



**Matsesho v Newton (Cause 9 of 2019) [2022] KEELRC 1554 (KLR) (29 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1554 (KLR)

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MALINDI**  
**CAUSE 9 OF 2019**  
**BOM MANANI, J**  
**JULY 29, 2022**

**BETWEEN**

**CHRISTONE CHARO MATSESHO ..... CLAIMANT**

**AND**

**CHARLES RICHARD NEWTON ..... RESPONDENT**

**JUDGMENT**

1. This is a claim for unfair termination. Through it, the Claimant has sued the Respondent alleging that the Respondent unlawfully terminated his services. Consequently, the Claimant seeks compensation for the alleged wrongful act by the Respondent.
2. The Respondent has opposed the claim. In the Respondent's view, the termination of the Claimant was lawful. As such, this claim is without merit and ought to be dismissed with costs to the Respondent.

**The Facts**

3. From the pleadings and evidence on record, the parties are in agreement that there was an employer-employee relation between them. Although the Claimant asserts that this relationship commenced in 2000, it is the Respondent's case that he first employed the Claimant in 2006 as a farmhand before promoting him between 2010 and 2012 to the position of farm manager.
4. It is common ground between the parties that the Claimant's duties included paying: other employees' salaries; water: and electricity bills on behalf of the Respondent. He was also entrusted with the task of supervising and paying other individuals who were occasionally engaged by the Respondent on the farm to undertake routine repair and construction works.
5. Due to the nature of the Claimant's engagement, it is the Respondent's case that he added the Claimant as a signatory to the Respondent's bank account so that the Claimant could access funds with ease. This account was also run by the Respondent's partner by the name Karren Maaik Visser. Either of



- the three could access and draw funds from the account. The Claimant does not dispute the existence of this arrangement.
6. According to the Claimant, the Respondent terminated his contract of service in August 2014 without lawful cause. It is the Claimant's case that the Respondent falsely accused him of stealing some Ksh 710,165/= meant for use at the Respondent's farm. Without allowing the Claimant a chance to defend himself, the Respondent went ahead to terminate his services.
  7. The Claimant asserts that the Respondent did not give him notice of termination contrary to the law. And neither did the Respondent pay him salary in lieu of notice.
  8. At the time of termination, the Claimant asserts that he had not been paid his salary for July 2014. And neither was his salary for August 2014 paid.
  9. It is the Claimant's further case that after he was terminated, the Respondent instigated a criminal complaint against him. As a result, he was arrested and charged with the offense of stealing. The case was however terminated for want of evidence.
  10. The Claimant further asserts that he never utilized his leave days during the tenure of his contract with the Respondent. Besides, he alleges that the Respondent did not remit statutory dues on his behalf including dues to the National Social Security Fund.
  11. Proceeding on the premise that his termination was unlawful, the Claimant has prayed for various reliefs to include the following: -
    - a. A declaration that his termination was unlawful.
    - b. Payment of salary in lieu of notice.
    - c. Payment of salary for July and August 2014.
    - d. Service pay.
    - e. Pay for accrued leave.
    - f. Compensation for unlawful termination.
    - g. Interest on the monetary awards sought.
    - h. Costs of the case.
  12. In response, the Respondent asserts that he entrusted the Claimant with the role of farm manager to help the Respondent manage his Malisho home at Bofa in Kilifi County. As part of his duties, the Claimant was to assist the Respondent to pay the Respondent's electricity and water bills as they became due. Besides, the Claimant was to also pay salaries for both himself and other workers on behalf of the Respondent. He was also to oversee other activities at the home including supervising construction and repair works in the compound and paying the casuals engaged for such works.
  13. The Respondent states that in order to ensure ease of execution of this mandate, he made the Claimant a co-signatory to his bank account. With this, the Claimant was able to access the account and draw funds to attend to the various activities aforesaid.
  14. According to the Respondent, he began suspecting that the Claimant was involved in dishonest activities when the Claimant travelled to Nairobi on January 21 and 22 and September 12, 2013 and withdrew cash from the joint account on the three occasions without authorization and for an unknown purpose. It is these activities that triggered an informal investigation by the Respondent



against the Claimant leading to the unearthing of evidence of misappropriation of money by the Claimant.

