



**Khalsa Schools & another v Balume (Appeal 23 of 2020)  
[2022] KEELRC 13202 (KLR) (14 November 2022) (Judgment)**

Neutral citation: [2022] KEELRC 13202 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
APPEAL 23 OF 2020  
BOM MANANI, J  
NOVEMBER 14, 2022**

**BETWEEN**

**KHALSA SCHOOLS ..... 1<sup>ST</sup> APPELLANT**

**SEBASTIAN CHACKO, PRINCIPAL/SECRETARY BOM ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JACQUES BALUME ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. This is an appeal from the decision of the Chief Magistrate’s Court at Nairobi in CMEL cause No 94 of 2019 delivered on February 19, 2020. In the decision, the trial court held that the appellants unfairly terminated the contract of employment between the 1<sup>st</sup> appellant and the respondent. Consequently, the court awarded the respondent damages for unlawful termination.
2. Aggrieved by the decision, the appellants have filed this appeal. Through it, they seek that the trial court’s decision be set aside.

**Facts of the Case**

3. From the record, the 1<sup>st</sup> appellant is an educational institution running a private school within Nairobi county. The 2<sup>nd</sup> appellant was at the material time the Principal of the school aforesaid.
4. Sometime in February 2016, the 1<sup>st</sup> appellant hired the services of the respondent as a French teacher. The parties executed a contract of service dated February 5, 2016.
5. It is common ground that around July 2018, the 2<sup>nd</sup> appellant convened a school meeting at which he asked teachers serving the 1<sup>st</sup> appellant (including the respondent) to furnish the school with their



- Teacher Service Commission registration details (hereafter called TSC registration). This directive was in compliance with the requirements of section 23 of the *Teachers Service Commission Act* (TSC Act).
6. It does appear that the respondent did not comply with the aforesaid directive. It is unclear whether this non-compliance was occasioned by the respondent's deliberate or negligent failure to pursue registration or by factors outside his control. Nevertheless, this development prompted the 2<sup>nd</sup> appellant to issue a follow up letter to the respondent on the subject on November 30, 2018.
  7. Meanwhile, the 2<sup>nd</sup> appellant directed that the respondent's salary be withheld until he furnishes the school with his TSC registration. From the evidence extracted from the respondent during cross examination, he still did not supply the appellants with the TSC registration details even after November 30, 2018. As a matter of fact, the respondent admitted that he had not registered with the Teacher Service Commission (TSC) even at the point of hearing his case on September 19, 2019 (see page 113 of the record of appeal).
  8. The record also shows that the respondent admitted during cross examination that he was not entitled to teach in Kenya because of his non registration with TSC. Further, he contended that the appellants removed his name from the school roster sometime in December 2018 apparently after he failed to secure the TSC registration.
  9. According to the respondent on December 7, 2018, he was orally informed by the 2<sup>nd</sup> appellant not to report on duty as his services had been terminated. He says that the 2<sup>nd</sup> appellant asked him to await communication regarding his dues. The respondent contends in his submissions that following this directive he stayed away from school awaiting further communication from the appellants.
  10. On the other hand, the appellants deny terminating the respondent's services. The 2<sup>nd</sup> appellant whilst admitting summoning the respondent to his office on or about December 7, 2018 denies that the meeting was to communicate a decision to terminate him. According to the 2<sup>nd</sup> appellant, the meeting was to confirm if the respondent had obtained the TSC registration.
  11. According to the 2<sup>nd</sup> appellant, the respondent's responses to inquiries raised at the meeting left no doubt that he was yet to apply for registration. The 2<sup>nd</sup> appellant avers that he reminded the respondent of the need to procure the registration certificate on or before December 15, 2018. It is the appellants' case that the respondent deserted duty after failing to comply with this directive.

### **Trial Court's Decision**

12. After hearing the parties, the trial magistrate found that the appellants did not comply with the provisions of the *Employment Act* in terminating the services of the respondent. It was the trial magistrate's view that the appellants did not try to reach out to the respondent to understand why he had not reported on duty before taking the decision to terminate his services. According to the trial court, this was in contravention of the provisions of statute forbidding employers from terminating employees without cause.

### **Grounds of Appeal**

13. Dissatisfied with the decision of the trial magistrate, the appellants lodged this appeal. The appeal raises several grounds of appeal. The totality of these grounds present the following questions for determination:-
  - a) Whether there was evidence tendered before court to support its finding that the appellants terminated the respondent's contract of service.



