



**Kenya Union of Sugar Plantation & Allied Workers v West Kenya Sugar Company Limited (Cause 40 of 2021) [2022] KEELRC 1722 (KLR) (21 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1722 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT BUNGOMA  
CAUSE 40 OF 2021  
JW KELI, J  
JULY 21, 2022  
(FORMERLY KSM ELR CAUSE NO. E023 OF 2021)**

**BETWEEN**

**KENYA UNION OF SUGAR PLANTATION & ALLIED  
WORKERS ..... CLAIMANT**

**AND**

**WEST KENYA SUGAR COMPANY LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The claimant, a registered union *vide* a memorandum of claim dated January 4, 2021 and filed in court on the March 11, 2021 on behalf of its members, Everlyne Masayi and Peter Wawire (grievants) following their termination from employment sought the following orders against the respondent :-
  - i. A declaration that the decision and the action of the respondent in terminating the employment of the grievants above was wrongful, unprocedural and unfair.
  - ii. An order for the respondent to issue all the grievants with their certificates of service
  - iii. An order for each of the grievants to be paid compensation as tabulated in the claim.
2. The claimant in addition with the memorandum of claim filed its bundle of documents, witness statement of Everlyn Masayi filed in court on January 12, 2022 annexing a letter dated January 13, 2015 and a witness statement of Peter Wawire dated January 8, 2020 filed in court on the February 12, 2020.
3. The respondent entered appearance through the law firm of M/S O&M Law LLP and filed a response to the memorandum of claim dated August 28, 2021 and received in court on the November 15, 2021 together with list of witnesses, witness statement by Duncan Abwao of November 10, 2021 and list of documents dated 10<sup>th</sup> November together with the bundle of documents.



4. The respondent further filed in court supplementary list of documents dated January 25, 2022 together with the bundle of documents.
5. The claimant's case was heard on the January 17, 2022 and on March 9, 2022 with 2 witnesses of fact testifying on oath namely, Everlyne Masaye and Peter Wawire. The witnesses were cross-examined by counsel for the respondent.
6. The respondent's case was heard on the March 9, 2022 with one of witness of fact namely, Duncan Abwao, who testified on oath and was cross-examined by the claimant's representative.
7. The parties filed written submissions after the closure of the defence case.
8. The claimant's written submissions drawn by Jeremiah Akhonya, the union representative, are dated March 23, 2022 and received in court on the March 29, 2022.
9. The respondent's written submissions drawn by O&M Law LLP Advocates are dated May 9, 2022 and received in court on the May 11, 2022.

#### **Claimant's case**

10. The claimant's case is that its members, Everlyne Masaye and Peter Wawire were summarily dismissed from the employment of the respondent on the August 6, 2016 unprocedurally, unfairly and without any valid reasons contrary to the provisions of the section 43,44 and 45 of the Employment Act and article 41 of the Constitution of Kenya .
11. The claimant states that the 2<sup>nd</sup> grievant, Peter Wawire was underpaid under the collective bargaining agreements between the claimant and the respondent.
12. The claimant's case is that the grievants were not paid for payment of notice pay and leave.

#### **Respondent's case**

13. The respondents case with regard to the 2 grievants, is that the 1<sup>st</sup> grievant, Everlyne Masayi, was summarily dismissed for reasons that she had intentionally delayed issuance of permits to the farmers and solicited for bribes from several farmers. That she was taken through fair disciplinary process and minutes produced in court.
14. That the 2<sup>nd</sup> grievant, Peter Wawire, was summarily dismissed for reasons that he issued harvesting slip to a farmer without inspecting the farms to ascertain the availability of sugarcane. That he also failed to submit the transport slips to the respondent's transport department. That he was summarily dismissed after fair disciplinary procedure. The respondent's case is that the claimant is not entitled to any reliefs sought on behalf of its members, the grievants.

#### **Determination**

##### **Issues for determination**

15. The claimant in its written submissions addressed lack of valid reasons for the summary dismissal, lack of procedural fairness and the reliefs sought.
16. The respondent in its written submissions identified the following issues for determination:-
  - a. Whether the grievants were summarily dismissed for justifiable reasons;
  - b. Whether the respondent adopted a lawful procedure before dismissing the grievants; and



- c. Whether the grievants are entitled to the prayers sought.
17. The court upon carefully considering the case of both parties and the issues they have addressed was of the considered opinion the issues placed before court for determination of the dispute are as follows: -
- a. Whether there was valid reason or reasons for summary dismissal of the grievants from employment
  - b. Whether the respondent followed a fair procedure before summarily dismissing the grievants from employment.
  - c. Whether grievants are entitled to reliefs sought by the claimant.