15. It was the Respondent's case that his investigations revealed that the Claimant had abused the trust bestowed on him by the Respondent by diverting funds meant for settling various bills on the farm to his own use. For example, whilst the Claimant had been given money to pay electricity and water bills, none of these bills were paid. Yet, the Claimant made entries in the cashbook purporting to show that the bills had been settled. There was also money allocated for the purchase of cattle and payment of other workers' salary which had been entrusted with the Claimant but which was not applied for the intended purpose.
16. The Respondent asserts that when he unearthed these misdeeds, he summoned the Claimant to a meeting in early August 2014 to explain where the money had gone. However, the Claimant was neither able to account for the cash nor refund it. This was despite the Respondent giving the Claimant time to go and look for the money and pay it back. As a result, the Claimant was relieved of his duties.
17. The Respondent denies that the Claimant is entitled to the reliefs that he prays for. In the Respondent's view, there were valid reasons to justify the summary termination of the Claimant. Further, the Claimant was only terminated after he had been given an opportunity to account for the whereabouts of the lost cash and given a chance to refund the same. It was the Respondent's case that it is only after the Claimant failed to refund the cash that he was terminated on August 8, 2014 in the presence of a fellow worker called Charlotte Kadilo Mwiga who incidentally was the Claimant's wife.

#### **Issues for Determination**

18. In his pleadings, the Claimant isolated the issues for determination as: unfair termination; and compensation for unfair termination. The Respondent did not file his version of issues. However, he framed his version of issues for determination in his written submissions.
19. The pleadings on record point to the following as questions for determination in the cause:
  - a. Whether the Claimant's contract of employment with the Respondent was terminated fairly.
  - b. Whether the Claimant is entitled to the reliefs in the Statement of Claim.

#### **Analysis and Findings**

20. The parties gave oral testimony in support of their respective cases. At the close of the hearing, they filed their closing submissions. In my judgment, I have considered the pleadings on record, the oral and documentary evidence and the submissions by the parties.
21. The law on termination of employment is codified in the *Employment Act* as read with the *Constitution* of Kenya 2010. Article 41 of the *Constitution* provides for the right to fair labour practices. In my view, this right is wide enough to cover the right of an employee to require that a proposed termination of his employment is informed by valid reasons and is processed in a manner that observes the dictates of due process.
22. Under section 41 of the *Employment Act*, if an employer proposes to terminate the services of an employee on grounds of gross misconduct, poor performance or physical incapacity, the employer must notify the employee of the ground for termination in a language that the employee understands. This information should be given to the employee in the presence of another employee of his choice or a trade union official if he elects. In addition, the employer is obligated to hear the employee's representations in response to the accusations against him.



23. My understanding of this provision is that it requires the employer to: notify the employee of the charge against him; permit the employee to defend himself against the charge; make a determination and communicate the determination to the employee. In his defense, the employee is entitled to call evidence from other persons. He is also entitled to be represented. The burden is on the employer to ensure that these rights are availed the employee.
24. On the other hand section 43 of the Act obligates the employer to prove the grounds for terminating an employee. Where the employer fails to do so, the law raises a presumption in favour of the unlawfulness of the termination. Of course the law expects an employee to provide prima facie evidence in terms of section 47 of the [Employment Act](#) to prove unfair termination before the presumption aforesaid comes into play.
25. It should be noted that in proving the reasons for termination under section 43 of the [Employment Act](#), the employer is entitled to plead matters that he genuinely believed to exist and which would, if they were in fact in existence, provide valid grounds for terminating the employee. In other words, situations may arise where the employer genuinely believes that a ground for terminating an employee has arisen when in actual fact it has not. For example, the employer may have strong preliminary evidence pointing to the employee having committed an offense against the property of the employer only for subsequent investigations to clear the employee. If the employer shows that he acted on such evidence out of a genuine belief that the employee had committed the act, the termination would be on valid grounds.
26. The test is whether the action of the employer falls in the band of actions that would be considered reasonable in the circumstances. Put differently, the question would be whether another reasonable employer acting on the same set of facts would have reached a similar decision (see [Galgalo Jarso Jillo v Agricultural Finance Corporation](#) [2021] eKLR).
27. In the case before me, the Respondent has given a detailed account of losses of his funds which were in the hands of the Claimant. He has testified that the funds came into possession of the Claimant by reason of his employment to the Respondent. He has further testified that the funds were intended for paying various bills including workers' salaries, water and electricity bills and purchase of cattle. It was the Respondent's case that the funds were lost whilst in the hands of the Claimant.
28. In support of his claims, the Respondent produced a cashbook prepared by the Claimant. The book has entries for, among others, payments under the following heads of expenditure: salaries; electricity; water. From the entries on pages one (1) and sixteen (16) of the cashbook, the said payments were made between June 1, 2013 and October 8, 2013.
29. The Claimant did not dispute the fact that he was the author of the cashbook and that the entries related to the records of payments made by him on behalf of the Respondent in the Claimant's capacity as the Respondent's farm manager. Also important is that the Claimant did not dispute the fact that the entries related to expenses allegedly settled between June 2013 and October 2013 as suggested in the cashbook.
30. The Respondent then produced documents appearing at pages 24, 25, 26 and 29 of his list of documents showing that records at Kenya Power and Lightning Company Ltd showed that his electricity account was in arrears in excess of Ksh. 100,000/= as at February 2014. The document on page 29 gives a breakdown of what comprises the outstanding electricity bill. Clearly, the bill relates to the period falling between the years 2013 and 2014.



