. Certificate of service**

124. The Claimants are entitled to certificates of service by dint of Section 51 of the [Employment Act](#), 2007.

125. In the upshot, judgement is entered for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Claimants against the Respondent as follows;

- a. Declaration that termination of the Claimants employment was unfair.
- b. Equivalent of one (1) month's salary.
- c. One (1) month's salary in lieu of notice.
- d. Certificate of service.
- e. Costs of this suit.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 3<sup>RD</sup> DAY OF OCTOBER 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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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**