**a. Whether there was valid reason or reasons for summary dismissal of the grievants from employment**

**The relevant law**

18. Section 43 of the [Employment Act](#) addresses proof of termination as follows:-
- “(a) in any claim arising out of termination of contract, the employer shall be required to prove the reason or reasons for the termination and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.
  - (b) The reasons or reasons for termination of contract are the matters that the employer at the time of termination of the contract genuinely believe to exist and which caused the employer to terminate the services of the employee.”
19. Section 44 (4) of the [Employment Act](#) provides for justifiable and lawful grounds for dismissal from employment, inter alia if:-
- a. Without leave or other lawful cause, an employee absents himself from the place appointed for the performance of work,
  - b. During working hours, by becoming or being intoxicated and employee renders himself unwilling or incapable to perform his work properly,
  - (c) an employee willfully neglects to perform any work which it was his duty to perform or if he carelessly and improperly performs any work which was his duty under his contract to have performed.....”
20. Section 45 (2) of the [Employment Act](#) provides that a termination of employment by an employer is unfair if the employer fails to prove:-
- a. The reason for the termination is a fair reason:-
    - i. Related to the employees conduct, capacity or compatibility or
    - ii. Based on the operational requirements of the employer.
21. Section 46 of the [Employment Act](#) provides for reasons that do not constitute fair reasons for dismissal.



22. Section 47(5) of the [Employment Act](#) provides for burden of proof in claims for wrongful dismissal as follows:

“(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds of the termination of employment or wrongful dismissal shall rest on the employer.”

Thus the obligation of the employee is discharged upon proving wrongful dismissal has occurred and the burden then shifts to justify the grounds of termination.

### **1<sup>st</sup> grievant’s case**

23. 1<sup>st</sup> grievant, Everlyn Masaye, states she was wrongfully summarily dismissed from employment for delayed permits and coercing bribes. The letter of summary dismissal (page 8 of the respondent’s bundle of documents) it is stated that, “from the deliberations (disciplinary hearing), emerged that during your meeting with the farmer in the presence of your head of department and other managers, the farmer claimed that you usually take bribes in order to permit cane. However, you were unable to deny the accusation. Your action negates the company values, procedure and practice and therefore puts that the company corporate image into disrepute. Note that this is breach of your contractual obligations and management cannot tolerate this kind of behaviour from its employees. Considering the magnitude of the offence, management hereby invokes section 44 (4)(g) of the [Employment Act](#) to summarily dismiss you from service with effect from August 6, 2018.”
24. During cross-examination the 1<sup>st</sup> grievant admitted it was her role to issue harvesting permits as per her employment letter but denied the show cause letter related to her work. She admitted one must get transfer letter. She did not have documents to prove she paid cash for the lorry driver, she told the court she had asked the Human Resource Manager, Mechumo, if the farmers can give evidence but had no evidence to say the witness would be called at her cost. She admitted that it was her role to notify employer of competitors harvesting sugar cane. She told the court that she reported to supervisor verbally that Mumias was harvesting sugarcane of West Kenya. She said she was not reporting to the Head of Agriculture but was talking to him. The 1<sup>st</sup> grievant admitted the show cause letter was on delay of permits and taking bribes. She said paragraph 3 in her response of June 30, 2016 was on delay of permits. She had no evidence she met the farmers. She denied that she was sacked for same reasons in the show cause letter. She admitted the reasons in the show cause letter was the same as in dismissal.
25. On re – examination, the 1<sup>st</sup> grievant said she was not given the name of the farmer who is alleged to have bribed her or the petition. She admitted the responsibility to issue permits was hers. She got the permits from the supervisor to issue and there was no complain of delay from the supervisor. It was her responsibility to shortlist farmers and issue report to the supervisor for sugarcane to be harvested for issuance of permits. There was no particular permit she was accused of failure to deliver, she asked for evidence of the farmers’ complaints at the hearing and was not shown. She denied ever seeing the memo at page 1 of the respondent’s documents. She reported to her supervisor of sugar cane being taken to Mumias and it is reflected in the minutes that both employees reported the invasion by Mumias to the head of agriculture. That in the minutes it is indicated it was the brother of the farmer not the farmer and the farmers were not called to the disciplinary hearing nor was she shown any letter by the farmer.