31. The document at page 30 of the Respondent's list of documents is a water bill advice note. It is addressed to the Respondent. Although it was issued on August 4, 2014, it relates to accrued water bills as at August 2013.
32. Documents numbers 31 and 32 are acknowledgements of settlement of salary arrears for Charlotte and Jackson, the other employees of the Respondent. Although the letters were drafted by the Respondent, they were signed by the respective employees. There was no evidence that they were coerced into signing them. Besides, in my view, the critical point raised by these letters is that they are acknowledgements of the fact that the Respondent had settled salary arrears due to the employees who signed them. As is clear from the documents the salary arrears accrued between January 2014 and July 2014. This falls within the period the Claimant had been entrusted to draw funds from the Respondent's account to pay, among others, staff salaries.
33. The evidence above points to the fact that the Claimant prepared records showing he had settled salaries for staff, water and electricity bills when he had not. The Claimant does not deny that he received some of the money for these various vote heads. In his evidence, he said that it is the Respondent's partner who diverted the cash meant for water and electricity bills to her personal use and told the Claimant to make entries in the cashbook suggesting that the funds had been applied for the intended purpose when in truth they had not. In his evidence, the said partner promised to settle the accounts as soon as she got money from the Respondent.
34. The Claimant stated that he permitted the Respondent's partner to do this because he felt accountable to her. What comes out from this evidence is that the Claimant was either engaged in some form of misapplication of the Respondent's funds or was willing to be used by the Respondent's partner in this apparent scheme of fraud and cover up through misleading entries in the cashbook. I find it difficult to describe this kind of conduct as anything but abuse of the trust the Respondent had invested in the Claimant.
35. Whatever explanation the Claimant had for what he did, the fact of the matter is that he tried to mislead the Respondent as to the true use of the funds that were entrusted to him. With the discovery by the Respondent that he had outstanding water, electricity and salary bills notwithstanding that he had given the Claimant funds to settle these bills, the Respondent had every reason to consider the Claimant as having engaged in acts of gross misconduct as contemplated under section 44 of the [\*Employment Act\*](#).
36. The fact that criminal charges against the Claimant arising from the same set of facts were terminated for lack of evidence in my view does not mean that the Respondent could not still validly terminate the Claimant under section 44 of the [\*Employment Act\*](#). All that section 44(4) (g) of the Act requires for an employer to terminate an employee is that he has reasonable and sufficient grounds to suspect that the employee has been involved in a criminal act which is injurious to the person or property of the employer.
37. I therefore find that the Respondent had valid reasons to terminate the Claimant. There was sufficient evidence to point at conduct bordering on gross misconduct on the part of the Claimant.
38. But sections 41, 43 and 45 of the [\*Employment Act\*](#) are not just concerned with the presence of valid reasons or grounds for termination. They also require of the employer to observe due process in processing the release of the offending employee. The employee must be: told what it is that he is accused of; allowed a chance to defend himself; allowed the opportunity to call witnesses in support of his case; and informed of the decision taken by the employer to terminate the employee's services



(see *Galgalo Jarso Jillo v Agricultural Finance Corporation* [2021] eKLR). Did the Respondent observe these procedural steps in handling the Claimant's case? I think not.

