

KENYA / JUDGMENT

# Mbugua v Geothermal Development Corporation [GDC] [2026] KEELRC 1171 (KLR)

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## COURT

Employment and Labour Relations Court

## CASE / FILE NUMBER

Cause E005 of 2024

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Mbugua v Geothermal Development Corporation [GDC] (Cause E005 of 2024) [2026] KEELRC 1171 (KLR) (30 April 2026) (Judgment)

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[2026] KEELRC 1171 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nakuru

Cause E005 of 2024

J Rika, J

April 30, 2026

Between

Benjamin Mbugua

Claimant

and

Geothermal Development Corporation [GDC]

Respondent

## Judgment

1. Through his Statement of Claim, amended on 2nd December 2024, the Claimant avers that he was employed by the Respondent State Corporation, as an Accountant, on 25th September 2009.

2.He was summarily dismissed by the Respondent on 2nd June 2023, on allegations of fraud and obtaining money by false pretences.

3.His last gross monthly salary was Kshs. 206, 972.

4.He lodged an appeal before the disciplinary appeals committee on 16th June 2023. He was to be heard on 13th September 2023. The hearing was cosmetic. The appeals committee had prejudged the Claimant. No decision was communicated to the Claimant, until he requested for it, on 13th October 2023.

5.He avers that his problems with the Respondent arose after he acted as a whistleblower, in cases of corruption and pilferage of funds in the Respondent's staff retirement benefits scheme [The Board]. He was one of the Trustees.

6.He had been requested to sign certain documents around 9th March 2022 by the Board, authorizing allocating of funds and functions. He declined, and reported fraud to the DCI. Senior members of management were implicated. The Claimant recorded a statement with the DCI on 30th June 2022.

7.The Respondent's Managing Director/CEO, the General Manager Human Resources and the Board Secretary, were all implicated.

8.Upon the Claimant reporting the fraud and corruption to the DCI, he was issued 4 letters to show cause why he should not be disciplined. He was harassed, intimidated, and food-poisoned.

9.The letter to show cause dated 25th July 2022 alleged that the Claimant breached company policies and procedures. Hearing was scheduled for 9th September 2022. There was no decision communicated to the Claimant by the Respondent after hearing.

10.The letter to show cause dated 28th July 2022, alleged that Claimant's academic papers were not valid. He was asked to avail original academic papers. The Respondent however, had his original papers plucked out of his personnel file.

11.The letter to show cause dated 3rd August 2022 alleged that the Claimant attended a meeting irregularly. He was charged with the offence of obtaining money by false pretences.

12.The fourth and last letter to show cause issued on 21st October 2022. The Claimant was alleged to have obtained money by false pretences, after he had lodged claims relating to use of his personal cars for official business. He was heard on 8th November 2022, but again no decision was communicated to him.

13.During the hearing, the Claimant repeatedly heard committee members, brief the Managing Director. The Managing Director interfered with the hearings.

14.The Managing Director travelled to Mombasa on 10th June 2022, where the Claimant was attending a training, to intimidate and harass the Claimant.

15.These events show that the Respondent was hellbent on getting rid of the Claimant.

16.He was surcharged a sum of Kshs. 703,302 unfairly. The Respondent purported to do so to recover mileage allowance which it claimed, was irregularly obtained by the Claimant. The Claimant obtained the allowance regularly, in accordance with the Respondent's transport policy. False claim had not been flagged in the frequent audits carried out at the Respondent. He claims a sum of Kshs. 207, 967, being the approved mileage allowance for the period November 2021 to July 2022.

17.His full prayers are: -a.Declaration that termination was unfair and unlawful.b.Declaration that termination violated the Claimant's constitutional right to fair labour practices under Article 41 of the Constitution.c.Declaration that the Respondent failed to adhere to Section 45 of the Employment Act.d.Reinstatement without loss of benefits.e.Compensation under Section 49 of the Employment Act.f.Payment of full salary and benefits during the period of dismissal.Alternatively: -g.2 months' salary in lieu of notice at Kshs. 206,972 x 2 = Kshs. 413,944.h.Compensation equivalent of 12 months' salary at Kshs. 2,483, 664.i.Severance pay for 14 years at 15 days' salary for each year completed in service, at Kshs. 1,448,804.j.Annual leave at Kshs. 732,228.k.Leave allowance at Kshs. 524,994.Total...Kshs. 5,603,634.

