

KENYA / JUDGMENT

Mutuma v DHL Worldwide Express Kenya Limited [2025] KEELRC 2153 (KLR)

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COURT

Employment and Labour Relations Court

BEFORE

B Ongaya

CASE / FILE NUMBER

Cause E1004 of 2021

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Mutuma v DHL Worldwide Express Kenya Limited (Cause E1004 of 2021) [2025] KEELRC 2153 (KLR) (23 July 2025) (Judgment)

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[2025] KEELRC 2153 (KLR)

Republic of Kenya

In the Employment and Labour Relations Court at Nairobi

Cause E1004 of 2021

B Ongaya, J

July 23, 2025

Between

Andrew Mutuma

Claimant

and

DHL Worldwide Express Kenya Limited

Respondent

Judgment

1. The claimant filed the statement of claim dated 01. 12. 2021 through J.A. Guserwa & Company Advocates. The claimant prayed for judgment against the respondent for: a.A declaration that the claimant's suspension from his position as the managing director and

the subsequent summary dismissal was unfair, unjustified, illegal, null and void.b.Reinstatement of the claimant back to his employment in the capacity of the managing director and board director of DHL Worldwide Express Kenya Limited of the respondent without any loss of benefits accruing therefrom.c.An injunction against the board of directors of the respondent's restraining it from interfering with and or sabotaging the claimant's terms of employment in force nor replacing him.d.Salary for the entire period the claimant has been out of employment.e.Damages for wrongful and/or unlawful suspension and unlawful dismissalf.Pecuniary damages for lost opportunitiesg.Damages for discriminationh.Costs of this suit with interest thereon

2. The statement of response was filed through Anjarwalla & Khanna LLP. The respondent prayed that the suit be dismissed with costs and judgment entered for the respondent on the counterclaim for:a.An order directing the claimant to pay the respondent the market value of the motor vehicle registration number KCX 007P, Toyota Prado at the time the respondent was terminated being on 12. 11. 2021 assessed at Kshs.3,500,000. 00. b.In the alternative, an order directing the claimant to forthwith release motor vehicle registration number KCX 007P, Toyota Prado to the respondent in good working condition to be confirmed by a reputable mechanic, and if motor vehicle registration number KCX 007P, Toyota Prado is not returned in a good working condition, the claimant to pay the amount necessary to do such repairs as would be required plus the amount for hiring a Toyota Prado at the prevailing market hiring rates for such a vehicle by a reputable company.c.General and special damages arising out of the claimant's illegal and unauthorised use of the company vehicle.d.Interest on (b) and (c) above at court rates from the date of filing the suit.e.Costs for suit and counterclaim.f.Any other relief the court may deem fit.
3. The claimant's case was that he was employed by the respondent as a Country Manager by a contract of employment that he signed on 02. 06. 2016.
4. The claimant states that his performance over the years was exemplary and in late 2020, owing to his great business performance and results, he was nominated as a candidate for the company's high potential programme and as a result he was enrolled into the DHL Global Certified Leaders Programme.
5. In the year 2019, Kenya faced a challenge with clearance of shipments owing to KRA rolling out a new system, the Integrated Customs Management System.
6. The team in South Africa were not convinced by the explanation given by the Kenyan management as regards the issue and opted to bring in a team from other countries, mainly from South Africa to try and resolve the situation.
7. Before the team arrived, the Commissioner of Customs and border control had visited the respondent's facility severally to try and assist them clear the shipment backlog.

