



**REPUBLIC OF KENYA**

**High Court at Nakuru**

**Cause 9 of 2012**

**BANKING INSURANCE & FINANCE UNION  
(KENYA).....CLAIMANT**

**-VERSUS-**

**KIPSIGIS TEACHERS SACCO SOCIETY LIMITED.....RESPONDENT**

**JUDGMENT**

The claimant **Banking Insurance and Finance Union (Kenya)** filed the memorandum of claim on 13.02.2012 on behalf of their member one **John Kiprotich Korir**, the grievant in this case. The Respondent **Kipsigis Teachers SACCO Limited** filed the statement of response on 26.03. 2012 through Kipkorir Tele and Kitur Advocates. The claimant has prayed for reinstatement of the grievant without loss of any benefits or break in the years of service. The respondent has prayed that the court strikes out the claimant's claim. The case came up for hearing on 12. 02.2013. The grievant gave evidence to support the claimant's case. The respondent's witness was one Charles Kipkemboi Rono, the Respondent's Senior Finance officer.

The facts of this case are as follows. By the letter dated 28.02.1992 marked **JK 3A** on the memorandum of claim the respondent employed the grievant to the position of a book-keeper. The respondent issued the grievant the further letter of temporary appointment being **JK 3B** on the memorandum of claim. The letter required the claimant to serve a probationary period of six months after which he would be confirmed in the service. The letter stated that the grievant would be subject to all the regulations for employees of the respondent in force and as promulgated from time to time. The claimant accepted the appointment by his letter dated 2.03.1992 marked **JK 3C** on the memorandum of claim.

The grievant being a member of the claimant became elected the Chief Shop steward on 17.03.2007 as per appendix **JK4** on the memorandum of claim. He was reelected to the same position as per appendix **JK4** at folio 18 of the memorandum of claim. The grievant as a union official raised various issues with the respondent as per the letter dated 25.01.2010 being appendix **JK5** on the memorandum of claim. In that letter he raised grievances on the implementation of the Collective Bargain agreement for 2009/2010 and in particular: unpaid overtime services; ignoring the new salary structure in calculating salary for new staff and annual increments; payment of salaries to some staff below the minimum wages; and adjusting working hours without consulting the union. The letter requested the respondent to resolve the grievances by correcting the anomalies, making clarifications and implementing the prevailing salary structure.

By the letter dated 18<sup>th</sup> January, 2011 being appendix **JK8** on the memorandum of claim, the grievant stepped aside as the Chief Shop Steward by tendering his resignation to the claimant's Secretary General. In his evidence the grievant told the court that the respondent frustrated the working of the claimant by victimizing and intimidating the union officials. Thus, as per folios 30 and 31 on the memorandum of

claim, the officials had resigned from holding offices as officials of the union. In the meantime, the grievant testified that negotiations for a new Collective agreement were to be undertaken though the respondent was reluctant to do so. The grievant relied on the letter dated 11. 01. 2011 by the respondent's Chief Executive Officer being **JK10B** on the memorandum of claim staying the negotiations.

The respondent addressed the grievant the letter dated 28.05.2011 being appendix **JK11A** on the memorandum of claim. The letter stated as follows:

**“RE: INSUBORDINATION**

**It has been reported to the Board of Directors that you wrote a letter to BIFU by-passing protocol and eventually the reply came from the above without us being aware at all.**

**Secondly, you made your Committee to sign the Collective Bargaining Agreement and eventually you were not satisfied. This has caused discontent among the staff.**

**You are therefore required to show cause why disciplinary action cannot be taken against you and meanwhile you are herein suspended until your case is determined.**

**Signed**

**KIPRUTO SIGEI, HSC**

**CHIEF EXECUTIVE OFFICER”**

The grievant replied by his letter dated 10.06.2011 being **JK11B** by stating that communicating to BIFU, the claimant, was within his mandate as the Chief Shop Steward as that did not amount to insubordination. Further, he had not met the Board of Directors to sign the Collective Agreement. In the circumstances, the grievant stated in his reply that he did not see any reason to be locked out of the work or to be suspended.

The grievant testified that there had been a system of serving for three years, renewable automatically. The grievant had to write requesting for the renewal towards the end of every three years so as to facilitate the payment of the every three years service. Thus, he had written the letter dated 13.10. 2009. It is appendix **JK12** on the memorandum of claim. It was a request for renewal for years 2010 to 2013. In the letter, he stated his contract was due to lapse on 28.02.2010. In response he had received the letter dated 10.05.2011 being appendix **JK13A** on the memorandum of claim inviting him to attend a meeting at the respondent's boardroom on 17.05.2011 at 9.00am. The grievant testified that at the meeting the renewal was not discussed. Instead he was asked to go home as he had been fired. Later he received the respondent's letter marked **JK14A** on the memorandum of claim conveying that the respondent's Board of Directors had declined to renew the contract of service. As per **JK14B**, the respondent had written to the District Labour Officer stating that the grievant had been paid his terminal dues being one month salary in lieu of notice and paid by way of recovery of an outstanding loan advanced to the grievant.