39. During cross examination of the Respondent, he stated that he convened a meeting with the Claimant and other persons around August 1, 2014 at which he demanded that the Claimant accounts for the funds he was given to buy cattle for milk production for orphaned children. At the meeting those present included: the Claimant; the Claimant's wife and co-employee; and the Respondent's partner.
40. As indicated, the agenda of the meeting was to ask the Claimant to account for money meant to purchase cattle. Nothing was raised in the meeting regarding loss of money meant for staff salaries, water and power bills. In the Respondent's own words, these latter items emerged after the Claimant had left after the meeting of August 1, 2014.
41. The Respondent was asked whether he had any other meeting with the Claimant after the meeting of August 1, 2014. He indicated that he held no other meeting with the Claimant.
42. The Respondent indicated that the Claimant left on August 1, 2014 to look for the money he had misappropriated relating to the purchase of cattle. That on August 8, 2014 after it became apparent that the Claimant was not in a position to refund the lost money, the Respondent took the decision to summarily dismiss him. That this decision was made in the presence of the Claimant's co-worker. However, the Claimant was not present at this latter meeting.
43. What emerges from these set of facts is that the Respondent did not formally subject the Claimant to an administrative disciplinary process. There is no evidence that the meeting of August 1, 2014 was a disciplinary session at which the Claimant was to offer a defense to the charge against him. And there is no evidence that the Claimant was informed that what was transpiring on August 1, 2014 was a disciplinary session which could lead to his termination.
44. In any event, there is no evidence of when the additional charges of loss of money meant to pay for water, electricity and staff salaries was communicated to the Claimant and whether he was offered an opportunity to respond to them. Further, between August 1, 2014 when the Claimant was asked to account for the cash meant to buy cattle and August 8, 2014 when he was terminated for misappropriating funds intended for: purchase of cattle; staff salaries; water; and electricity bills, there is no evidence of a disciplinary session having been conducted at least in respect of the latter charges. Worse still, the Claimant was not invited to the meeting of August 8, 2014 at which the decision to terminate him was taken.
45. The totality of the foregoing is that the Respondent may have had valid grounds for terminating the Claimant. However, he failed to follow the procedure laid down in articles 41, 43 and 45 of the *Employment Act* in terminating the Claimant.
46. Under section 45 of the *Employment Act*, where an employer fails to prove the reasons for termination and or demonstrate that he accorded an employee procedural fairness in the process leading to his termination, the termination becomes unfair. I will therefore declare the Claimant's termination unfair for want of procedural fairness in the process that led to his release.

## **Award**

47. I now turn to the question regarding the award of reliefs other than the declaration of unlawfulness of the Claimant's termination which I have done in the foregoing section. As stated in the foregoing sections of this judgment, the Claimant has prayed for several reliefs which the Respondent has opposed. I will consider the reliefs sought here below.