8. The claimant states that the foreign team bullied, belittled and insulted the local staff which resulted in him addressing the matter formally, a move his seniors in South Africa did not appreciate.
9. It is the claimant's case that the respondent looked down upon the Kenyan staff, and as a result appointed a South African Caucasian to the position of Country Operations Manager for Kenya, one Michael Hartzenburg.
10. The claimant pointed out to the respondent that there was an anomaly in the appointment, drawn from favouritism. The claimant was then called to South Africa for a meeting, wherein he was presented with allegations, which he states the respondent could not substantiate.
11. The claimant states that in the same year, he received a letter of appreciation from the Commissioner of Customs and Border Control, however, his immediate boss downplayed this achievement.
12. In November, 2019 the President of Kenya, H.E. Uhuru Kenyatta awarded DHL a Presidential Award for being a distinguished taxpayer compliant company.
13. The claimant states that in 2020 he was approached by the respondent's legal team and the South Africa office to remove Dr. Chris Kirubi from the respondent's board of directors. The claimant states that he found the method proposed to be illegal and in bad taste given that Dr. Kirubi had been ailing for a while. He resisted the proposal and the same was not taken kindly.
14. Upon the death of Dr Kirubi and his burial on 21. 06. 2021, on 23. 06. 2021 the CEO for Sub Saharan Africa, without notice to the claimant, sent documents to the Company Registrar, Adili Corporate Services Kenya for the claimant's removal from the board of directors of the board of Document Handling East Africa Ltd.
15. The claimant claimed racism and discrimination on the part of the respondent, owing to the appointment of only white South Africans, four in total to the Kenya board.
16. The claimant states that he pointed out to the Legal Vice President for Sub-Saharan Africa that they were not adhering to the shareholder agreement, that Dr. Kirubi had made changes to the board by appointing his daughter, Mary-Ann Kirubi.
17. On 01. 09. 2021 the claimant received a letter from Mr. Hennie Heymans the DHL Express CEO for Sub Saharan Africa indicating that the claimant needed to attend a meeting on 03. 09. 2021, for his temporary suspension of duties.
18. On 06. 09. 2021 the claimant was suspended from duty as the Managing Director and Country Manager for DHL Worldwide Express Kenya Ltd.

19. On 21. 10. 2021 the claimant received a notice to attend a disciplinary enquiry to which he responded on 24. 10. 2021 requesting for hard copies of the supporting documents being relied on. Additionally, he requested for postponement of the enquiry.
20. The respondent, through Mr Paul Clegg denied the claimant access to the supporting documents being relied on for the disciplinary charges.
21. On 02. 11. 2021 the claimant attended the disciplinary hearing, which he states took 10 hours.
22. On 03. 11. 2021 the claimant filed his response regarding the allegations levelled against him.
23. On 11. 11. 2021 the claimant was invited for a further disciplinary hearing, which he objected to, for reasons that he had not been furnished with the supporting documentation.
24. On 12. 11. 2021 the claimant was issued with the findings and determination of the disciplinary hearing, which recommended summary dismissal.
25. On 15. 11. 2021 the claimant received a termination letter with the effective date being 12. 11. 2021 summarily dismissing him from employment, with a 3 day right to appeal.
26. On 16. 11. 2021 Mr Hennie Heymans initiated changes to the board of directors of DHL Worldwide Express Kenya Ltd.
27. On 16. 11. 2021 the claimant filed his appeal, to which the respondent replied on 25. 11. 2021 indicating that a final decision on the appeal would be rendered on 01. 12. 2021.
28. On the part of the respondents, it is stated that the claimant did not diligently and dutifully execute his roles and responsibilities as the respondent's Country Manager- Kenya and as a director before receiving the invitation to the suspension meeting. Instead, the claimant breached several terms of the employment agreement and the respondent's policies and was found to have engaged in gross misconduct. Further the claimant also breached several of his fiduciary and statutory director duties.
29. Following suspicion that the claimant and other senior employees of the respondent had breached the terms of their employment agreements, the respondent hired a third party, IRS-Forensic Investigation to conduct investigations.
30. On 13. 01. 2021 the claimant was informed of the respondent's decision to appoint the IRS to assist it in investigating the payment of the 13th cheques, which constituted a breach of the respondent's policies and procedure on remuneration.
31. However, the claimant refused to co-operate in the preliminary investigations citing the Kenyan data protection laws. The respondent decided to suspend the claimant from his duties to enable the respondent carry out and complete its investigations into the allegations.

