



**Anunda v Tiger Force Security Services Limited (Cause 73A of 2018)
[2023] KEELRC 3273 (KLR) (13 December 2023) (Judgment)**

Neutral citation: [2023] KEELRC 3273 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 73A OF 2018
DN NDERITU, J
DECEMBER 13, 2023**

BETWEEN

NORAH SHEM ANUNDA CLAIMANT

AND

TIGER FORCE SECURITY SERVICES LIMITED RESPONDENT

JUDGMENT

I. Introduction

1. The claimant commenced this cause by way of a statement of claim dated 10th September, 2018 filed in court on 11th September, 2018 through S. M. Omae & Co Advocates. As expected, the statement of claim is accompanied with a verifying affidavit, claimant's written statement, a list of documents, and copies of the listed documents.
2. The claimant is seeking the following -
 - a. A declaration that the Respondent has engaged in unfair labour practices contrary to Article 41 of *the Constitution* 2010.
 - b. A declaration that the Claimant was constructively dismissed by the Respondent.
 - c. A declaration that the Claimant's rights to fair labour practices, remuneration, reasonable working conditions, economic and social rights guaranteed and protected by Articles 41 and 43 of the Constitution 2010 have been violated by the Respondents.
 - d. Terminal dues in the sum of Kshs.901,140.35/= made up as follows:
 - i. Kshs.14,401.13/= being 1 month's salary in lieu of notice.
 - ii. Kshs.170,349.68/= being salary underpayment.



- iii. Kshs. 59,302.45/= being unpaid house allowance.
 - iv. Kshs.55,153.35/= being leave earned but not taken.
 - v. Kshs.357,360.00/= being rest days worked.
 - vi. Kshs.68,037.60/= being public holidays worked.
 - vii. Kshs.26,263.50/= being service pay.
 - viii. Kshs.150,272.64/= being compensation for wrongful dismissal at the rate of 12 months gross salary in terms of Section 49(1)(c) of the Employment Act Laws of Kenya.
- e. Compensation in terms of Article 23(3)(e) of the Constitution, 2010.
 - f. An order that the Respondent remits all the statutory deductions due to the National Social Security Fund and National Hospital Insurance Fund in respect of the Claimant.
 - g. A certificate of service
 - h. Interest on d) and e) above.
 - i. Costs of this suit with interest.
 - j. Any other or further relief the court may deem fit to grant.
3. On 1st October, 2018 the respondent entered appearance in person and filed a response to the claim praying that the claimant's cause be dismissed with costs for want of merits.
 4. The claimant filed a reply to the response to the claim reiterating the contents of the statement of claim and pleading that the defence be dismissed and judgment entered in her favour as prayed.
 5. On 30th January, 2019 the respondent appointed Nyagaka S. M. & Co. Advocates to act for it in the matter and filed a witness statement by Evans Kosgei Kipng'eno (RW1) on 12th February, 2019.
 6. The cause came up for hearing in open court on 1st March, 2023 when the claimant (CW1) testified and closed her case. The defence was heard on the same day, RW1 testified and the respondent's case was closed as well.
 7. Counsel for both parties addressed the court through their respective written submissions. Mr. Ratemo for the claimant filed his submissions on 17th March, 2023, while Miss Matoke for the respondent filed on 28th March, 2023.

II. The Claimant's Case

8. The claimant's case is expressed in the statement of claim, the oral and documentary evidence by the Claimant (CW1), and the written submissions by her Counsel. The same is summed up as hereunder.
9. In her statement of claim the claimant states that she was employed as a regular full-time guard by Kikipeda Security Services on or about 1st September, 2015. It is pleaded that thereafter the said employer changed name to that of the respondent herein.
10. She pleads that she served for over two years working from 6am to 6pm for seven days a week without off-days and without pay for overtime or the public holidays worked. She pleads that she was neither issued with a contract of service nor with pay-slip, and that she was not given housing accommodation or housing allowance. Further, she pleads that she was not allowed to take annual leave for the entire period of service.