18.The Respondent filed its Statement of Response, dated 25th May 2024. It is conceded that the Claimant was employed by the Respondent. He was dismissed fairly and lawfully, for obtaining money by false pretences and fraud.

19.He was heard and a decision made to dismiss him. He lodged an appeal which was heard fairly and declined. The Respondent heard the Claimant in accordance with its Human Resource Policies and Procedures Manual [Manual].

20.He was advised on his right of legal representation. He was accompanied by his Advocate, Mokua Manyara, at the hearing.

21.He did not place any material before the Court, to back up his pleading that he was requested to sign certain documents concerning the Scheme, which he declined to sign. He did not establish that he reported fraud and corruption against the Respondent's staff pension scheme, to the DCI. He did not show that he was harassed, intimidated and food-poisoned by the Respondent. He did not report poisoning to the police.

22.The Respondent denies that its Managing Director travelled to Mombasa, with the sole purpose of harassing the Claimant

23.The letters to show cause were issued in accordance with the Manual. The law does not place a limit on the number of letters to show cause that can be issued to an Employee.

24.The Claimant has not placed evidence before the Court, to support his position that the Managing Director, interfered with the disciplinary proceedings.

25.To streamline its operations, the Respondent contacted various academic institutions, to verify certificates presented by Employees on recruitment. Verification affected all staff. Some were found to possess fake certificates. Culprits were subjected to fair disciplinary process. The Claimant has not established any link between the academic papers and the letters to show cause. He has not shown that the Respondent plucked his academic papers from his personnel file. He was not the custodian of the personnel files.

26.He was invited by Head of Security to shed light on the allegations of fraud and obtaining money by false pretences. He ignored the invitation, alleging that he was not answerable to Head of Security.

27.His appeal was not predetermined. He occasioned delay to the hearing of the appeal, by making frequent objections to the composition of the committee. On other occasions, he stated that he was not available for physical hearing.

28.He continued to receive surcharged amounts fraudulently. He manipulated the private mileage scheme with others in finance department, a fraud whose full extent was still being investigated, by the time the Claimant initiated the Claim herein.

29.All mileage due to the Claimant was paid. Any mileage that was not, fell in the category of false mileage claims.

30.Hearing conducted on 8th November 2022 concluded that the Claimant fraudulently claimed mileage, to the tune of Kh. 703,302. He has not reimbursed the sum

31.If the Claimant was involved in crime, it was not for the Respondent to prosecute him.

32.The Respondent urges the Court to find that there is no reasonable cause of action against the Respondent, and dismiss the Claim with costs.

33.The Claimant gave evidence on 5th March 2025. His case was closed on 19th September 2025. Respondent's Human Resource Manager Mariam Athman, Finance Manager Jackline Wakhungu and Security Officer Edwin Mwai, gave evidence on 19th September 2025, closing the hearing. The Claim was last mentioned before the Court on 24th February 2026, when the Parties confirmed filing and exchange of their submission.

34.The Claimant adopted as his evidence-in-chief, his witness statement dated 2nd February 2024, and documents [1-10]. He restated his employment history, adding that he was stationed at Nakuru. He was victimized following his whistleblowing against senior managers to DCI and EACC. Trustees of the staff retirement benefits scheme, were summoned by the DCI and the EACC. Many improprieties were unearthed. The Managing Director threatened the Claimant, directing him to be reporting to him directly, rather than approach external agencies.

35.The Managing Director followed him to Mombasa, threatening that he could dismiss the Claimant. Many accusations were made against the Claimant by the Respondent, including that: his academic certificates were irregular; he manipulated the mileage system; and, interfered with trade union matters, while he was in management. He was sexually harassed. He was issued several letters to show cause, after he reported corruption and fraud cases to the DCI.

36.The disciplinary hearing was unfair. He was made to remove his clothes, for the Respondent to find out, if he had hidden a recording device. The Managing Director was briefed about the disciplinary proceedings by the committee.

