



REPUBLIC OF KENYA



**Thairu v Registered Trustees Fatima Mission Hospital (Cause
1708 of 2017) [2022] KEELRC 65 (KLR) (27 May 2022) (Judgment)**

Neutral citation: [2022] KEELRC 65 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1708 OF 2017**

J RIKA, J

MAY 27, 2022

BETWEEN

SOLOMON GITHINJI THAIRU CLAIMANT

AND

REGISTERED TRUSTEES FATIMA MISSION HOSPITAL RESPONDENT

JUDGMENT

1. This Cause is undefended.
2. It was certified as such by the Court, on 13th October 2021.
3. It was heard and closed on formal proof, on 2nd February 2022.
4. The Claim was filed on 27th August 2017.
5. The Claimant states and testified, that he was employed by the Respondent as a Nurse Anaesthetist, on or around 1st January 2005, on a monthly salary of Kshs. 30,000. His salary was reviewed later to Kshs. 44,275.
6. He was suspended without pay by the Respondent, on 20th February 2016. He resumed on 21st March 2017, when he was unfairly and unlawfully dismissed. He was not issued notice. He was not given valid reason.
7. He prays for Judgment against the Respondent for: -
 - a. 1-month salary in lieu of notice at Kshs. 44,275.
 - b. Cell [phone?] allowance December 2016 to February 2017 at Kshs. 67,500.
 - c. Unremitted deductions to Waumini Sacco at Kshs. 557,013.
 - d. Lost dividends and interests at Kshs. 82,486.



- e. Uniform allowance 2011 to 2016 at Kshs. 60,000.
 - f. Gratuity at 20% for 6 years at Kshs. 637,560.
Total...Kshs. 1,448,834.
 - g. Declaration that the Claimant was unfairly and unlawfully terminated.
 - h. Compensation for unfair termination, equivalent of 12 months' salary at Kshs. 531,300.
 - i. Punitive and aggravated damages.
 - j. Costs.
8. The Claimant adopted his Witness Statement and Documents in his formal proof.
 9. The issues are whether the Claimant's contract was unfairly and unlawfully terminated by the Respondent; and whether the Claimant merits the remedies sought.

The Court Finds: -

10. The Claim is undefended, and from the outset, there is no evidence available to the Court, justifying termination in terms of Section 47[5] of the *Employment Act*, 2007.
11. The Claimant has through his oral and documentary evidence, established that his contract was unfairly terminated. He discharged his evidential burden under Section 47[5] of the *Employment Act*, 2007. He was suspended without pay by the Respondent, from 20th February 2016, allegedly for failure to avail certified academic and professional certificates. He was advised his contract would be terminated, if he did not supply these. There no notice of termination. There was no letter to show cause. There was no hearing.
12. He had worked for 5 years. He initially worked on contract which was renewed. He expected to go on working. He did not contribute to the circumstances, leading to termination. He seeks various prayers adopting his basic, rather than gross salary, as the base rate. He is granted compensation for unfair termination, equivalent of 5 months' salary at Kshs. 221, 375.
13. He is granted notice at Kshs. 44,275.
14. He did not articulate his prayer for car allowance, in his evidence.
15. There was similarly no evidence of unremitted Waumini Sacco deductions. The Claimant did not give details of this prayer. There are entries in the pay slip, indicating that there were Sacco share deductions of Kshs. 3,000 monthly. But there was no evidence from the Claimant, to support his claim, that deductions were not remitted. There is in no evidence for lost dividends and interests, and for uniform allowances. Lastly, the prayer for gratuity is not founded on any law or clause in the contract. The prayer pleaded as cell allowance is not supported by the Claimant's contract. These prayers are declined.
16. The Claimant has not established the prayer for punitive and aggravated damages for breach of constitutional rights. This is not a constitutional dispute. It is a dispute based on a contract, which is exhibited by the Claimant. The remedies sought are largely based on statutes and contract. There is no constitutional moment in the dispute. Even if there was a constitutional moment, how does the Claimant justify punitive and aggravated damages?
17. Costs to the Claimant.



In Sum, It Is Ordered: -

- a. It is declared that termination was unfair.
- b. The Respondent shall pay to the Claimant: Kshs. 221,375 in compensation for unfair termination; and notice at Kshs. 44,275 – Kshs. 265,650.
- c. Costs to the Claimant.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

Court Assistant: Emmanuel Kiprono

Waiganjo Wachira & Company Advocates for the Claimant

No appearance for the Respondent