11. It is also pleaded that while the respondent made statutory deductions from her salary to be remitted to NHIF and NSSF the respondent did not remit the same as per the law.
12. The claimant states that on or about June, 2018 the respondent unilaterally converted her month to month oral contract into casual employment engaging her for one day per week and her pay was calculated on hourly rates instead of a fixed monthly salary as agreed.
13. It is pleaded that from June, 2018 the respondent also failed, refused, and or neglected to pay to the claimant her salary which then forced the claimant to resign effective 31st August, 2018. It is pleaded that the conduct of the respondent amounted to constructive dismissal and that the rights of the claimant to fair labour practices were violated.
14. It is pleaded that despite demand made and notice of intention to sue issued to the respondent has failed and or refused to settle the claim leading to the filing of this cause.
15. In her testimony in court, the claimant reiterated the foregoing pleadings and adopted her filed statement. She also produced as exhibits her two documents filed alongside the statement of claim as exhibits 1 and 2 – a demand letter and a response thereto, respectively.
16. In her oral testimony, the claimant alleged that she was wrongfully, unfairly, and unlawfully dismissed.
17. In cross-examination, the claimant stated that she was employed by Kikipeda in September, 2015 and that the said entity later on changed its name to that of the respondent herein. She admitted that she did not have any documentary evidence in support of that allegation.
18. She admitted that she stopped working on 31st August, 2018 due to lack of pay from the respondent which the respondent had hitherto paid through her account at Equity Bank. She admitted that she did not write a letter to register her complaints and reason for the resignation. She insisted that her salary, as at the time of resignation, was being paid by the respondent and not by Kikipeda Security Services.
19. It is on the basis of the foregoing evidence and circumstances that the claimant is seeking that judgment be entered in her favour as prayed in the memorandum of claim. The submissions by her counsel shall be considered in the succeeding parts of this judgment.

III. The Respondent's Case

20. The respondent's case is contained in the statement of response to the claim, the oral and documentary evidence adduced through RW1, a supervisor at the respondent, and the written submissions by its Counsel, as summarized hereunder.
21. In the response to the claim the respondent denied ever employing the claimant on full-time basis or that there was an employer-employee relationship between the parties herein of whatever form. Further, presumably without prejudice to the foregoing, it is denied that the claimant worked for the respondent for a continuous period of two years and that she worked from 6am to 6pm each day and on public holidays without pay. It is even denied that a demand and notice of intention to sue was served upon the respondent, notwithstanding that there is even a response to the demand and notice of intention to sue.
22. It is on the basis of the foregoing that the respondent prays that the claimant's cause be dismissed with costs. The submissions by counsel for the respondent shall be considered in the succeeding parts of this judgment alongside those by counsel for the claimant.



IV. Submissions by Counsel

23. The claimant's counsel identified two issues for determination – Whether the claimant was an employee of the respondent, and, whether the claimant is entitled to the reliefs prayed for.
24. On the first issue, it is submitted that while the respondent in its pleadings denies that the claimant was their employee it is in contrast alleged that the respondent owes the respondent nothing admittedly arising from an employment relationship and that the respondent settled all dues payable to the claimant. In the same token, it is submitted that the respondent alleges that the monthly salary payable to the claimant included house allowance and that the statutory deductions made were duly remitted to NSSF and NHIF. Further, it is submitted that the respondent pleaded that the claimant did not issue a notice before terminating her services. It is submitted that in the pleadings the respondent admits and in the same token denies the employer-employee relationship between it and the claimant.
25. It is urged by counsel for the claimant that a party is bound by the pleadings filed and that a party cannot approbate and reprobate -deny and admit - at the same time. Counsel has cited *Al Husnain Motors Ltd V Joshua Matagaro Michira (2021) eKLR* in laying emphasis on this issue concluding that the respondent has admitted in its response that indeed the claimant was their employee and that there was an employer-employee relationship between the parties herein.
26. Further, counsel has submitted that from the response to the demand letter and notice of intention to sue it is unequivocal that an employer-employee relationship existed. The said reply by respondent's lawyers was produced as an exhibit by the claimant without any objection. The relevant part of the letter states as follows –

“Our instructions are that when our client employed yours they were in agreement that her engagement was pursuant to availability of work placement opportunities and hence payment for the time engaged.