26. RW told the court at cross examination that the 1<sup>st</sup> grievant was terminated on basis of reasonable belief she was involved in soliciting for bribes from farmers. That he did not have the complaints or petition by farmers in court. He said at page 1 of the respondent's bundle was the investigation report being a memo from the head of agriculture to the head of human resources, he had no report from the local administrators, the minutes of the referred meeting was not produced at the meeting, no record of the referred meeting or place of meeting, admitted no prove that the security manager and assistant transport manager met the head of agriculture, admitted that the 1<sup>st</sup> grievant responded to the show cause and denied the allegations, admitted the minutes of the disciplinary meeting were not signed but were true record. RW admitted that the 1<sup>st</sup> grievant reported the incident of Mumias invasion of sugar cane, admitted that the said cane was not within the maturity period for harvest of the respondent, the farmers had not asked for permits, agreed the minutes reflected no proper investigations had not been done on delay of permits.
27. The court is of the opinion that the reason for termination of employment under the summary dismissal of the 1<sup>st</sup> grievant was not valid considering the foregoing evidence of the parties. There was no investigation report on the bribery claim, there was no evidence of complaints by farmers, the managers alluded at document 1 of the respondent at the alleged meeting did not record their statements, RW could not confirm the place of meeting of the head of agriculture and the said chief, MCA and 4 subchiefs or produce evidence of the meeting. The burden of proof of bribe which is a criminal offence is higher than in civil cases. The 1<sup>st</sup> grievant was entitled to more than document 1 before the disciplinary committee on the accusation of bribery. Even the alleged person who alleged bribery, but did not mention the 1<sup>st</sup> grievant specifically, was not a farmer but a brother of the farmer.
28. Section 43 of the [Employment Act](#) provides for proof of the reasons for termination of employment by the employer. The respondent submits that from the minutes of the disciplinary hearing the 1<sup>st</sup> grievant did not challenge the allegations against her neither did she give any reasons as to why she never reported the bribery claims that has arisen from previous meetings with the farmers. In the said minutes, it is recorded the grievants said that it was the brother of the farmer who made the allegations and they avoided confrontations with the man who was not the owner of the field. The staff said that without the farmer having made request for permit the issue of bribe would not arise.
29. The court finds and determines that there was no prove of the reasons for the summary dismissal being allegation bribery to permit cane. Indeed under the disciplinary meeting for the 1<sup>st</sup> grievant it is recorded, 'the committee unanimously agreed that the management should issue a stern warning letter to both employees to deter and eradicate laxity and non-compliance with the laid down cane harvesting rules and company values' Under the observation there was no finding on bribery. Document 1 by the 1<sup>st</sup> respondent which is an internal memo does not amount to investigation report. The court is satisfied there was no proof the existence of the reason of bribery and section 44(4) g of the [Employment Act](#), as the basis of the summary dismissal of the 1<sup>st</sup> grievant by the employer.

## 2<sup>nd</sup> Grievant's case

30. The 2<sup>nd</sup> grievant alleges he was not dismissed fairly. The letter of his dismissal dated August 6, 2016 refers to the disciplinary hearing and states, 'from the deliberations you admitted having flouted the company cane harvesting procedure including failure to inspect contracted farms , issuing permits and not submitting copies to transport department. Some of these slips were fraudulently used at the weighbridge by unknown persons . your action was a deliberate scheme to facilitate fraudulent activities at the weighbridge. Note that this is a breach of your contractual obligations and the management cannot tolerate that kind of behaviour from its employees. Considering the magnitude of



the behaviour the management hereby invokes section 44(4)(c) (others not legible) of the Employment Act to summarily dismiss you from service..”.