- b) Whether the trial court failed to appropriately analyze the evidence and submissions by the appellant.
- c) Whether the trial court gave undue weight to the case by the respondent thereby arriving at the wrong conclusion in the matter.
- d) Whether the trial magistrate erred in awarding the respondent salary for December 2018 when this had not been pleaded.
- e) Whether the trial magistrate erred in awarding the respondent pro-rata leave pay without evidence to support the award.
- f) Whether the trial magistrate erred in law and fact by failing to consider the principles for the award of compensation under section 49 as read with section 50 of the *Employment Act*.
- g) Whether the trial magistrate erred in awarding the respondent costs.

14. In this decision, I shall endeavour to address the above issues separately. However and where appropriate, some of them will be addressed concurrently.

### **Analysis**

- 15. I begin by acknowledging the submissions filed by the parties in the appeal. In this decision, I have considered these submissions alongside the law and the documentation as contained in the record of appeal.
- 16. Being the first appeal, this court is required to re-evaluate the evidence on record and arrive at its own conclusion on the issues in dispute. In a sense, an appeal of this kind is in the nature of a retrial in so far as the appellate court is permitted to pronounce itself differently on the factual issues in dispute (see *C.K. Bett Traders Limited & 2 others v Kennedy Mwangi & another* [2021] eKLR).
- 17. That notwithstanding and as rightly submitted by the parties, this court must bear in mind that as the appellate court, it did not have the benefit of seeing the witnesses testify as did the trial court. Consequently, the court must exercise caution not to depart from the findings of fact by the trial magistrate unless they are not supported by the evidence on record.
- 18. The substance of the dispute in the appeal in my view revolves around the demand by the appellants that the respondent provides them with his TSC registration. It is this demand that culminated in the separation of the parties.
- 19. From the record, although the appellants deny terminating the respondent and allege that he deserted duty, the totality of the evidence suggests otherwise. In my view, it points to the appellants having terminated the respondent when he failed to furnish them with his TSC registration details.
- 20. I entertain this view because of the import of the appellants' letter dated January 14, 2019. In the letter, the appellants imply that the respondent's services to the 1<sup>st</sup> appellant terminated sometime in December 2018. However, they do not give the exact date in December 2018 when this happened. And neither do they suggest in the said letter that their separation was occasioned by the respondent's desertion of duty.
- 21. In his evidence before the trial court, the 2<sup>nd</sup> appellant stated that he wrote the recommendation after the respondent requested for it in order to secure employment elsewhere. There was however



- no suggestion that the respondent directed the appellants on the content of the letter. Indeed, it is doubtful that such attempt to influence the content of the recommendation would be permissible.
22. In my view, the 2<sup>nd</sup> appellant's statement in the letter that the respondent ceased employment in December 2018 is consistent with the respondent's evidence that he was terminated on or about December 7, 2018. In a sense, the statement corroborates the respondent's assertion that he was terminated in December 2018.
  23. It is also noteworthy that the letter, which is couched in past tense signifying a closed chapter between the parties, describes the respondent using fairly positive attributes. It is doubtful that the 2<sup>nd</sup> appellant would be willing to issue such a positive recommendation to an employee he accuses of having deserted duty just a few days earlier thereby depriving students of their right to learn and exposing the appellants to loss and damage as suggested in the 2<sup>nd</sup> appellant's witness statement. The content of the recommendation letter leads to the inescapable conclusion that it is the appellants who let go the respondent due to his failure to furnish them with the documents they required.
  24. That the appellants terminated the respondent is further fortified by the 2<sup>nd</sup> appellant's evidence before the trial court. During his cross examination, the 2<sup>nd</sup> appellant is quoted as saying that at the commencement of January 2019 the respondent had already been replaced and was no longer in the 1<sup>st</sup> appellant's register. This can only imply that the respondent's employment came to a close on a date in the month of December 2018.
  25. Despite the apparent contradictions in the evidence by the respondent regarding the date of his termination, the totality of the evidence on record points to the fact of the appellants having terminated him as opposed to the respondent having deserted duty. In this respect I bear in mind the standard of proof in civil cases. And in my view, the evidence on record points more to the probability of termination of the respondent by the appellants than it does to desertion of duty.
  26. It is therefore improbable that the respondent absconded duty as suggested by the appellants. In my view, there was sufficient material on record to point to the conclusion that the respondent was terminated.
  27. In any event and notwithstanding the foregoing, if the respondent had absconded duty as suggested by the appellants, it was the duty of the 1<sup>st</sup> appellant to process closure of the employment relationship between the parties in compliance with the dictates of fair labour practice. This required that the 1<sup>st</sup> appellant issues the respondent with the requisite notices to show cause why his services should not be terminated for failure to report to work (*Jacob Oduor Nyalidhe v Automec Limited* [2022] eKLR). I have looked through the record and found no evidence that the appellants complied with this procedure.
  28. In their submissions, the appellants, through counsel aver that they tried to reach the respondent without success. consequently and coupled with the fact that the respondent had not provided his TSC registration, they presumed an intention on the respondent's part not to resume his work.
  29. In my view, this approach by the appellants was inappropriate particularly for a party who bears the burden of justifying termination of a contract of employment in terms of sections 43 and 45 of the *Employment Act* (EA). An employer must navigate the process of closure of such contract with care by documenting the steps he has taken to ensure due process (see *Rotich v Metkei Multi-Purpose Company Limited* (civil appeal 94 of 2017) [2021] KECA 161 (KLR)). He must for instance document the fact of instituting the disciplinary process against the deserting employee through issuance of appropriate notices to show cause.