32. On 06. 09. 2021 the respondent after considering the representations made by the claimant, communicated its decision, in writing, to temporarily suspend the duties of the claimant to allow the respondent to conduct and finalize the investigation.
33. The respondent states that preliminary investigation and the investigation revealed that there was evidence to substantiate the allegations that senior employees, including the claimant, had been involved in the following suspected breaches:
 - a. Allegedly being involved in the alleged unauthorized changes made to the provisions of DHL's employee handbook dated June 2018 relating to retirement scheme, long service award scheme and motor vehicle.
 - b. Allegedly being involved in the approval and payment of the 13th cheque to the respondent's employees contrary to the respondent's group policies and procedures and without obtaining the requisite approvals from the regional level and/or at the group level.
 - c. Allegedly being involved in the unauthorised amendment of the 2009 handbook in July 2020 by introducing provisions on the 13th cheque without following due process and obtaining the required approvals at the regional level and/or at the group level.
 - d. Allegedly accepting the request for early retirement by the former head of HR Kenneth Kaunda, which was outside the claimant's scope and responsibilities with the claimant's acceptance of the request for early retirement also allegedly compromising the investigation into the matters set out in the notice.
 - e. Allegedly refusing to cooperate in the investigation after being approached by the IRS Forensics for information and/or explanations pertaining to the alleged unauthorised approval and payment of the 13th month cheque.
 - f. Allegedly failing to protect DHL's confidential information and documents.
 - g. Allegedly signing letters terminating former employees of the respondent in circumstances where there were repeated failures to follow the correct procedure contrary to the Employment Act and the disciplinary procedure which has led to some employees instituting claims against the respondent for unfair dismissal.
34. On 21. 10. 2021 the respondent issued a notice to the claimant to attend a disciplinary enquiry on 26. 10. 2021 at 9. 30 am. The notice set out the alleged offences and the claimant's right to be accompanied by a fellow employee during the hearing.
35. The notice contained a link to access all the supporting documents relied on by the disciplinary panel.
36. The notice required the claimant to confirm to the respondent in writing that he was able to access the virtual data room and documents by noon Kenya time on or before 22. 10. 2021 and, failure to which the respondent would assume that the claimant had been able to access the secure virtual room. The claimant did not inform the respondent in writing or at all that he could not access the virtual room. The respondent understood the claimant's silence to mean that he could in fact access the virtual data room.
37. Vide an email of 24. 10. 2021 the claimant requested for the hearing to be postponed for a period of 14 days to enable him prepare his defence and also requested the respondent to deliver the hard copies of the documents to the office of his advocates.

38. The respondent postponed the enquiry to 02. 11. 2021. With regard to the request for delivery of hard copies, the respondent confirmed that the link to the virtual data room had at all times been working thereby giving the claimant access to the documents.
39. The respondent stated that it did not deny the claimant access to the supporting documents. That the only request that was denied, was the request for delivery of hard copies to the claimant's advocates. The claimant was informed that he could physically peruse the supporting documents at a place and time to be communicated by the respondent.
40. A disciplinary hearing was held on 02. 11. 2021. Subsequently, after reviewing the evidence on record and considering the representations made by the claimant during the disciplinary hearing, the disciplinary panel came to the conclusion that the claimant had committed and was guilty of the allegations.
41. In line with the respondent's disciplinary code, the claimant was invited to attend a mitigation meeting on 11. 11. 2021 but the claimant elected not to attend the mitigation meeting.
42. The claimant was given prior warning that the mitigation meeting would proceed and a decision would be made even in his absence.
43. The disciplinary panel proceeded in the absence of the claimant and prepared a report setting out its recommendation to the respondent.
44. The report concluded that the claimant was culpable of all allegations proffered against him and should therefore be summarily dismissed. Consequently the disciplinary panel recommended the summary dismissal of the claimant on the grounds of wilful misconduct and gross negligence contrary to the terms of the Employment Act, the disciplinary procedure and the respondent policies.
45. On 12. 11. 2021 a termination letter was sent to the claimant terminating him effective 12. 11. 2021. The respondent informed the Claimant that he would be paid his terminal dues immediately upon completing the clearance process by way of RTGS payment to his bank account with a value date of 25. 11. 2021.
46. The claimant was to be paid his salary up to the date of termination which was in the amount of Kshs 507,993. 83 as well as unpaid but accrued leave days for a total of 15. 75 leave days at Kshs 116,605. 37 total Kshs 395,725. 33.
47. He was informed of his right to appeal, which was to be done within three working days from the date of the termination letter.
48. The claimant was also informed that by virtue of his employment, he was a director of the respondent, he was therefore, required to immediately resign from his office as a director and deliver a signed resignation letter and statutory declaration to the respondent by 15. 11. 2021.