31. The above were the same issues under the show cause letter dated April 19, 2021. The 2<sup>nd</sup> grievant in his response admitted to have issued the slips to the farmer to privately transport cane to the weighbridge. He admitted to have issued the slips without verifying the existence of the cane in the farm and not supervising the harvesting and transportation of the cane, he did not monitor the slips movement from the farmer to the weighbridge. He stated he did not have information of any criminal activities that happened at the weighbridge.
32. During cross examination the 2<sup>nd</sup> grievant admitted it was his contractual duty to attend to the field and assess cane growth and harvesting, on visit to the farm he was to check if the cane was ready for harvest and confirm the quantity of delivery, had to ensure cane delivered was mature and clean, he was to obtain and ensure permits reach farmers, he understood the contents of the show cause letter, he admitted to giving 3 transport slips to Mr Nabukwesi, the 2<sup>nd</sup> grievant admitted that in his written response he stated that he did not verify the farm and monitor as the farmer was going to deliver himself, on the transport slip he stated he responded under paragraph 4. The said paragraph it is written, ‘the process of slip movement from the farmer to the weighbridge according to my knowledge I did not know and how criminal activities happen at the weigh bridge”
33. The claimant submits that the respondent acted maliciously as the report by one James Otieno was clear there was no statement from the accusers. It also submits that there was no operational procedures on who handles the slips and the alleged criminal activities ought to be disclosed to the grievant.
34. The court is satisfied that there existed valid reason to dismiss the 2<sup>nd</sup> grievant from employment as he admitted failure to verify cane being harvested before issuing the transport slips. At cross-examination on the issues under the show cause it was apparent that the issues in the show cause letter fell under his duties contained in the employment letter. The reasons for his dismissal fall under section 44(4)(c) of the Employment Act which reads: - ‘an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract to have performed carefully and properly.”

#### **b. Whether the Respondent followed a fair procedure before summarily dismissing the grievants from employment**

35. Section 45 (2) provides for criteria of determining whether there was unfair termination(supra). The respondent submits that statutory procedure was following prior to the summary dismissal.

#### **1<sup>st</sup> Grievant**

36. On 1<sup>st</sup> grievant the court found there was no valid grounds for dismissal. section 45(2)(a) provides that, ‘a termination of employment is unfair if the employer fails to prove the reason for the termination is valid’.
37. The court does not have any issue with the statutory procedure followed as it complied with section 41 of the Employment Act but its outcome was flawed for lack of valid reason.
38. The court finds that the summary dismissal of the 1<sup>st</sup> grievant was unfair for lack of valid reasons.

#### **2<sup>nd</sup> Grievant**

39. The respondent produced the show cause letter issued to the 2<sup>nd</sup> grievant, his response, and report by one James Otieno (page 11 of the respondent’s documents.)



40. The claimant submits that 2<sup>nd</sup> grievant was invited for disciplinary hearing which did not take place as scheduled and as confirmed by statement of James Otieno (page 11 of the respondent's documents).
41. The respondent submits that the grievants were called for disciplinary hearing which occurred on the July 26, 2016 and May 12, 2016 respectively and refers the court to pages 4 of the respondent's bundle and page 53 of the plaintiff's bundle. At page 4 of the respondent's bundle is the minutes of the hearing of the case of Godfrey Mukanzi and Everlyn Masayi (1<sup>st</sup> grievant). At page 53 of the claimant's bundle is letter of summary dismissal. The letter of dismissal refers to disciplinary hearing conducted on July 27, 2016. The said minutes of the proceedings are not produced. The only evidence by respondent of the disciplinary hearing of the 2<sup>nd</sup> grievant is the document at page 11 of the respondent's bundle which is a report by James Otieno advising how the disciplinary of the 2<sup>nd</sup> grievant should be conducted.
42. The court then makes a conclusion that there was no disciplinary hearing of the 2<sup>nd</sup> grievant before his summary dismissal from service.
43. Section 45(2) of the *Employment Act* provides that a termination of employment by the employer is unfair if the employer fails to prove (c) that the employment was terminated in accordance with a fair procedure.
44. The court then finds that although the reasons for termination of the services of the 2<sup>nd</sup> grievant were valid based on the operational requirements of the employer as stated in his employment letter, the 2<sup>nd</sup> grievant was not afforded procedural fairness as stated in section 41 of the *Employment Act* before the summary dismissal.
45. The court upholds to apply in the instant case the authority cited by the claimant in *Geoffrey Gikonyo Mathu v Intex Construction Company* (2017)eKLR in which the Court of Appeal held that, "But even if the reasons advanced by the respondent had been valid, the dismissal herein would stand impugned for want of a hearing in line with section 41(2) of the *Employment Act* set out hereinabove. We note that the appellant was merely asked to provide a written account of the events of the material day to his supervisor who in turn served him a dismissal letter informing him of the decision to dismiss him summarily. Would the foregoing action amount to a hearing? We think not as the said approach ought to be in addition to and not in substitution to a hearing as envisaged in section 41 of the *Employment Act*."
46. The court determines that the summary dismissal of the 2<sup>nd</sup> grievant was unfair for lack of compliance with the provisions of section 41 (2) of the *Employment Act*.