30. I have considered the appellants' reasons why the parties eventually separated. The respondent was, at the time of separation not registered as a teacher pursuant to the provisions of section 23 of the TSC Act. In his own words before the trial court, the respondent was not entitled to continue teaching in Kenya. And as is clear from the letter by the TSC, the regulator of the teaching sector dated May 2, 2019, it is mandatory for schools to ensure their teachers are registered before assigning them teaching duties. It is therefore clear to me that in view of the position of the law on registration of teachers, it would have been unlawful for the appellants to continue utilizing the services of the respondent without him registering under the TSC Act.
31. The reason for the registration requirement is self evident from the statute. It is to enable the TSC as a regulator of the teaching services sector to establish and maintain a database of all teachers in Kenya in order to be able it monitor their conduct in matters discipline and quality of delivery. This is a public good requirement. In my view, the rule is intended to foster public policy goals geared towards ensuring delivery of quality education in schools in Kenya.
32. Sometimes, parties to a contract may encounter legal constraints at the point of its performance with the consequence that the contract's continued implementation becomes unlawful. Such contract is said to become unlawful by reason of performance.
33. Unlike contracts that are illegal from inception and therefore entirely void in law and incapable of enforcement in absolute terms, contracts that go against the grain of the law by reason of performance can be saved if the aspect of the contract that renders its performance illegitimate is remedied by the parties. If this is done, the contract gains enforceability.
34. Remedying such contract is depended on such factors as: the nature of the illegality; whether the offending clause can be severed from the contract without affecting its validity; and whether the contract is not unlawful on its face and is capable of performance in a lawful way.
35. In *Trans Mara Sugar Co Ltd & another v Ben Kangwaya Ayiamba & another* [2020] eKLR the trial judge had this to say of contracts which become unlawful by reason of performance:-  
 '.....it is clear that contracts which are illegal by performance are not outrightly unenforceable. A court must transcend beyond the borders of the illegality in determining on whether the rest of the contract may still be enforced.'
36. In *Waugh v Morris* [1872-73] L.R 8 Q.B. 202 it is suggested that parties to a contract that is affected by illegality could, going forward, rescue it if they are able to lawfully correct the illegality and execute the contract in a legal manner within its terms. In such case, it is suggested that the parties act promptly to lawfully rectify the illegality as soon as their attention is drawn to it (see also *Jayntilal Dhamshi Gosrani v Kenya Oil Company Ltd* [2009] eKLR).
37. In my view, the contract between the 1<sup>st</sup> appellant and the respondent is one such contract. Whilst there was nothing illegal about the parties entering into the contract as they did, the law (section 23 of the TSC Act) requires that for the contract to be lawfully executed, the respondent must first obtain registration under the Act.
38. I note from the TSC letter dated May 2, 2019 that the regulator provided a window to its stakeholders (schools and unregistered teachers) to regularize their contracts by ensuring registration of unregistered teachers as demanded under the Act. It is in this context that the regulator issued a reminder to its regional directors to monitor continued compliance with the TSC Act.
39. The respondent was afforded the opportunity to comply with this requirement. He readily admits that as early as July 2018 he was notified by the 2<sup>nd</sup> appellant to provide his TSC registration details by