That in recent times due to harsh economic times there has been lack of placement opportunities hence her work placement reduced to once a week to which she has been paid for each and every time she has reported for her duties.

It is therefore untrue that our client has subjected yours to any unbearable working conditions in any way, she has been well compensated for the days she has worked for our client and hence these allegations are unfounded.”
27. It is submitted that it is beyond peradventure that the claimant was an employee of the respondent as pleaded and testified by the claimant and the court is urged to find and hold as such.
28. On whether the claimant should be granted the reliefs sought it is submitted that her right to fair labour practices under Article 41 of *the Constitution* was violated.
29. Further, it is submitted that based on *Coca Cola East & Central Africa Limited V Maria Kagai Ligaga (2015) eKLR* it is as a direct consequence of respondent's failure to pay salary that the claimant resigned and that the same amounted to constructive dismissal.
30. It is on the basis of the foregoing submission that counsel for the claimant urges the court to judge in favour of the claimant as prayed in the statement of claim. The submission on the reliefs shall be analyzed and considered below.
31. On the other hand, counsel for the respondent identified four issues for determination – Whether the claimant was employed by the respondent; whether the claimant was constructively dismissed by the



- respondent; whether the claimant is entitled to the reliefs sought; and, who should pay the costs of the suit (cause).
32. In regard to the first issue, it is submitted that although parties to a cause are bound by their pleadings as filed, pleadings are mere allegations and not evidence and that whichever way pleaded or alleged a party has to prove an allegation and a cause on a balance of probability for the court to judge in favour of such party. Counsel has cited *Netah Njoki Kamau & Another V Eliud Mburu Mwaniki (2021) eKLR* in support of that proposition.
 33. It is submitted that the reply to the demand letter is not an admission or evidence that an employer-employee relationship existed between the parties herein. It is submitted that the said reply to the demand letter only states that the claimant was to be engaged on need basis subject to availability of work.
 34. Further, it is submitted that the claimant was originally employed by Kikipeda Security Services and that there is no evidence adduced to prove that this entity is the same as or connected to the respondent herein. It is also submitted that the claimant has not proved that there existed an employer-employee relationship and that she did not challenge the respondent to produce employment records. Counsel has cited *Casmur Nyankuru Nyaberi V Mwakikar Agencies Limited (2016) eKLR* in laying emphasis that an employee should challenge an employer to produce such documents as the employee may wish to rely on in a cause. Failure to do so cannot and should not be taken against the employer, it is so submitted.
 35. Counsel has submitted that the claimant failed to produce any shred of evidence to prove employment and as such there is no basis for a judgment in favour of the claimant. Counsel has cited *Kenya Commercial Food & Allied Workers Union V Mwana Black Smith Limited (2013) eKLR* in asserting that the legal burden on the claimant to prove existence of employer-employee relationship was not discharged. It is submitted that the claimant failed to call independent evidence, may be a co-worker, photographs of her wearing uniform assigned to her by the respondent, describe her duties and the location or site where she executed such duties, et al.
 36. On the second issue on whether the claimant was constructively dismissed, it is submitted that since the claimant was not able to prove employment the issue of dismissal or termination does not arise.
 37. The submissions on the other two issues on reliefs and costs shall be dealt with in the respective portions of this judgment hereinafter.