37.He emphasized that the cars he used to claim mileage, were his cars. He gave ownership documents to the Respondent. Mileage allowance was approved by the relevant officers. In short, the Claimant explained that all his problems had their root, in his whistleblowing.

38.Cross-examined, he told the Court that he was appointed as a Trustee of the staff benefits retirement scheme. There were attempts made to poison him, for whistleblowing. He reported the matter to the police. He received several letters to show cause. He responded. All disciplinary hearings were minuted. He did not have any document, showing that the Managing Director was prevented from consulting the disciplinary committee members. The Managing Director was conflicted, having been reported to the DCI by the Claimant.

39.The Claimant had authenticated his certificates in 2009 and 2012. They were plucked out from his file. The Managing Director followed the Claimant to Mombasa and threatened him. He reported the threats to the police. Disciplinary hearings were cosmetic. He was never charged with any criminal offence. The Respondent ought to have filed complaint with the police.

40.He enrolled his cars in the mileage scheme. He provided ownership documents, including a sale agreement. KRA had delayed in processing his logbook after purchase. A shylock Daniel Wanyiri, provided the finance for purchase of one of the vehicles. He repossessed the vehicle, after the Claimant defaulted in October 2016. The Claimant disposed of his vehicle KBQ, which was enrolled to the mileage scheme, and bought another vehicle KCK. He did not update the Respondent. The Respondent read the odometers frequently. Finance and Audit departments carried out audit exercises quarterly.

41.Redirected, the Claimant told the Court that he was elected as a Trustee. He reported irregularities to different agencies, including the RBA. He was summoned by DCI through a letter dated 30th June 2022, to record his statement. The union branch secretary wanted to be a Trustee, and therefore alleged that the Claimant had interfered with union affairs.

42.There was no policy against the Claimant using any of the cars registered under the mileage scheme, to secure loans. Dismissal was illegal and discriminatory. The Claimant urges the Court to uphold his evidence and grant his prayers.

43. Mariam Athman, Human Resource Manager, relied on her witness statement dated 14th June 2024, in her evidence-in-chief. She underscored that the Claimant was dismissed on valid ground, and through a fair procedure.

44. Cross-examined, she told the Court that the Claimant had no role in the trade union. She was not aware that he made a report to the DCI concerning corruption at the Respondent. He claimed mileage using vehicles that were not registered in his name. Policy required that he is the registered owner. Accounts and finance departments approved his claims, and paid him. The paying officers are still in office.

45. His A-level certificate had not been verified by the issuer. He was issued about 4 letters to show cause. He was also issued a cautionary letter, regarding his behaviour towards his supervisor. He was dismissed for fraud. He was not victimised. The DCI report was outside the scope of the disciplinary process.

46. Redirected, Mariam told the Court that there was no collusion between the relevant departments and the Claimant, in obtaining mileage allowance. He presented a copy of his A-Level certificate. The PSC required authentication by the examining body.

47. Manager Finance, Jackline Wakhungu, relied on her witness statement, and documents filed by the Respondent, as her evidence-in-chief. She investigated the mileage allegations made against the Claimant.

48. Policy allowed Employees to use their own vehicles for official duty, and claim mileage. The Claimant was required to provide the Respondent with his logbook. It could be in his name, or his spouse's name. Manager had to give prior approval. The journey details had to be captured in a personal return form. Kilometres and rates adopted had to be captured. The Respondent has been reimbursing Employees since the inception of the system.

49. The Claimant was alleged to have used 2 vehicles, KBQ 450X and KAU 542K. Jackline and her team of 3 members, investigated the allegations objectively. They interviewed the Claimant, and those who approved, and made payments. It was established that approval was made in good faith. There were inconsistencies in the Claimant's ownership of the vehicles used in claiming mileage.

50. Cross-examined, Jackline told the Court that she worked in finance department, while the Claimant worked in the budget office. The Claimant was not rude to Jackline. She did not complain that he was rude. She did not cause the cautionary letter to be issued to the Claimant. She was at the time a Senior Accountant, while the Claimant was Accountant II.