The grievant in his testimony admitted that he had received the advance as per appendix **JK14C & D** on the memorandum of claim which showed that the first loan was for Ksh. 1,936,800 on 6.11.2011 and a second loan of 125,000 on 28.04 2011. The grievant further testified that the respondent was recovering the loan from the guarantors and that at all material time the respondent knew that the grievant was to repay the loan through monthly deductions from the grievant's salary. The grievant also told the court he had been paid his gratuity in March 2010 for his contract of service ending on 28.02.2010. He also testified that on 17.05.2011 at the Board meeting at which he was asked to go home, the Chief Executive Officer, the Board Chairperson and Board Members were all present. He asked to be given reasons for being told to go home but no reasons were conveyed.

The respondent's witness testified that the grievant had been paid the terminal dues including gratuity for three years at 25% of the basic pay as per prevailing policies, salary for three months in lieu of the

acceptance to renew the contract and gratuity for the months he had worked after expiry of the contract. The witness did not produce any evidence to show such payment actually took place. Instead he relied on the letter dated 4.10.2011 to the District Labour Officer, appendix **JK14B** cited above and showing that the grievant had been paid only one month salary in lieu of notice. He also produced **R1** being the letter to the District Labour Officer dated 23.09.2011 alleging payment of Ksh. 361,492.25 being gratuity for three years, Ksh. 168,109 being gratuity for March 2010 to May, 2011 and that full salary had been paid for March 2010 to May, 2011. The witness did not produce any accounts records to confirm the alleged payments. In such circumstances, the court finds that there is no sufficient evidence to show that the alleged payments were made by the respondent as alleged.

The respondent's witness confirmed that the grievant was at all material time a member of the claimant. The witness also confirmed that as at 28.05.2011 the grievant was an official of the claimant as a workers' representative. While smiling, the respondent's witness told the court he had attended the meeting at which the renewal was to be discussed and the reasons for refusal to renew might have been poor performance or lapsing of the contractual time and he recalled that no reasons for termination were given to the grievant. The witness stated that he could not explain the belated refusal to renew the contract of service.

The witness further testified that the grievant was an assistant accountant and as per folio 49 on the memorandum of claim, on 8.07.2011 just after the verbal dismissal of the grievant, an advertisement for the vacancy in the office of assistant accountant was made and, on 13.07.2011 the renewal was refused. He also told the court that the grievant was fully paid in April 2011, half month pay in May and no pay in June and July 2011. The witness confirmed that as per folio 53 on the memorandum of claim, the report by the Ministry of Labour found that the grievant's involvement in trade union activities did not affect the grievant's work and it was wrong for the respondent to terminate his services on account of such participation in union matters. The report had also found that the grievant had worked for the respondent since 1992 with a clean record of service for 19 years. The witness also confirmed that the report concluded by recommending the reinstatement of the grievant effective receipt of the report by the respondent. The report was dated 12.10.2011.

The court has considered the pleadings, the evidence, the respective submissions by the parties, the issues in dispute and makes the following findings:

**1.** The first issue for determination is whether the grievant served on a renewable contract of service or on permanent terms of service to retire upon attainment of 55 years of age as per clause 11 of the Collective Bargaining Agreement. It was pleaded and submitted for the respondent that the respondent employed the claimant on temporary basis on 28.02.1992, the claimant was never confirmed in appointment and instead, the claimant was offered a three year employment contract, and, the contract was renewable at the discretion of the respondent upon lapsing of the three years. Clause 8(a) of the Collective Bargaining Agreement being **JK2** on the memorandum of claim provided as follows:

**“CONTRACT TERMS OF EMPLOYMENT**

**These terms shall apply to appointment of employees on regular basis. In all cases contract period shall be for a maximum of three years where each contract shall carry a service gratuity of 25% calculated on total salary earned during the contract period. This contract shall be subject to renewal or otherwise either party may give a three months notice of intention to terminate the contract service or salary in lieu of notice. Any dismissal shall not qualify for any benefits.”**

At the hearing the grievant testified and confirmed that he received the gratuity at the end of every three years of his service. The respondent's witness confirmed that the grievant served on a three year contract renewable upon the lapsing of the three years. In view of the evidence, the court finds that the grievant, who was a member of the claimant union, was bound by the provisions of the Collective Agreement and served on a three years contract as provided for in clause 8(a) of the agreement. While making this finding, the court observes that the claimant did not place before the court an extract of clause 11 upon which it purported to place the basis for a claim for retirement of the grievant upon attainment of 55 years

of age.