- close of November 2018. For unexplained reasons, the respondent did not undertake the registration as demanded.
40. As the trial magistrate observed, the respondent did not demonstrate the efforts made by him to procure this registration. It would therefore be unreasonable to have expected the appellants to keep him in employment without registration. If they did, the appellants would not assign him teaching duties as this would be in violation of the law. Yet, at the core of the contract between the parties was the requirement that the respondent offers the services of a french teacher in return for the agreed pay.
41. In my view therefore, the appellants had valid reason to consider terminating the respondent. This is because despite the window provided by the regulator to secure registration, the respondent failed to ensure, for whatever reasons, that this requirement was met.
42. However, in discharging the respondent, the appellants failed to comply with the requirements of due process. Although the appellants assert that they tried to reach out to the respondent through contacts retrieved from his personal file, they do not give details regarding the mode and times of the said attempts. Indeed, no details of the contacts were given in evidence to confirm that they correspond with what the respondent supplied the appellants at the time of his employment.
43. In my view, both the regulator and the appellants having opted to offer the respondent the opportunity to regularize their relation but the respondent having failed to take advantage of the offer for unexplained reasons, it was essential that the appellants close the relation between the parties after allowing the respondent a chance to be heard in defense of his failure to register. Attempts by the appellants in this regard ought to have been made in a manner that is verifiable by an independent third party. It is for this reason that I fault the appellants' actions. They handled the process of separation with the respondent in a manner that was obscure.
44. As has been observed in a series of decisions, although desertion by an employee of duty is likened to repudiation of the contract of service between the parties which entitles the employer to close the contract, the contract does not close automatically upon the act of desertion. The employer must take steps to close the contract through a disciplinary process initiated against the deserting employee. In *Luka Mbuvi v Economic Industries Limited* [2020] eKLR the court expressed itself as follows on the matter:-
- “ .....the employee who deserts employment does not dismiss himself, so to speak. The decision to formally end the employment relationship should come from the innocent party.”
45. Nevertheless, there is a sense in which it is clear to me that the trial magistrate gave undue weight to the respondent's case even as he disregarded the critical issue raised by the appellants on the need by the respondent to register under section 23 of the TSC Act. At page four (4) of the decision, the trial magistrate rightly observed that registration of teachers under the TSC Act was mandatory. He went further to hold that the respondent had provided no evidence to show the efforts made to secure this registration.
46. In effect, the court acknowledged that the respondent was not compliant with the legal framework that would entitle him to serve the 1<sup>st</sup> appellant as a teacher. Yet, he failed to consider that this non-compliance in effect frustrated the contract between the parties. And that this state of affairs provided a justifiable reason for the 1<sup>st</sup> appellant to consider terminating the respondent's contract so long as this was done in compliance with the dictates of due process.
47. In my respectful view, had the trial magistrate considered the matter from this viewpoint, he would have reconsidered the quantum of compensation to award the respondent. In my view and having