V. Issues for Determination

38. This court has carefully and dutifully gone through the pleadings filed, the oral and documentary evidence tendered from both sides, and the written submissions by counsel for both parties. The court identifies the following issues for determination –
 - a. Was the claimant an employee of the respondent?
 - b. What was the nature of the employment relationship between the claimant and the respondent?
 - c. If (a) above is in the affirmative, was the claimant unfairly and unlawfully terminated or constructively dismissed by the respondent or did she voluntarily resign?
 - d. If (c) above is in the affirmative is the Claimant entitled to the reliefs prayed for?
 - e. What orders are appropriate on costs?



VI. EMPLOYMENT

39. There is the basic and cardinal rule of evidence that he who alleges shall prove. In civil proceedings the standard of proof is on a balance of probabilities as opposed to criminal cases where the standard is that of beyond reason doubts – See Sections 107 & 108 of the *Evidence Act*.
40. In the understanding of this court the above provisions of the law mean that, unless the burden of proof is shifted by a specific provision of the law, the burden of proving any allegation is on the party who makes that allegation, and the incidence of the burden is on the party who would fail if no evidence is adduced on a specific contested issue.
41. In this cause the claimant made several allegations in terms of her alleged employer-employee relationship with the respondent. First, the claimant alleged that she was originally employed by Kikipeda Security Services on 1st September, 2015 through an oral contract. Secondly, the claimant alleged that at some point the said employer changed name to Tiger Force Security Services Limited, the respondent herein. Thirdly, the claimant alleged that she was paid her salary through her account with the Equity bank.
42. An employment contract, or a contract for service, may be written or oral. The *Employment Act* (the Act) defines a contract of service as –
- “An agreement, whether oral or in writing and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership”
43. It was therefore incumbent upon the claimant to prove that indeed there was an employer-employee relationship between the respondent and herself. This may have been done by way of oral or documentary evidence. It is not enough to just allege in the pleadings and leave it at that. For example, the claimant ought to have availed evidence of payment of salary into her alleged bank account whether the account is still active or inactive. She could also have called a former co-worker to testify in support of her case, that she was indeed an employee as alleged. The claimant did not do any of the above and hence the only evidence is her word of mouth which is vehemently denied by the respondent.
44. It was also incumbent upon the claimant to prove that indeed her original employer Kikipeda Security Services is the same legal entity that changed its name to that of the respondent and that indeed both of the entities are one and the same and that indeed they both paid her salary during the respective period when she was in employment of each of them. Again, no evidence was adduced in support of this allegation.
45. The only evidence adduced in support of the existence of the employment contract between the parties, beyond the oral evidence by the claimant, is the demand letter and the notice of intention to sue by her lawyers and the response thereto by lawyers for the respondent. The relevant passages of the response to the said demand notice dated 1st September, 2018, were reproduced verbatim in an earlier part of this judgment. The respondent indeed admitted that the claimant was offered employment by the respondent but on casual terms based on availability of work and that the pay was based on hours worked. In the said letter the respondent’s lawyer further informed that due to lack of opportunities the claimant’s working hours had reduced to one day per week and that she had been paid for all hours worked.
46. It is with the above background and the exchange leading to a stalemate that the claimant filed this cause. Sections 10 and 74 of the Act places an obligation upon an employer to keep records of



employment and to avail the same for scrutiny and inspection by labour officers. Mutatis mutandis, when a dispute as to the terms, conditions, and or nature of an employer-employee relationship arises in court, it is upon the employer to avail such documents without waiting for prompting. It is ridiculous and unreasonable to expect the employee to retain and or maintain a parallel record of his employment. While the claimant alleged a month to month contract that lasted from September, 2015 to August, 2018, the respondent alleges that the claimant was engaged on need basis subject to availability of work. The respondent as the employer was under a legal burden to disapprove the allegation by the claimant based on the above cited law that places an obligation upon the respondent to prepare, retain, and maintain employment records. Failure to avail such records entitles the court to presume that the respondent has withheld that evidence as the same would be against it if produced in court. In other words, the incidence of the burden of proof was upon the respondent.