2. The second issue for determination is whether the grievant's contract of service was renewed or not renewed upon its falling due for lapsing on 28.02. 2010. Clause 8(a) of the Collective Agreement is clear, thus **"...This contract shall be subject to renewal or otherwise either party may give a three months notice of intention to terminate the contract service or salary in lieu of notice..."** The effect of the provision is that the contract renewed automatically and the party who desired to terminate was required to give a three months notice of intention to terminate the contract or salary in lieu of the notice.

There is no evidence on record that the respondent gave such notice before 28.02.2010 and there is no evidence that the respondent paid in lieu of such notice on or about 28.02.2010 or any other time. Instead the respondent allowed the grievant to continue in employment beyond 28.02.2010 until the letter dated 10.05.2011 being **JK13A** inviting the grievant to a renewal of contract interview. In the meantime, the respondent had by the letter dated 28.05.2011 being **JK11A** alleged insubordination against the grievant, and in the opinion of the court, thereby acknowledged that the grievant was a regular employee subject to the respondent's disciplinary process.

In **Ruth Gathoni Ngotho-Kariuki – Versus - Presbyterian Church of East Africa And Another(2012) eKLR, Industrial Court of Kenya Cause No. 509 of 2010 at Nairobi**, at page 16 to 17 of the typed judgment, this court stated as follows, thus **"The court upholds the learned Judge's holding that employers are not under any obligation to give employees reasons for non-renewal of fixed term contracts, unless there is such an obligation created in the expiring contract. The expiring contract may create such an obligation by, like in the instant case, making it mandatory for the employer to renew the expiring contract and setting time lines for communication of the decision to refuse the renewal. In the instant case, the renewal was to be mandatory, thus, 'The Hospital Board shall renew your contract....' was such an imperative provision of the contract that entitled the Claimant to unwavering legitimate expectation to the renewal of her contract of service. The only intervening contractual provision was that if renewal was to be refused, then the Claimant was to be informed the refusal three months before the expiry of the contract. The Respondents having failed to comply with the three months conveyance of refusal to renew, the court finds that the three years fixed term contract intended to lapse on 31.03.2010 did not so lapse. Did a contract of service exist between the parties after 31.03.2010 even after the Respondents failed to renew the lapsing fixed three years contract? This court considered the point in the case of Robert Muriithi Ndegwa versus The Minister for Tourism, Industrial Court of Kenya at Nairobi at page 19[1] of the judgment. In that case, the court stated,**

***'The court has also carefully considered the circumstances of this case and its wide jurisdiction to make any other appropriate relief as the court may deem fit to grant as provided for in Section 12(3) (viii) of the Industrial Court Act, 2011. It is the court's considered opinion that an appointment takes place in circumstances where the employee is entitled to the appointment by reason of the employer's conduct. In the instant case, the petitioner was entitled to deem the contract renewed in view of the provisions of the circular, failure of the respondent to convey his refusal to renew and the entitlement to renew as per the terms of the contract. The court considers that in employment relationship there exist a reciprocal duty of cooperation and the employer must respect express provisions of the contract, the personal dignity of the employee and the legitimate expectation that consultative framework that underpin the relationship shall be respected. Thus, in the special circumstances of this case, the court finds that the petitioner's contract of service was constructively renewed for three years with effect from 18.10.2012.'***

Similarly, in the present case the court finds that the Claimant's contract of service was constructively renewed with effect from 01.04.2010. The Claimant was entitled to be informed by the Respondents the refusal to renew within the contractual three months before the lapsing of the expiring contract. By that conduct of the Respondents, the contract thereby was constructively renewed. The timelines in the contract for conveying the decision of refusal to renew created express trust, confidence and expectation that the Respondents' silence, despite the Claimant's

**inquiry, that the contract had or would be renewed. The contract of employment was obviously one of the most important things in the Claimant's life. It was therefore important that the Respondents strictly comply with the contractual provision on the renewal failing which the Claimant would be entitled to claim under the contract."**

In the present case, the grievant inquired about the renewal of his contract by his letter dated 13.10.2009 being appendix JK12 on the memorandum of claim. The respondent decided not to reply or to serve the three months notice and allowed the grievant to continue in employment. The court upholds the reasoning in the cited previous cases and finds that the grievant's contract of service scheduled to lapse on 28.02.2010 was constructively and automatically renewed in accordance with the contractual terms.