- regard to this factor, the compensation for unfair termination granted to the respondent ought to have been significantly lower than the sum awarded by the trial court.
48. With respect to the award of salary for December 2018, I have looked at the pleadings filed by the respondent and noted that he did not make an express prayer for this item. This notwithstanding, the trial magistrate entered judgment for the respondent for the said item.
  49. The appellants contend that the claim for salary for December 2018 having not been pleaded ought not to have been granted. On the other hand, the respondent contends that the court was right to grant the relief under the omnibus prayer by which the respondent asked the court to grant “any other relief the court deems fit and just to grant.”
  50. Although it is trite law that parties are bound by their pleadings and a court ought to generally decline to grant prayers that are not sought in the pleadings, I am aware that the law permits the grant of consequential reliefs in a suit. These are reliefs which, though not expressly pleaded, inevitably flow from the grant of the main relief in a suit. In *Bell & another v I. L. Matterello Limited* (Civil Appeal 72 of 2019) [2022] KECA 168 (KLR), the Court of Appeal indicated that consequential reliefs which have not been pleaded can be awarded by a trial court under the omnibus prayer of “any other relief that the court may deem fit and just to grant” so long as they were a necessary consequence of the main reliefs granted by the court.
  51. Although the respondent did not expressly pray for salary for December 2018, the court found that he had been unfairly terminated. As a consequential order, the court was entitled to order that his unpaid salary, if any, be settled. On this account and based on case-law as indicated above, I think that the court was right to consider the item of salary for December 2018 even though not expressly pleaded.
  52. I have also considered the import of section 49 of the EA. It appears to me that the provision grants the court wide discretion to grant a range of remedies, including unpaid salary, irrespective of what the parties may have pleaded. Consequently, I do not think that it was outside the power of the trial court to grant the prayer for salary for December 2018, if unsettled by the appellants, even though it was not expressly pleaded.
  53. What may perhaps appear contestable in respect of this award is that it covered salary for the entire of the month of December 2018. According to the respondent, he was terminated on December 7, 2018. He did not continue working for the 1<sup>st</sup> appellant thereafter.
  54. Section 49 (1) (b) of EA permits an award of salary for days worked by an employee before his termination. In addition, the provision allows the court to make an award to cover the loss the employee may have suffered “consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice.”
  55. The clause on the termination notice in the letter of appointment issued to the respondent obligates any party wishing to terminate the contract otherwise than on account of summary dismissal to give the other notice lasting one school term. The court takes judicial notice of the fact that a school term in Kenya usually approximates three calendar months.
  56. In my view, under section 49 (1) (b) of the EA aforesaid, the trial court was entitled to grant the respondent a sum that would cover the loss he had suffered as a result of the failure by the appellants to give him notice to terminate his employment that was equivalent to the school term subject only to discounting salary for the seven (7) days actually worked so long as such salary was paid separately. Certainly, such award would have exceeded the sum of Kshs 40,000/ that was awarded as salary for December 2018. Consequently, so far as the award for December 2018 salary does not go beyond



what is contemplated under section 49(1) (b) of the EA, it is not objectionable. Accordingly, I will not interfere with it.

57. Notwithstanding my observations that the trial magistrate would perhaps have awarded a higher figure to the respondent under this head of damages had he considered that the notice period that the respondent was entitled to was equivalent to a school term, I am nevertheless satisfied that any consequential loss suffered by the respondent is adequately compensated by the award of seven (7) months' salary to be discussed below.
58. On accrued pro-rata leave pay, the record of the trial court shows that the respondent did not tender evidence to support this claim. Whilst he made reference to the claim in his statement of claim, the respondent did not allude to it either in the witness statement he adopted in evidence or in the oral testimony he provided to compliment the witness statement. Apart from stating that teachers at the 1<sup>st</sup> appellant institution never took breaks during school holidays and besides asking that he be paid "as per claim" during his oral testimony, the respondent gave no cogent evidence on the claim for accrued leave.
59. From his letter of appointment, it is clear that there is a clause indicating that the respondent was entitled to annual leave for 21 days every calendar year. Such leave was to be taken during school holidays. The respondent's assertion that the 1<sup>st</sup> appellant did not permit teachers to proceed on breaks during school holidays is in conflict with this clause on annual leave in the said letter. It was for him to provide evidence to demonstrate that this entitlement was not taken. He did not.
60. In his judgment, the trial magistrate entered judgment for pro-rata leave. However, he did not provide a basis for making this award. The trial court did not provide the formula by which it pro-rated the respondent's leave period if at any. It is not indicated how many days of leave had accrued to the respondent and from which period of service they arose.
61. In his submissions, the respondent avers that because the appellants did not provide records relating to leave, the court was right to enter judgment for pro-rata leave in his favour. Yet, he gave no evidence on this claim. How would the court properly award the claim without evidence in support of it?
62. I agree with the observations by Ndolo J in *Brookhouse Schools Limited v Dorcas Njeri Gichuhi* [2016] eKLR that merely because the employer has not furnished records of the employee's leave days is no reason to presume in favour of the employee not having taken the leave. Such scenario would only arise in situations where there is a dispute in respect of a term of a contract of service which the employer was required to have reduced into writing in terms of section 10 (7) of the EA but had failed to do so.
63. In the absence of evidence to support the claim for pro-rata leave and in the absence of the trial court's justification for the award, I find that the same was improperly granted. The fact that the respondent alluded to the matter in his final submissions cannot justify granting it as submissions are not evidence.
64. Section 49 of the EA sets out the principles that guide the granting of compensation in employer-employee relationships. While a number of judicial pronouncements acknowledge the discretion of a trial court to grant maximum compensation that is equivalent to an employee's twelve months' salary, it has nevertheless been emphasized that the court must provide justification for that kind of award. In the *Ol Pejeta Ranching Limited v David Wanjau Muhoro* [2017] eKLR case, the Court of Appeal said this of the above requirement:-