49. The respondent stated that it was not true that in 2021, upon the immediate death and burial of Dr. Chris Kirubi the CEO for Sub Saharan Africa, without notice to the claimant, that it sent documents to the respondent's company registrar for the claimant's removal from the board of Document Handling East Africa Ltd.
50. The respondent maintained that it had power to appoint two directors under clause 2. 2 and 4. 1(b) of the shareholders agreement of 01. 01. 1993 between DHL Worldwide Express BV, Christopher Kirubi and Document Handling East Africa Limited and to the articles of association of the company.
51. The removal of the claimant as a director was notified by the respondent to the company secretary of the respondent on 23. 06. 2021 pursuant to the requirements of Article 84(c), pursuant to article 85(c), the removal of the claimant took effect on the date that the notice of removal was served.
52. The respondent maintains that the right of removal of the claimant as a director of the company did not affect the claimant's employment with the respondent. It was an exercise of the company's right under articles 84(b) and 84(c) of the company's articles.
53. The respondent maintains that the disciplinary hearing was procedurally fair and states as follows:
 - i. The claimant was provided with an opportunity to review in detail the allegations and reasonable time to prepare his defence.
 - ii. The claimant was given ample opportunity to give his defence, plead his case and prefer his appeal.
 - iii. The claimant was given an opportunity to be accompanied at the disciplinary hearing by a colleague of his choice.
 - iv. The claimant was offered the reasons for the disciplinary hearing panel determination.
 - v. He was provided with the electronic link to access all the supporting documents and information that would be relied on by the respondent in the disciplinary hearing.
 - vi. There were fair, valid and justifiable reasons for terminating the employment of the claimant.
54. On 16. 11. 2021 the claimant being dissatisfied with the decision to summarily dismiss him, submitted a formal written appeal challenging the procedural and substantive fairness of the disciplinary hearing.
55. The respondent states that an appeal panel of suitably qualified DHL SSA employees was constituted by the respondent upon receipt of the appeal.
56. The composition of the panel was communicated to the claimant and he did not contest the composition of the appeal panel.
57. The appeal panel determination was made on 01. 12. 2021 where the panel unanimously found that the disciplinary hearing was carried out in a procedurally and substantive fair manner in line with the Employment Act and the respondent's disciplinary procedure.