**c. Whether the grievants are entitled to the reliefs sought by the Claimant**

47. The claimant sought a declaration that the decision and the action of the respondent in terminating the employment of the grievants above was wrongful, unprocedural and unfair. The court found unfair termination of employment for both grievants consequently the declaration is granted as sought.
48. The claimant sought for certificate of service for the grievants. The court grants the order as sought pursuant to the provisions of section 51 of the *Employment Act*.

**On compensation for unfair dismissal**

**1<sup>st</sup> Grievant- Everlyne Masayi**

49. The Claimant asks for maximum compensation. Under section 49(1)(c) of the *Employment Act*, the court may recommend compensation the equivalent of months wages not exceeding 12 months based



on the gross monthly wage or salary at time of dismissal. In making the decision on the award the court then takes into account the provisions of section 49(4) of the Act the relevant factors to compensation being, the circumstances in which the termination took place including the extent, if any, to which the employee caused or contributed to the termination, the employee's length of service with the employer, the reasonable expectation of the employee as to the length of time to which his employment with that employer might have continued but for the termination, the opportunities available to the employee for securing comparable or suitable employment with another employer, the value of any severance payable by law, the right to press claims or any unpaid wages, expenses or other claims owing to the employee among others.

### 1<sup>st</sup> Grievant

50. In the instant claim the reason for termination was found invalid. The grievant was employed on June 12, 2013 and summarily dismissed from service on the August 6, 2016. The 2<sup>nd</sup> grievant is entitled to notice pay under the collective bargaining agreement and there is no reason why she could not secure comparable or suitable employment with another employer.
51. The court finds that compensation the equivalent of 6 months is adequate compensation for the unfair termination of the 1<sup>st</sup> grievant. Her last gross salary as per payslip produced of July 2016 was Kshs, 32886.00 multiplied by 6 months to make total sum of Kshs 197,316/-
52. Notice pay- The respondent submits that the grievant having been summarily dismissed from service they are not entitled to notice pay and relies in what it calls wise decision of the court in *Vincent Abuya Obunga v Mast Rental Services limited* (2019)eKLR where the court held that, 'this being a summary dismissal, the claimant is not entitled to payment in lieu of notice.'  
  
And further relies on the decision of *Consolata Kemunto Aming'a v Milimani High School* (2019) eKLR where the court held that the employer who paid notice pay to an employee summarily dismissed was more than generous.
53. The court finds that the above decision of the court are persuasive but only if the court finds the summary dismissal was valid like in the case of Vincent Abuya Obunga(supra). The court found that the summary dismissal of the 1<sup>st</sup> grievant was invalid hence the foregoing authorities relied on by the respondent are not relevant to the instant case.
54. The 1<sup>st</sup> grievant is awarded notice pay equivalent of 1 month gross salary as sought at the sum of Kshs 30, 187.20
55. On claim for annual leave for 2015. The grievant was dismissed from service in the year 2016 August. No evidence was led on the accrued leave of year 2015. The 1<sup>st</sup> grievant does not mention the issue of leave for 2015 in her witness statement. The claimant did not meet his obligation of pleading the allegation or claim as envisaged under section 14 of the Employment and labour Relations Act to elicit response of the employer. The claim is dismissed.
56. On claim for service pay- this claim was not pleaded. It only appeared in the prayers. The grievant was deducted NSSF. Under section 35(6)(d) the grievant having been under NSSF is not entitled to service pay.
57. Claim for reimbursement of transport cost and house rent. The claim was pleaded. During cross examination the grievant admitted she had no prove of the transfer. There was evidence of a transfer being validated later by the respondent (letter dated January 13, 2015). The respondent did not rebut the claim for transfer. The court believes the grievant was on transfer as stated. The 1<sup>st</sup> grievant said



the transfer allowance was Kshs 5000/- but had paid Kshs 10,000. She also indicated to have paid rent of Kshs 20,000. The court finds and determines she was only entitled to Kshs 5000/- being the relocation allowance paid by the respondent as per her statement under paragraph 7. She was paid housing allowance under her payslip.