47. Likewise, the allegation by the claimant that she was an employee of the respondent is not denied specifically in the said letter. It is the terms and nature of the employment that is disputed and, as the court has found above, the respondent failed and or refused to dislodge the allegation by failing to avail employment records that it ought to have kept and maintained in accordance with the law.
48. Therefore, in absence of evidence pointing otherwise in answer to issues (a) and (b) above, the court finds and holds that indeed the claimant was an employee of the respondent on month to month basis as pleaded by the claimant and supported with her oral and documentary evidence.
49. In regard to issue (c) it is the claimant's case that from about June, 2018 the respondent unilaterally and without notice changed the terms of their oral contract and placed her on call wherein she was allocated work for only one day a week and was not paid a single penny as from June to August, 2018 when she decided to resign due to the unbearable working conditions imposed on her by the respondent. Again, once this allegation was made in the statement of claim, the respondent ought to have availed in court records to prove that indeed it did not unilaterally change the terms and conditions of employment as alleged and that the terms of engagement were always and remained the same. For example, once the claimant alleged that she was not paid a single penny from June to August, 2018 the respondent ought to have dislodged and disproved this allegation by simply availing a record of payments of salary to the claimant for those months.
50. The basic obligation of an employee is to avail his/her labour as per the agreed terms and conditions and as lawfully directed by the employer. On the other hand, the employer is under an obligation to first and foremost pay for the said labour and abide by the lawful terms and conditions of the relationship. Where an employer fails to pay for the labour supplied, then, the very basic term of the contract is breached. The employer subjects an employee to pain, agony, and indignity when it fails to pay salary or wages as agreed. It is unfair labour practice.
51. In my view, if and where an employer fails to meet the basic terms and conditions of employment, such as failing to avail work and failing to pay salary or wages, the employee may leave such employment, with or without notice, as such unfair labour practices amount to constructive dismissal – See Coca Cola East & Central Africa Limited V Maria Kagai Ligaga (Supra).
52. The evidence on record is that the claimant left and or verbally resigned from employment of the respondent due to lack of allocation of working time and non-payment of salary or wages for work done. It is the view and holding of this court that the claimant was constructively dismissed by the respondent for the blatant and adamant unfair labour practices by the respondent as outlined above.
53. In conclusion in regard to issues (a), (b), and (c) it is the finding and holding of the court that the claimant was an employee of the respondent, in whatever name, as a guard from September, 2015 to August, 2018, and that the claimant was constructively dismissed by the respondent's conduct in



unilaterally changing the terms and conditions of employment from June, 2018, and by failing to pay the agreed monthly salary. The respondent thus subjected the claimant to unbearable working conditions which amounted to unfair labour practice. It is so held and declared.