"The compensation awarded to the respondent under this head was the maximum awardable, that is to say, 12 months' pay. The trial judge did not at all attempt to justify or explain why the respondent was entitled to the maximum award. Yes, the trial Judge may have been exercising discretion in making the award. However, such exercise should not be capricious or whimsical. It should be exercised on



some sound judicial principles. We would have expected the Judge to exercise such discretion based on the aforesaid parameters. In the absence of any reasons justifying the maximum award, we are inclined to believe that the trial judge in considering the award took into account irrelevant considerations and or failed to take into account relevant considerations.....”

65. In *Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya)* (civil appeal 240 of 2018) [2021] KECA 173 (KLR), the Court of Appeal had this to say of the above requirement:-  
“.....the trial judge must justify or explain why a claimant is entitled to the maximum award.”
66. In the judgment that is the subject of this appeal, the trial court did not justify the award of Kshs 552,000/ as compensation for wrongful termination. Importantly, the award appears to have exceeded the respondent’s twelve months gross salary which at Kshs 40,000/ per month works out to Kshs 480,000/. This was in contravention of the statutory capping placed by section 49 of the EA. Although the respondent indicates in his submissions that the court used a sum of Kshs 46,000/ which included his house allowance to arrive at the sum of Kshs 552,000/, it is to be noted that the pay slips produced by him show that his gross salary was Kshs 40,000/.
67. Under section 49 of the EA, one of the factors that are essential in assessing the quantum of damages payable to an employee is the extent to which his conduct contributed to the separation of the parties. In this case, it is clear to me that the failure by the respondent to procure the TSC registration contributed to his termination. It was at all times clear to the respondent that such registration was critical to the continuance of his contract of service with the 1<sup>st</sup> appellant. On the other hand, the appellants were under notice from the regulator to ensure compliance with section 23 of the TSC Act or risk resultant legal consequences.
68. Yet, it is now generally appreciated that it is not easy for persons in the teaching profession to secure employment in Kenya. This challenge presents the possibility of the respondent not securing another teaching job even after securing registration with the regulator once he lost employment with the appellants.
69. The record does not disclose that the trial court considered these or any of the other principles in the aforesaid provision of law. Had the trial magistrate kept these principles in mind, he would have endeavoured to balance the scales of justice by making an award that did not weigh heavily against either of the disputants.
70. On the question of an award for costs, I note that the same was not canvassed as an issue for determination before the trial court. Ordinarily and as rightly submitted by the respondent, costs follow the event and are in the court’s discretion. The fact that a demand letter did not issue does not necessarily tie the court’s hands not to award costs to a successful claimant (see *Stanley Kaunga Nkarichia v Meru Teachers College & another* [2016] eKLR). Importantly, apart from the pleadings by the appellants, the question whether to award the respondent costs was only pursued vigorously through their final submissions and not evidence at the trial. I will therefore not interfere with the trial court’s order on costs.

### **Revised Award**

71. In the premises, I set aside the judgment of the trial court and enter judgment for the respondent in the following terms:-
  - a. I uphold the trial court’s finding that the respondent was improperly terminated save to add that the impropriety relates only to the failure by the appellants to uphold due process in terminating the respondent.



- b. I reduce the award for compensation for wrongful termination to the sum of Kshs 280,000/=, an amount that is equivalent to the respondent's gross salary for seven (7) months.
- c. The award of Kshs 40,000/ to cover the respondent's salary for December 2018 is upheld.
- d. I set aside the awards for pro-rata leave for want of proof.
- e. The award aforesaid is subject to the applicable statutory deductions, if any, under section 49 of the *Employment Act*.
- f. The above amounts shall attract interest at court rates from the date of the decision of the trial court till payment in full.
- g. The respondent shall have costs of the proceedings before the trial court.
- h. Each party shall bear his/its costs on appeal as both have been partially successful.

**DATED, SIGNED AND DELIVERED ON THE 14TH DAY OF NOVEMBER, 2022**

**B. O. M. MANANI**

**JUDGE**

**In the presence of:**

**The Appellant in person**

**Mugwe for the Respondents**

**ORDER**

**In light of the directions issued on 12th July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision 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**