58. The respondent states that there was no unfair or vindictive targeting of the respondent's key management including the claimant. The respondent maintains that it arrived at its decision to terminate the claimant's employment after conducting extensive investigations and holding fair and proper disciplinary proceedings.
59. The respondent maintains that the claimant's allegations that the accusations levelled against him were not in tandem with his job description are incorrect. The allegations were specifically related to the claimant's senior role as the respondent's Country Manager-Kenya and a director of the respondent and the dereliction of those duties.
60. The respondent maintains that the claimant is not entitled to any bonus and or discretionary payment from the respondent because he was summarily dismissed for just cause. Clause 10. 5 of the employment agreement provides that "to the extent allowed by law, in case of termination for cause, the employee shall forfeit entitlement to any bonuses or discretionary payments or other payments including salary for days already worked".
61. The respondent issued the claimant with a fully serviced Toyota Prado registration number KCX 007P valued at Kshs 3,500,000 as part of the claimant's employment benefits. The respondent states that the claimant without any legal basis and despite numerous demands being made, refused to return the company vehicle to the respondent. The claimant's illegal and unauthorised use of the company car exposed the respondent to loss and damage including devaluation of the motor vehicle.
62. The parties filed their respective submissions. The claimant testified to support his case. The respondent witness No. 1 (RW1) was Paul Robert Clegg, the Vice President of Human Resources for Sub-Sahara Africa and the respondent's witness No. 2 (RW2) was Nolwazi Tshikala, Senior Human Resource Advisor based in South Africa and chairperson of the disciplinary committee. The court has considered the parties' respective cases and makes finding as follows.
63. To answer the 1st issue, there is no dispute that parties were in a contract of service. The claimant was employed by the respondent by the letter of appointment dated 01. 07. 2015 effective 01. 08. 2015 as Country Manager and later as Director. The claimant's last gross monthly pay per the exhibited payslip of 25. 08. 2021 was Kshs. 1, 269,984. 58.
64. To answer the 2nd issue, the Court returns that the claimant was dismissed from employment by the respondent's letter dated 12. 11. 2021. The reasons for termination were listed in the letter as follows:
 - a. Being involved in the unauthorised changes made to the provisions of the 2018 respondent's employee handbook relating to retirement scheme, long service award scheme and motor vehicle benefits.
 - b. Wilful misconduct by being involved in the approval and payment of the 13th month cheque to the respondent's employees including the claimant contrary to respondent's group's policies and procedures and without obtaining the requisite approvals from regional and global levels.
 - c. Involvement in unauthorised amendments of the 2019 handbook in July 2020 by introducing provisions on the 13th month cheque without following due process and obtaining the required approvals

at the regional and global levels.d.Accepting request for early retirement by Kenneth Kaunda, the former Head of Human Resources Kenya, which was outside the claimant's scope of duties.e.Refusing to cooperate in the investigations after being approached by the IRS Forensics Team for information and explanations pertaining to the unauthorised approval and payment of the 13th month cheque and failing to return DHL's laptop to allow for investigations to be completed timeously.f.Failing to protect DHL's confidential information and documents by forwarding emails outside of the DHL Domain to Mary –Ann Musangi and the claimant's personal e-mail addresses.g.Negligently performing duty by signing letters terminating former employees of the respondent in circumstances where there were repeated failures to follow the correct procedure contrary to the Employment Act and the disciplinary procedure which had led to some employees instituting claims against the respondent for unfair dismissal.

65. The termination was effective 12. 11. 2021 and the respondent would pay terminal dues upon the claimant completing clearance process. He was to be paid salary up to date of termination Kshs.507, 993. 83; unpaid accrued and untaken leave days 15. 75 making Kshs.116, 605. 37; and total Kshs. 624, 599. 20. The claimant appealed the termination by the letter dated 16. 11. 2021. The appeal panel convened on 26. 11. 2021and the termination was upheld.
66. To answer the 3rd issue, the Court returns that the procedure adopted to terminate the claimant's employment was unfair. It is true that the claimant was accorded a notice for a hearing by the notification to attend a disciplinary enquiry scheduled for 26. 10. 2021, and a chance to be heard in exculpation per section 41 of the Employment Act. However, the evidence is that the respondent while having suspended the claimant to pave way for investigations, no investigation report appears to have been prepared and provided to the disciplinary panel and the claimant as a basis of the disciplinary process. Further, and in absence of the investigation report, the claimant expressly requested to be provided with the hardcopy documents to assist him prepare his defence. The evidence was that he was not provided the documents. In such circumstances, it is the finding of the Court that the respondent adopted an unfair procedure as tested against the provisions of section 45 of the Act that the employer adopts a fair procedure in terminating a contract of employment. While making that finding the Court has considered the testimony by RW2, the chairperson at the disciplinary hearing that the claimant requested hard copy documents and that the link for the claimant to access the documents relied upon at the hearing was send by a person RW2 did not know. RW2 testified confirming that the claimant had addressed to her the email of 09. 11. 2021 stating that he was handicapped in his defence because as at 09. 11. 2021 he had not received the documents. She also testified that she had never seen the hardcopy documents except in court.RW1 testified that the investigation report was not relied upon at the disciplinary hearing and no such report had been filed or exhibited in Court. RW1 confirmed that throughout the disciplinary hearing there was no reference to an investigation report. By that testimony, the Court finds that the suspension and subsequent termination was malicious and unfair as urged for the claimant because, the evidence was