58. The 1<sup>st</sup> grievant is awarded Kshs 5000/- as relocation/transfer allowance.

### **Compensation for 2<sup>nd</sup> Grievant – Peter Wawire**

59. Claim for underpayment -The claimant under paragraph 19 of the claim pleaded that the 2<sup>nd</sup> grievant was engaged in a contract discriminatively on inferior terms and conditions, was underpaid and exploited by the respondent contrary to articles 27, 41 and 47(1) of *the Constitution of Kenya*, section 5 and 26 (2) of the *Employment Act, Labour Relations Act* section 59 and the recognition agreement clause 2e and the CBA clause 2 and 34. The claimant told the court that the 1<sup>st</sup> and 2<sup>nd</sup> grievant were both field officers but the 2<sup>nd</sup> grievant was paid much less.
60. During cross - examination the 2<sup>nd</sup> grievant agreed he had not produced evidence of being a member of the union before 2016 nor had he produced the relevant CBA covering period of 2013 to 2015.
61. On re-examination, the grievant said his consolidated salary on employment in 2013 was Kshs 13,580 and was never increased. He told the court his terms and conditions of service were as per the current collective bargaining agreement that the respondent had with the claimant. That this is reflected in his employment letter at page 33 of the claimant's bundle of documents.
62. During cross- examination of RW, the witness confirmed the two grievants were employed in 2013 as field assistants. 1<sup>st</sup> grievant was earning Kshs 22,634/ and the 2<sup>nd</sup> grievant Kshs 13580/-, that they had same responsibilities and duties, RW admitted that the 1<sup>st</sup> grievant had received annual increment over time and that also applied to the housing allowance. RW told the court the contracts of the two grievants were similar.
63. During re-examination, RW told the court the employees negotiate contracts differently.
64. Section 5 (5) of the *Employment Act* provides, 'that an employer shall pay his employees equal remuneration for work of equal value'. Evidence was led that the grievants were employed for same work with exact duties and responsibilities yet paid differently contrary to the law and the CBA.
65. The court finds that the claimant has discharged its obligation of demonstrating the underpayment of the 2<sup>nd</sup> grievant which was not rebutted by the respondent.
66. The court awards the 2<sup>nd</sup> grievant underpayment as prayed for total Kshs 510,752./

### **Compensation for unfair termination**

67. The court found there were valid reasons to summarily dismiss the 2<sup>nd</sup> grievant from service of the respondent. He cannot be rewarded for his breach of contract.
68. The court awards nominal compensation for procedural unfairness equivalent of 1 month gross salary of the amount he ought to have been paid were it not for underpayment of Kshs 32,235/-.

### **Notice pay.**

69. The court having found the dismissal was unfair notice pay is due. The same is awarded equivalent to I month salary under the CBA clause 9a of Kshs 32,235.65 his gross salary as reflected in the underpayment calculation.



**On claim for leave,**

70. The findings under 1<sup>st</sup> grievant apply. The claim is dismissed

**Claim for Service pay**

71. The 1<sup>st</sup> grievant was deducted NSSF. Under section 35(6)(d) of the Employment Act he is not entitled to service pay and the claim is disallowed

**Conclusion and disposition**

72. The claimant has succeeded in its claim against the respondent and the court enters judgment for the grievants as follows: -

- a. A declaration is hereby issued that the decision and the action of the respondent in terminating the employment of the grievants above was wrongful, and unfair.
- b. The respondent to issue the grievants with certificates of service pursuant to the provisions of section 51 of the Employment Act.  
Compensation for 1<sup>st</sup> grievant
- c. Compensation for unfair dismissal – award of salary the equivalent of 6 months last gross monthly salary of Kshs 32,886.00 total sum of Kshs 197,316/-.
- d. Notice pay equivalent of one month’s gross salary as sought at the total sum of Kshs 30,187.20.
- e. Transfer/ relocation allowance of total sum of Kshs 5000/-  
(amount payable subject to statutory deduction).  
Compensation for the 2<sup>nd</sup> grievant
- f. Underpayment during period of employment as tabulated in the claim for total sum of Kshs 510,752/-.
- g. Notice pay of one month’s gross salary total sums of Kshs 32,325.65/-.
- h. Compensation for unfair termination equivalent of one month gross salary total sum of Kshs 32,325.65 (above amounts subject to statutory deductions)

73. The claimant is awarded interest on award amounts at court rates from date of judgment.

74. No order as to costs.

**DATED, SIGNED AND DELIVERED THIS 21<sup>ST</sup> DAY OF JULY 2022 IN OPEN COURT AT BUNGOMA.**

**J. W. KELI,**

**JUDGE.**

**In the presence of :-**

Court Assistant -Brenda Wesonga

For Claimant:- Akhonya Jeremiah

For Respondent :-Andiwo