51.The logbook was kept in the custody of finance department. Finance confirmed there were gaps, in the mileage claims made by the Claimant. Jackline became a Trustee of the pension scheme, in 2024. She was not aware of the Claimant's whistleblowing, with regard to fraud involving senior managers of the Respondent. The Claimant requested to be transferred from Jackline's office. He worked directly under her. She had nothing to do with his request. He was not rude to her. He never complained against her, internally or externally.

52.She was not aware that the Claimant complained against her to the DCI, for her covering up senior staff who were involved in fraudulent activities. All the Claimant's mileage claims were verified by relevant Managers. Jackline verified the ownership of the vehicles with the NTSA.

53.She did not take statements from persons, other than the Claimant, shown as owners of the vehicles in the logbooks. She did not know if odometer reading authenticated mileage claims. Policy did not require that the vehicle is physically examined. The Claimant gave details of his journeys.

54.The vehicle KAU was used between July 2011 and March 2013. The Claimant was dismissed in 2022 about 11 years later.

55.Redirected, she clarified that the Respondent retained copies of Employee's vehicle logbooks, not the originals. The Respondent verified the logbook for vehicle KBQ, not KAU. The logbook would be lodged once, not every time a claim was made. An Employee could sell his vehicle, and continue claiming mileage, using the logbook.

56.Security Officer Edwin Mwai, adopted his witness statement and documents exhibited by the Respondent, in his evidence-in-chief. He investigated fraud against the Claimant, in July 2022.

57.The mileage claims were from 2011. The Respondent had intelligence that claims made by the Claimant were fraudulent. He did not own the vehicles against which mileage was claimed. The vehicles were registration KBQ 450X and KAU 542K.

58.Mwai interviewed the Claimant. It was established that the vehicles had already been transferred to third parties. Mwai interviewed others including those from the finance department. KAU changed ownership in 2013, while KBQ did so in 2016. There was evidence obtained from the NTSA. The Claimant made false mileage claims to the tune of about Kshs. 1.1. million.

59.Cross-examined, Mwai told the Court that verification of vehicle ownership, was done by finance department. Mwai joined the Respondent in 2014 as an investigator. The Claimant was at a higher grade than him. A higher grade should have investigated the Claimant. Mwai told the Court that he was acting as Head of Security at the time of investigation.

60.He was not required to refer fraud to the police. KAU was used from 2011 to 2013, KBQ from 2013 to 2022. The investigators did not examine the vehicles. Approval for payment was given. The vehicles could be pledged as collateral for loan. This would not prevent use of the vehicles by the Claimant, for mileage claims.

61.Mwai was not aware about the Claimant's whistleblowing. He was not aware about other officers being dismissed over the false mileage claims. Paragraph 10 of Mwai's witness statement, indicates that an Employee could use the log book, or transfer form, to establish ownership of the vehicle. The Manual had been reviewed, making it mandatory to have a logbook in ones name, one's spouse or child, to establish ownership. Transfer form was acceptable under the old Manual. Mwai denied that the Claimant was victimised. He was not aware of multiple letters to show cause, issued to the Claimant. He confirmed that the mileage claimed, was covered by the Claimant.

62.Redirected, Mwai told the Court that he did not have bias against the Claimant, in his investigations. It was not necessary to physically examine the vehicles. He gave evidence that the vehicle had been transferred to a financier. There was no joint ownership at any point. Mwai did not see any transfer form, in favour of the Claimant's spouse or child. Mwai was acting Head of Security. The Claimant presented himself before the investigating team, and recorded a statement voluntarily.

63.The issues are whether the Claimant's contract of employment was terminated by the Respondent through a fair procedure [Sections 41 and 45] of the Employment Act; whether it was based on valid reason [Sections 43 and 45] of the Employment Act; and whether the Claimant merits any of the alternative prayers.

### **The Court Finds: -**

64.It is common ground that: the Claimant was employed by the Respondent, as an Accountant on 25th September 2009; he was summarily dismissed on 2nd June 2023 on account of fraud and obtaining money by false pretences; and, the Claimant's last gross monthly salary was Kshs. 206,972.