that in fact, no investigation report was prepared in view of the purported investigations. The claimant's lamentation that RW1 was the investigator, prosecuted the disciplinary proceedings and swayed the disciplinary panel's decision appears to be well founded grievance. The want of an investigation report, access to documents, and the apparent bias were raised in the administrative appeal but the respondent failed to address the issues. The Court returns that it amounted to unfair procedure as it was unreasonable in the circumstances.

67. To answer the 4th issue, it therefore appears to the Court that the respondent cannot be said to have had valid or genuine reasons to terminate per section 43 of the Act and for want of due process. In any event the Court returns as follows:
- a. The Court finds as submitted for the respondent that the claimant was involved in Senior Management Team (SMT) meetings at which the 13th salary was approved. However, RW1 testified thus "Amended Handbooks were forwarded to me for first time could have been sometimes in 2021. I do not recall exact date. It was well after the fact. 13th pay was instituted in December 2019. I could see on payroll it had been given. Kenneth Kaunda confirmed it was policy. He confirmed it was policy. It was COVID-19 time and we had to offer it. Kenneth Kaunda had confirmed it was policy. He had issues to provide documents due to COVID-19. Investigations were in 2021. Investigations exposed the amendments." By that testimony RW1 confirmed that in view of the COVID-19 Situation, the respondent had a policy to offer the 13th salary and Kaunda had confirmed as such.
- b. The further evidence by RW1 was that the 13th salary had continued to be paid even as at the hearing of the suit herein. Further, audit reports made after implementation of the 13th salary did not report a discrepancy in view of the alleged 13th salary. It is noteworthy that the respondent does not counterclaim a refund of the 13th pay cheque from the claimant. In that view it is the Court's inference that it was properly and regularly instituted and the allegations as levelled were an unjustified afterthought.
- c. Thus, the evidence is that on a balance of probability, Kenneth Kaunda who was in charge of the human resources confirmed that the 13th salary was the policy and he was as well fully responsible for all the other human resource changes in the Handbook. RW1 was aware of that scope of responsibility and that Kenneth Kaunda left the respondent's service with a clean record without preferred disciplinary proceedings confirms that the want of global or regional approvals was unnecessary or had been granted by voluntary implementation of the changes. RW1 by his own testimony confirmed that Kenneth Kaunda had not submitted the relevant documents for such approval at global or regional level by reason of the COVID-19 situation. The Court finds that the allegations levelled against the claimant about the human resource lapses were, by RW1's testimony, the proper responsibility of the said Kenneth Kaunda. The Court holds that duties clearly vested in a professional employee by reason of reliance on their competence cannot be subject of culpability of their supervisors unless it is shown that the supervisor colluded or made an established supervisory failure. The same is not established against the claimant and the said Kaunda was fully in charge of the human resource function.
- d. Thus, the Court finds that in signing the termination letters which were subsequently subject of Court cases by affected staff, it is that the claimant was