48. The Claimant has prayed for service pay under section 35(5) of the *Employment Act*. I do not think that he is entitled to this relief because his termination, whether or not regularly executed, was on account of gross misconduct under section 44 of the *Employment Act*. As stated by the defense, the Claimant's release from employment was not one contemplated under section 35 of the Act. Section 44 of the *Employment Act* is clear that an employer is entitled to summarily terminate an employee for gross misconduct without notice or if he elects, with less notice than that contemplated under section 35. In effect, the termination, in so far as it was not with the benefit of notice in terms of section 35 of the Act does not attract service pay. For this reason, this prayer is declined.
49. With regard to the prayer for salary for the months of July and August 2014, the legal position is that an employee who has worked is entitled to his salary for the time expended serving his employer unless the salary is withheld for some lawful reason (see Part IV of the *Employment Act*). There was no dispute that the Claimant had worked for the whole of July 2014 before he ran into trouble with his employer. In his evidence, the Claimant stated that he was not paid for this month. When the question was put to the Respondent whether the Claimant was paid for July 2014, his response was that the Claimant had withdrawn some cash from the joint account and that this withdrawal may have been towards his salary. However, there was no positive assertion by the Respondent that the Claimant's salary for July 2014 was settled.
50. In fact, contrary to the Respondent's evidence that the Claimant may have paid himself the July 2014 salary, paragraph 3.6.2 of the defense pleads an entirely different defense in respect of the July 2014 salary. By this paragraph, the Respondent suggests that he withheld the July 2014 salary in part refund of the sums misappropriated by the Claimant. Yet, no evidence in support of this plea in the statement of defense was presented to the court. The evidence that the Claimant paid himself the July 2014 salary is inconsistent with and does not find support in the Respondent's pleadings.
51. Further, although the Respondent may have genuinely believed he lost cash as a result of the Claimant's conduct, recovery of this money ought to have been the subject of a counter-claim now that the parties submitted to the court's jurisdiction. Even though an employer can exercise a right of recovery under section 19 of the *Employment Act*, it is not lost to me that an employee is entitled to challenge the lawfulness of such decision in which case the employer must demonstrate the right to recover.
52. Again, under section 112 of the *Evidence Act*, the employer being the ultimate custodian of records of payments of staff emoluments should ordinarily be able to provide evidence to establish payment of any emolument to an employee in the event of a dispute about such payment. This is because by virtue of his control of employment records in terms of section 10(6) of the *Employment Act*, the employer has, under section 112 of the *Evidence Act*, special knowledge of such facts.
53. In effect, I find that the Claimant having worked for the Respondent for July 2014 and there being no evidence that he was paid salary for this month, it is his right to recover this sum irrespective of the reasons for his termination. Indeed, section 18 (4) of the *Employment Act* renders this position clear when it provide that "where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all moneys, allowances and benefits due to him up to the date of his dismissal." Therefore, I award the Claimant Ksh 16,000/= being the salary for the month of July 2014.
54. As regards salary for August 2014, it is clear from the evidence that the Claimant left employment on August 1, 2014 allegedly to go and fetch the money that he had failed to account for. He was subsequently terminated on August 8, 2014 without having reported back on duty. Therefore, he did not work during the month of August and is not entitled to claim salary for this period.



55. Regarding leave entitlement, it was the Claimant's evidence that for the duration he worked for the Respondent, he never proceeded on leave. In response, the Respondent disputed this fact. In an effort to prove that the Claimant took his annual leave, the Respondent stated that the issue of when the Claimant should go on leave had been left to the Claimant's discretion. That he would determine when to take leave depending on when work at the Respondent's compound was least.
56. Further, the Respondent pointed to the three days the Claimant was said to have been away in Nairobi when he withdrew funds from the joint account as evidence of the Claimant having proceeded on leave. Specifically this was on January 21 and 22, 2013 and September 12, 2013. He further contended that the Claimant had been away from the compound in June and July 2014 and it was assumed that he had gone on leave. This evidence should be contradistinguished with paragraphs 3.7 and 3.7.1 of the Respondent's defense where he contends that the Claimant took his annual leave regularly as required by law and that the Respondent was going to furnish the court with the evidence of this.
57. Under section 28 of the *Employment Act*, annual leave is an entitlement of every employee who has been in continuous service for a period of at least one year. The law grants such employee a minimum of twenty-one (21) working days per year as annual leave. The Respondent's evidence that the Claimant was in Nairobi for three (3) days in January and September 2013 and left the compound in June and July 2014 is certainly no evidence of the Claimant having proceeded on leave as contemplated under section 28 of the *Employment Act*. By his own admission in the aforesaid paragraphs of the defense, the Respondent alluded to being in possession of the Claimant's leave record but did not provide them to court as would have been expected under the provisions of the Evidence and Employment Acts referred to earlier on in this judgment.
58. In my view, the evidence of the Claimant that he had not taken leave provided prima facie evidence that leave was not taken. Given the Respondent's own assertion that he would provide records to demonstrate the contrary, one would have expected this evidence from him in terms of section 10(6) & (7) of the *Employment Act* especially now that the Respondent was required under section 9 of the *Employment Act* to have caused the contract between him and the Claimant to have been reduced into writing.
59. In view of the foregoing, I find that the Claimant is entitled to pay in lieu of untaken leave. Again I should mention that in terms of section 18(4) of the *Employment Act* accrued leave benefits are strictly not affected by the circumstances under which the Claimant left employment. And the only way the Respondent would have exercised the right of set off in respect of the Claimant's leave dues is if he had filed a counter-claim within the limitation period.
60. A final thing on the leave entitlement issue relates to whether part of the Claim is time barred as pleaded by the defense. My personal view is that leave claims for every year are standalone claims. Consequently, I consider that perhaps claims for leave pay that fall outside three years from the date of institution of a suit to recover this benefit should be discounted on account of limitation in terms of section 90 of the *Employment Act* (see *Vipingo Ridge Limited v Swalehe Ngongwe Mpitta* [2022] eKLR). However, the Court of Appeal appears to hold a different view on the subject (see *G4S Security Services (K) Limited v Joseph Kamau & 468 others* [2018] eKLR) and as well *Rift Valley Railways (Kenya) Ltd -vs- Hawkins Wagunza Musonye & Others* (2019) eKLR relied on by the defense. For this reason, since the Claimant filed the current suit on 1<sup>st</sup> August 2017 following his termination on August 8, 2014, the claim for accrued leave pay is not time barred as it was presented within three years of the Claimant's termination. This is notwithstanding that at the time of filing the case some of the leave dues may have related to a period that was more than three years since they accrued.