65.The remedies sought, if the Court may be allowed to start with the remedies, are to some extent repetitious. Other remedies are pursued both as principal prayers, as well as alternative prayers.

66.Prayer 1 in the Amended Statement of Claim, is that the Court declares termination unlawful and unfair. What purpose is served by prayer 3, which is that the Court declares that the Respondent failed to adhere to Section 45 of the Employment Act?

67.Prayer 4 seeks an order of reinstatement without loss of benefits and continuity of service. What again, is the value of seeking full salary and benefits during the period of dismissal, under prayer 6?

68.Prayer 5 seeks compensation pursuant to Section 49[1][c] of the Employment Act. The prayer is replicated in what are characterized as alternative prayers, under prayer 1 [ii]. A repeat prayer, is not an alternative prayer.

69.Procedure. The Claimant was suspected of involvement in multiple employment offences, and was recipient of 4 separate letters to show cause. In addition, he was issued a cautionary letter.

70.The Court does not attach much weight to the number of letters issued to the Claimant. The allegations raised in those letters, did not lead to dismissal of the Claimant.

71.The only relevant letter to show cause would be that which related to the disciplinary charges of fraud and obtaining money by false pretences, charges which led to summary dismissal of the Claimant, and which were subject matter of his appeal.

72.The other letters to show cause, and the multiple allegations, were dealt with by the Parties, and did not result in the Claimant's dismissal.

73.The Respondent was within its discretion, and acted in accordance with the Manual, in issuing letters to show cause.

74.The allegations relating to irregular A-Level certificate; unbecoming conduct by the Claimant to his senior; and meddling in trade union affairs, were not relevant to the disciplinary hearing.

75.The Claimant was issued a letter to show cause dated 3rd August 2022. He was required to respond specifically, to 3 related allegations: fraud; obtaining money by false pretences; and misappropriation of company property.

76.The Claimant gave his response in his letter dated 8th August 2022. He denied the allegations, explaining that he owned both vehicles, KBQ and KAU, at the time of claiming mileage. He had provided copies of the logbooks. He explained that he subsequently disposed one of the vehicles, and acquired another vehicle, KCK 960K. He had supplied finance department with the logbook for the new vehicle.

77.He was invited for disciplinary hearing and concedes that he was heard. A decision to summarily dismiss him was made. He was given the opportunity to appeal, and lodged an appeal. He was heard on appeal, although he complains that his Advocate was kept out of the hearing.

78.The Court has not been availed evidence from the Claimant's Advocate, to support the position that the Advocate was instructed to represent the Claimant, and was barred for whatever reason from doing so, by the Respondent.

79.The Respondent explains that the Claimant failed to notify the Respondent that he would be represented at the hearing by an Advocate, in accordance with clause 12.7.1 [j] of the Manual, and clause 2.1 b-[v] of the Discipline Manual for Public Service, 2022. The Respondent states further that it nonetheless allowed the Claimant's Advocate, Mokua Manyara, to attend the hearing and follow the proceedings.

80.The Court accepts the explanation by the Respondent. The Claimant was accompanied by his Advocate to the hearing.

81.The record shows that the Claimant appealed against dismissal. He was granted a hearing by the Ad hoc Appeals Disciplinary Committee. He was advised through Managing Director Paul Ngugi, in a letter dated 23rd November 2023, that his appeal did not raise grounds, sufficient to warrant review of the summary dismissal decision.

82.There is nothing in this procedure, that deviated from the minimum statutory standards of procedural fairness, under Sections 41 and 45 of the Employment Act, and the Respondent's Human Resource Manual.

83.Procedure was fair.

84.Validity of Reason. The Respondent dismissed the Claimant for 3 employment offences: fraud; obtaining by false pretences; and misappropriation and theft of company property [being funds]. This is disclosed in the letter of summary dismissal, dated 2nd June 2023.

85.The Claimant was surcharged by the Respondent, for the sum of Kshs. 703, 302, alleged to have been obtained by the Claimant through false mileage claims.

86.He was warned that his employment offences were criminal offences under the Anti-Corruption & Economic Crimes Act, 2003. The Respondent however, did not pursue criminal complaint against the Claimant.