VII. Reliefs

54. Having found and held as above, the court shall now consider each of the reliefs sought by the Claimant as hereunder. The reliefs sought are also set out in the introductory part of this judgment.
55. It is important to state that having taken the position that the claimant was not their employee, the respondent's case and submission is that she is not entitled to any of the reliefs sought.
56. Prayer (a) is for a declaration that the respondent engaged in unfair labour practices contrary to Article 41 of *the Constitution*. The court has found and held that the respondent purported to unilaterally change the terms of employment and then failed and or refused to pay to the claimant her monthly wages. The court has no difficulties in making the declaration sought based on Article 41(1) & (2)(a) & (b) of *the Constitution*.
57. Prayer (b) is for a declaration that the claimant was constructively dismissed by the respondent. The court has found and held as such in the foregoing parts of this judgment and a declaration is hereby made as sought.
58. Prayer (c) has been resolved in the holding on prayer (a) above. There is no specific pleading and evidence adduced as to how the claimant's economic and social rights under Article 43 of *the Constitution* were violated. Of course, it is not farfetched to fathom that once the respondent failed and or refused to pay her salary and purported to unilaterally change the terms of employment the claimant was socially and economically handicapped. However, the decisions in Anarita Karimi Njeru V Republic (No. 1) (1979) KLR 154 and Mumo Matemu V Trusted Society of Human Rights Alliance (2014) eKLR demand that allegations of constitutional violations be specifically pleaded and proved. As shall be seen below, failure by the claimant to specifically plead and prove the constitutional rights violations and or breaches disinherits her the prospect of compensation under that head.
59. Prayer (d)(i) is for one month's pay in lieu of notice in the sum of Kshs.14,401/=. The evidence by the claimant, and the holding by the court, is that she was a month to month employee of the respondent and that her last gross salary was Kshs.14,401/=. The respondent, as analyzed and held elsewhere in this judgment, has not produced any records to disapprove this gross monthly pay. In the circumstances the claimant is granted this payment in lieu of notice, in view of the finding that the claimant was constructively dismissed without notice from the respondent, in the sum of Kshs.14,401/=.
60. Prayer (d)(ii) is for salary underpayment in the sum of Kshs.170,349.68. The court has gone through the pleadings filed, the evidence tendered by the claimant, both oral and documentary, and the written submissions by her counsel and no support or explanation has been rendered to justify this claim. No legal notices or wage regulations have been cited in demonstrating that the claimant was underpaid. It is not enough for a party to plead and make allegations to the face of the court and then expect the court to grant the same without the alleging party proving its claim to the required standard. This claim by the claimant is unsupported and unsubstantiated and the same is hereby denied and dismissed.
61. Prayer (d)(iii) is for unpaid house allowance in the sum of Kshs.59,302.45. The particulars of the same are provided for and calculated from September, 2015 to August, 2018. Other than the general denial that the claimant was not their employee, the respondent has not provided any records to prove that indeed the claimant was either provided with housing or paid commensurate house allowance



- in lieu thereof. In the circumstances, this claim is allowed and the claimant awarded the sum of Kshs.59,302.45.
62. Prayer (d)(iv) is for compensation for leave earned but not taken in the sum of Kshs.55,153.35. The particulars of the same are provided for in the statement of claim. It was incumbent upon the respondent to disprove and dislodge the same by way of production of employment records which it failed to do. In the circumstances this claim is allowed and the claimant awarded Kshs.55,153.35.
 63. Prayer (d)(v) is for a sum of Kshs.357,360/= being rest days worked. However, the specific days worked have not been particularized. As stated above, it is not enough for a party to plead a case and throw it to the face of the court asking the court to grant the orders sought. The court is an impartial umpire insulated from sympathetic, empathetic, whimsical, or capricious tendencies. A party has to prove its case to the required standards in order to be granted the orders sought. The court agrees with the submissions by the respondent's counsel that failure by the claimant to provide the particulars of the days allegedly worked and, in any event, the particulars given imply that the claimant should be paid for this on hourly basis which completely ruins the claim. This request is denied and dismissed.
 64. Prayer (d)(vi) in the sum of Kshs.68,037.60 for alleged public holidays worked is equally faulty for lack of particulars and proof and is hereby denied and dismissed. On which public holidays did the claimant work during her period of employment? Counsel for the respondent has cited Rogoli Ole Manadieggi V General Cargo Services Limited (2016) eKLR in demonstrating that it is not enough for a party to plead or make an allegation. Such pleas and allegations must be proved by evidence to gain traction of admissibility and found basis for an award of a remedy or relief.
 65. Prayer (d)(vii) is for service pay in the sum of Kshs.26,263.50. The particulars of this claim are provided. It is the evidence of the claimant that the respondent deducted statutory dues from her salary yet the same was not remitted to the authorities. This means, inter alia, that the claimant was left without a pension or retirement benefits as no evidence of a retirement scheme have been availed. In the circumstances, this claim is allowed as prayed in the sum of Ksh.26,263.50.
 66. Prayer (d)(viii) is for compensation for wrongful and unlawful dismissal. The claimant is seeking compensation equivalent to 12 months gross pay in the sum of Kshs.150,272.64. The court has critically and dutifully examined the evidence and circumstances of this cause in the foregoing paragraphs. I have also considered the factors under Section 49(4) of the Act and applied the same to this cause.
 67. The parties have not expressed willingness to re-engage; the claimant did not contribute to her constructive dismissal based on the evidence on record as analyzed in another part of this judgment; the employee worked for the respondent for over three years; the employee was ready and willing to continue working for the respondent bar the constructive dismissal; no terminal benefits were paid to the claimant upon dismissal; and the respondent was unfair, unreasonable, inconsiderate, and dispassionate in the dismissal.
 68. It is unfortunate that the respondent treated the claimant with such indignity and contempt for reasons not availed in court other than the mere, dubious, and callous position taken that the claimant was not their employee.
 69. In the considered view of the court an award of compensation equivalent to six months gross pay shall be fair and reasonable in the circumstances of this cause. The claimant is therefore awarded Kshs.14,401.13 * 6= Kshs.75,136.32.
 70. Prayer (e) is for compensation under Article 23(3)(e) of *the Constitution*. This prayer shall fail on several fronts. Firstly, as noted elsewhere above, threat to, breach, or violation of constitutional rights