61. In their submissions, the Respondents seek to rely on *Charles Nyaringo Rianga –vs- Hatavi Security Guards Ltd* (2019) eKLR to fight off the claim for accrued leave. In the decision my brother Radido J suggests that leave is forfeited if not utilized within 18 months after accrual. With respect, I do not think this is what the provision is about. The provision addresses a situation where an employee takes a portion of leave days from one leave term leaving others. In such case, the unutilized days must be used within 18 months. The provision does not apply to situations where there is no distribution of leave days that are due to an employee within a leave term.
62. That said, I will consider that the Claimant began working for the Respondent in 2006 and not 2000. This is because the brief engagement between the parties before 2006 was casual in nature as the Respondent had not settled on the farm where the Claimant was eventually employed. Before 2006, the Respondent would only occasionally hire the services of the Claimant to clear the farm. The decision to employ the Claimant appears to have been reached in 2006 when the Respondent began construction works on the farm. Accordingly, the Claimant's leave entitlement will be for eight (8) years from 2006 when he gained permanent employment. At the rate of salary for one month per year (inclusive of weekends), this brings the Claimant's leave dues to Ksh 128,000/=.
63. On compensation for wrongful termination, as I have pointed out earlier, save for the procedural flaws in the process leading to the termination of the Claimant, the Respondent had reasonable grounds to entertain a genuine belief that the Claimant had been diverting money meant for other purposes at the work place. The law that guides this court in determining the quantum of damages for wrongful termination is section 49 of the *Employment Act*. Under the section, the court must consider several factors before making the award. These include the extent to which, if any, the employee contributed to his termination
64. In this case, it is clear to me that the conduct of the Claimant was the direct cause for his termination. But for the fact that the procedure for his termination was flawed, I would have found in favour of the Respondent on whether the Claimant's termination was fair. Having regard to the Claimant's conduct, it is my conviction that to award him sizeable damages is to turn a blind eye to his misconduct. In the circumstance I will award him compensatory damages of an amount that is no more than two (2) months of his salary on exit of Ksh 28,000/=.
65. Having regard to the matters aforesaid, I will also decline to award the Claimant interest on the sums awarded to him.
66. I will however award him costs of the suit.
67. I also order the Respondent to issue the Claimant with a Certificate of Service.
68. Any of the awards that are subject to statutory deductions under section 49 of the *Employment Act* should be so handled.

### **Summary of the Decision**

- a. Termination of the Claimant's employment is declared unfair for want of compliance with procedural safeguards.
- b. Claim for service pay is declined.
- c. Claim for salary for July 2014 is allowed at Ksh 16,000/=.
- d. Claim for salary for August 2014 is declined.
- e. Claim for accrued leave pay allowed for eight years at Ksh 128,000/=.



- f. Compensation for unfair termination granted at the rate equivalent to Claimant's salary for two months, that is to say Ksh 28,000/=.
- g. The court declines to order interest on the amounts granted.
- h. Costs of the case are awarded to the Claimant.
- i. The Respondent to issue the Claimant with a Certificate of Service.
- j. The monetary award above is subject to statutory deductions under section 49 of the *Employment Act* where applicable

**DATED, SIGNED AND DELIVERED ON THE 29<sup>TH</sup> DAY OF JULY, 2022**

**B O M MANANI**

**JUDGE**

**In the presence of:**

**Omondi for the Claimant**

**Ongeso for the Respondent**

**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> April 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

**B O M MANANI**

**JUDGE**