87.The Respondent states at paragraph 19 of the Statement of Response, that the Claimant obtained a total sum of Kshs. 703,302 fraudulently. He was surcharged, but did not pay.

88.The Respondent has not counterclaimed any amount from the Claimant.

89.At paragraph 10 of Jackline's witness statement, she states that the Claimant made false mileage claims using vehicle KAU, between July 2011 and 2013. The amount claimed was Kshs. 344,974. He obtained money by false pretences using vehicle KBQ, from July 2011 to June 2022. The amount under KBQ, was Kshs. 1,174,985.

90.The total sum according to the witness statement of Jackline, was Kshs. 1,519,959.

91.This amount was neither counterclaimed, nor surcharged on the Claimant.

92.It was not explained by the Respondent's witnesses, how false mileage claims made way back between 2011 and 2013, were only discovered by the Respondent in 2022, about 11 years from the first false mileage claim.

93.The NTSA wrote to the Respondent on 21st September 2022, months after the Respondent had made allegations against the Claimant for false mileage, that as of September 2013, vehicle KAU was registered in the name of the Claimant.

94.How would the Claimant have made false mileage claims if he owned the vehicle as of September 2013?

95.The NTSA also issued a letter dated 30th September 2022, with respect to vehicle KBQ. It was confirmed that the vehicle was acquired by the Claimant on 3rd August 2013. He transferred it to David Wandiri on 10th November 2016.

96.The Claimant explained in his response to the letters to show cause, that he owned both vehicles at the time he lodged his claims for mileage allowance. He furnished the Respondent with documents establishing ownership. He explained that Employees were not barred from transacting using their vehicles as collateral, and that he had been granted a loan using the KBQ logbook by a shylock.

97.The shylock Daniel Wanyiri had retained his documents, but released them, after the Claimant repaid his loan. Throughout the shylocking transaction, the Claimant retained possession of KBQ. He purchased a new vehicle KCK, whose logbook he availed to the Respondent.

98.The Respondent did not show that the Claimant, did not own the vehicles he claimed to own at the time of claiming mileage.

99.It was not established that he acted fraudulently.

100.The Respondents' witnesses confirmed that the Claimant's mileage claims were verified. They were approved and paid by finance and accounts departments. No officer from these departments was charged for any offence related to paying out false mileage allowances.

101.The witnesses also confirmed that the Claimant's journeys, subject matter of the mileage claims, were indicated in his travel records.

102.Security Officer Mwai, confirmed that it was possible to use a vehicle as a loan collateral, while a copy of its logbook was retained by finance department. He also told the Court that ownership, at some point, could be established through transfer forms.

103.Overall, the evidence adduced by the Respondent's witness, read carefully with the Claimant's own evidence, does not establish that the Claimant did not have ownership, or possession of the vehicles, which he used to claim mileage.

104.It was conceded by the Respondent that mileage claimed was covered. If it was covered, it could never be false mileage. There is nothing counterclaimed by the Respondent in recovery of false mileage allowance paid out to the Claimant. The figures floated by the Respondent as the total amount obtained by the Claimant through false pretences, are inconsistent.

105.There was no valid reason or reasons established by the Respondent, to justify summary dismissal.

106.Remedies. The Court has at the outset, given an overview of the Claimant's inelegance, in pleading his remedies.

107.It is declared that termination was unfair and unlawful under Sections 43 and 45 of the Employment Act.

108. Having granted this declaration under the Employment Act, it is not appropriate to declare that the Claimant's right to fair labour practice, under Article 41 of the Constitution, was violated.

109. An order of reinstatement is statutorily permissible under Section 12 [3] [vii] of the Employment and Labour Relations Court Act. Summary dismissal took place on 2nd June 2023 slightly under 3 years ago.

110. Reinstatement however, does not commend itself to the Court, considering the multiple differences the Claimant had, with the Respondent. He claimed he had extremely bad blood with management, including the Managing Director, who he claimed, followed him to Mombasa and threatened him. He claims that he was stripped naked, and sexually abused at the disciplinary hearing, while the disciplinary committee looked for recording devices from his body. Why would he wish to go back to an Employer who undressed him? He was not in good working relationship with various colleagues, and the Court does not think that he can rebuild an employer-employee relationship, based on the cornerstone elements of trust and confidence, required of any workable employer-employee relationship.