entitled to sign in reliance upon the advisory of the human resource expert, Kenneth Kaunda. There is no bad faith established against the claimant and he acted in good faith per advisory and actions of the said Kenneth Kaunda.e.It then appears to the Court that allegations about failure to cooperate by not availing the laptop to investigators were farfetched as no investigation report was filed to show the relevance of the laptop to the investigations.f.As submitted for the respondent, there were changes to the 2018 handbook introducing the retirement scheme, long service award scheme, and motor vehicle benefits. The claimant's name appeared on the relevant amended handbook. But the Court has found that the changes were purely within the human resource expertise and RW1 has confirmed that the human resource expert, Kenneth Kaunda, confirmed the policy. As submitted for the respondent the claimant received the amended 2018 handbook but there is no evidence that the global or regional authorities expunged the same and, the evidence is that instead, they have continued to implement the same. As submitted for the respondent the claimant issued no communication to disassociate himself from the changes and he never effected the changes. The basis for the claimant to question the human resource expertise and proper docket is not established at all.g.To confirm the changes were ratified or known to the regional and global authorities, CW testified that on 11. 09. 2019, way after the amendments, the global audit report stated that the employee handbook and employee profiles were in place – while the amendments on 13th pay and other changes in issue on the handbook had been forwarded to him way back on 26. 06. 2018. h.The Court finds that forwarding respondent's information to claimant's own email did not amount to breach of confidentiality. It also appears that he shared the company information with Mary-Ann who had previously been a nominee of a director and which nomination appears not to have been revoked or the director had passed away. The transition was rather mixed up and no good reason has been established to show the breach, and if any, the resulting harm or injury. The allegations in that respect are found remote to have been a valid basis for termination.

68. In view of the findings the termination was unfair in procedure and in substance.
69. The 5th issue is on remedies. The Court returns as follows:a.The termination letter stated that the claimant would be paid the salary due plus leave days if he cleared. A pay statement issued but the claimant did not acknowledge receipt of the termination letter. On a balance of probability he was paid the terminal dues in the termination letter for salary and leave as the same are not claimed at all. The respondent's submissions are upheld in that regard.b.As submitted for the respondent the claim for salary, allowances, and other benefits for 14 years after termination in lost future earnings are not justified as are speculative. The claimant has not shown any reason barring him from gainful engagement after the termination and attributable to the respondent. The claims in that regard will fail.c.As the termination was unfair, the claimant is entitled to Kshs. 1, 269, 984. 58 in lieu of termination notice per section 35 of the Employment Act and the contractual provisions.d.As submitted for the respondent the bonus was a discretionary privilege not available consequential to the termination per contractual provisions and the claim is declined.e.The claimant prays for 12

months compensation. The Court has considered the factors in section 49 of the Act. The mitigating factor is that the claimant has continued to use the respondent's motor vehicle and which is due for delivery to the respondent per the counterclaim. The claimant also failed to attend the mitigation hearing. Otherwise he had a clean record of service. To balance justice for parties and in view of those considerations the claimant is awarded six months compensation making Kshs. 1, 269, 984. 58 x 6 thus Kshs.7,619,907. 48. f.As already found the counterclaim will succeed for delivery of the motor vehicle. Considering the margins of success, each party to bear own costs of the suit.g.In view of the irreparable relationship and the impracticability of reinstatement because the vacancy was filled after the termination, the prayer for reinstatement is declined. In any event, the three years of limitation attached to grant of the order per section 12 (3) of the Employment and Labour Relations Court Act have lapsed.In conclusion judgment is hereby entered for the parties with orders as follows:a.The declaration the termination of the claimant's employment by the respondent was unfair.b.The respondent to pay the claimant Kshs.8, 889,892. 06 less PAYE by 01. 11. 2025 failing interest to run thereon from the date of this judgment till full payment.c.The declaration that the claimant to deliver to the respondent motor vehicle registration number KCX 007P, Toyota Prado by 01. 11. 2025 or parties may enter a partial set-off agreement as may be just and appropriate in view of the amount awarded to the claimant herein.d.Each party to bear own costs of the suit including the counterclaim.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
WEDNESDAY 23RD JULY, 2025. BYRAM ONGAYA,PRINCIPAL JUDGE

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