shall be specially pleaded and proved – See Anarita Karimi and Mumo Matemu (Supra). Secondly, the foregoing provisions of *the constitution* apply to proceedings brought under Article 22 of *the Constitution*. The matter herein is a cause for wrongful and unlawful dismissal and the claimant and her counsel have not persuaded or convinced this court, either by evidence or submissions, that an order of compensation for constitutional rights violations is an appropriate one in the circumstances. In any event, the court has already ordered for compensation and other awards above which should reasonably, fairly, and justly compensate the claimant based on the employer-employee relationship that is the basis of the contract between the parties and the foundation of this cause.

71. Prayer (f) is for an order that the respondent remit all statutory deductions made from her pay to the relevant authorities. The deductions made are not particularized and the institutions to which the remittance is to be made are only named in the pleadings as NSSF and NHIF with no supporting evidence as to how much is due to each one of them. Needless to state that those institutions or authorities have not been joined as parties to this cause. This prayer shall fail and is hereby dismissed.
72. Prayer (g) is for a certificate of service under Section 51 of the Act. This is a right to every employee no matter the circumstances of the termination or separation. The respondent is hereby ordered to issue and deliver to the claimant a certificate of service within 30 days of this judgment.
73. Prayer (h) is for interest on any amount awarded and the same is allowed at court rates from the date of this judgment till payment in full.

VIII. Costs

74. Prayer (i) is for costs of the cause and interest. Costs should ordinarily follow the event and the claimant is thus awarded costs of this cause with interest thereon at court rates from the date of taxation till payment in full.

XI. Disposal

75. In disposal of this cause, this court issues the following orders: -
 - a. A declaration be and is hereby issued that the claimant was an employee of the respondent on a month to month contract.
 - b. That constructively by its conduct the respondent wrongfully, unfairly, and unlawfully dismissed the claimant.
 - c. Consequently, the claimant is awarded a sum of Kshs.230,256.32 made up as follows –
 - i. Notice payKshs.14,401.00
 - ii. House allowance in arrearsKshs.59,302.35
 - iii. Leave pay Kshs.55,153.35
 - iv. Service pay Kshs.26,263.50
 - v. Compensation Kshs.75,136.32
 - TotalKshs.230,256.52This amount is subject to statutory deductions.
 - d. The above amount shall earn interest at court rates from the date of this judgment till payment in full.



- e. The respondent shall issue and deliver to the claimant a certificate of service within 30 days of this judgment.
- f. Costs of the cause and interest thereon to the claimant.
- g. All the other reliefs are denied and dismissed.

DATED, DELIVERED VIRTUALLY, AND SIGNED AT NAKURU THIS 13TH DAY OF DECEMBER 2023.

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DAVID NDERITU

JUDGE