111. The prayer for reinstatement is not reasonable and practicable. The prayer is declined, as are the prayers claimed differently, as "full salary and benefits during the period of dismissal," and, "without loss of benefits and continuity."

112. The Claimant did not leave employment on account of his position being declared redundant. His prayer for severance has no foundation.

113. The claim for unpaid annual leave of 144 days is declined. The Claimant states that 38 days were to be commuted and 106 had not been utilized due to exigencies of work.

114. This Court has in the past granted such prayers, on the understanding that annual leave is an Employee's entitlement under Section 28[1] of the Employment Act. An Employee's benefit conferred by the law, or voluntarily given by the Employer, is never clawed back.

115. The position of this Court on the subject has been that leave is either taken, or converted into cash payment by the Employer, but never to be forfeited. Forfeiture is alien to Section 28 of the Employment Act.

116. Section 28 [4] does not state that leave not taken within 18 months from the date of accrual, shall be forfeited. In the view of the Court, such leave remains an entitlement by virtue of Section 28[1], which could only be converted into cash, equivalent of the monthly salary covering the period of untaken leave.

117. Employment law does not encourage clawback of accrued benefits, entitlements, due to Employees, either by statute or contract.

118.The Court of Appeal in *Bins [Nairobi] Services Limited v. Hardard Macharia Kariamburi* [2025] KECA 1726 [KLR], held that annual leave is forfeited, if not taken within 18 months, from the date of accrual. The Court of Appeal relied on Section 28[4] of the Employment Act, in this interpretation.

119.By way of comparative jurisprudence, the European Court of Justice held in *Max-Planck-Gesellschaft zur Forderung der Wissenschaften eV v. Shimizu* [C-684/16 and *Kreuziger v Berlin* [C-619/16 [generally Max Planck or Shimizu rulings], that paid annual leave cannot automatically be lost at the end of the annual leave earning period, if the Employee has not requested for it.

120.In *King v. The Sash Window Limited* Case C-214/16 CJEU it was held that where the Employer has not provided the Employee with paid leave, the right to paid leave carries over, until the Employee has the opportunity to exercise it, and on termination, the Employee has the right to payment in lieu of leave that remains outstanding.

121.Our caselaw, and legislation as currently authoritatively interpreted, allows for automatic forfeiture, where annual leave is not utilized, within 18 months from the date of accrual. It is not clear from this holding, whether the Employer has any obligation in notifying the Employee that the Employee must utilize his leave, or forfeit it.

122.The Court does not think that the Claimant can therefore, recover his accumulated annual leave days, and the prayers for annual leave pay and allowance, are declined.

123.The Claimant did not exhibit a contract or policy document, showing that he was entitled to a notice period of 2 months.

124.He is granted the statutory minimum notice of 1 month, under Section 35 [1][c] of the Employment Act, at Kshs. 206,972.

125.The Claimant worked for the Respondent from 2009 to 2023, a period of 14 years. He was permanent and pensionable.

126.He was not shown to have caused or contributed, to the circumstances that resulted in his summary dismissal. He did not clarify in his evidence, if he secured an alternative job. The Respondent does not indicate if it paid to the Claimant any terminal benefits, after 14 years of service.

127.He merits and is granted 12 months' gross salary in compensation for unfair termination at Kshs. 2,483,664.

128.He is granted costs of the Claim. He does not pursue interest.In Sum, It Is Ordered: -a.It is declared that termination was unfair and unlawful for want of valid reason[s].b.The Respondent shall pay to the Claimant notice at Kshs. 206, 972, and equivalent of 12 months' salary in compensation for unfair termination at Kshs. 2,483,664.c.Costs to the Claimant.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, UNDER RULE 68 [5] OF THE E&LRC [PROCEDURE] RULES, 2024, THIS 30TH DAY OF APRIL 2026.JAMES RIKAJUDGE

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