3. The third issue for determination is whether the contract of service was terminated on account of lapsing of the contractual term of three years and whether the termination was lawful and fair. The grievant was issued with the letter of 13.07.2011 being appendix JK14A on the memorandum of claim conveying that the respondent's Board of Directors had decided to decline to renew the grievant's contract of service. The court has already found that the contract had constructively and automatically renewed after 28.02.2010. The respondent's entitlement to refuse the renewal had ceased to prevail effective three months before 28.02.2010. The grievant testified that he had already been orally dismissed by the respondent's Board of Directors at the meeting of 17.05.2011 and the respondent did not rebut that testimony. Section 43 of the Employment Act, 2007 provides that the employer must prove the reasons for termination and such reasons must be matters the employer, at the time of termination, genuinely believed to exist as to cause the termination.

In the instant case the court has considered that prior to the termination letter the grievant had already been terminated orally on 17.05.2011. The bad faith of the respondent's termination of the grievant is manifested in the letter of 28.05.2011 being **JK11A** alleging insubordination due to the grievant's participation in trade unionism. It is obvious that the respondent did not have any genuine reason for terminating the grievant's employment contract. It is also obvious from the evidence that the grievant was denied the benefit of express contractual clause on renewal and he was not accorded any hearing on the alleged insubordination as mandatorily required under section 41 of the Employment Act, 2007.

The court considers that the respondent pretended to commence disciplinary action, abandoned the process and dismissed the claimant in total breach of the contract and the cited statutory provisions. The court finds that it is not open to an employer to initiate a vindictive and abortive disciplinary action and proceed to remove the employee or terminate the contract of service on account of reasons that are not genuine. Such conduct on the part of the respondent was unlawful and unfair as it contravened Article 41 of the Constitution that entitled the grievant to fair labour practices. The court finds that the termination of the grievant's employment was accordingly unlawful, unfair and unconstitutional. The court further finds that the grievant is entitled to maximum compensation of twelve months gross salaries at the time of termination being **Ksh. 977,196** at the rate of Ksh. 81,433 being the grievant's undisputed gross monthly salary at the time of termination.

4. The fourth issue for determination is whether the grievant was victimized for discharging his functions as the Chief Shop Steward in the claimant union and for participating in trade union activities. The evidence on this subject is clear. The respondent initiated inconclusive disciplinary proceedings against the grievant on account of his participation in trade union activities and for discharging his duties as the Chief Shop Steward. It is evident that the grievant had performed his duties as a union official by formally raising genuine and valid grievances. There is clear evidence of the union officials in the respondent's employment having resigned and the grievant's evidence that the respondent harassed and intimidated union officials to hold back free exercise of unionism was not rebutted and cannot be doubted.

The court finds, that the respondent persecuted and harassed the grievant on account of raising genuine complaints and discharging his duties as the Chief Shop Steward, is not in doubt. **Section 46(h) of the Employment Act, 2007** is elaborate that an employee's initiation or proposed initiation of a complaint or other legal proceedings against the employer is no fair ground for termination unless the complaint is

shown to be irresponsible or without foundation. In the present case the court finds that the grievant's complaint was responsible and with good foundation; it was in exercise of his duties as the Chief Shop Steward and on the basis of the provisions of the Collective Agreement. **Section 46 (c), (d) and (e) of the Act** entitled the grievant to be a member of the claimant trade union, participating in trade union activities outside the working hours or with the respondent's consent, and seeking and being elected as an official in the claimant union.

The undisputed report by the Ministry of Labour at folios 51 to 53 of the memorandum of claim found that the grievant had been an active shop steward at the place of work and proceeded to recommend thus, **" Since Mr. Korir's involvement in union activities has never affected his work performance, and also it is his right to participate in union matters, it was wrong for management to terminate the services of Mr. John Kiprotich Korir simply because of his involvement in union activities which has never affected his production at the work. It is therefore my humble recommendation that the management should reinstate him back to work without any loss of benefit immediately on receipt of this recommendation."** It is obvious that the respondent disregarded the recommendation while then and before the court did not dispute the righteousness of that recommendation. The court has carefully considered the conduct of the respondent in defeating the statutory and constitutional protection of the grievant's right to participate in activities and programmes of the trade union. The court has considered the respondent's callous and surreptitious conduct of undermining the fundamental constitutional right of the grievant perfected through the unconstitutional and unfair termination. The court is persuaded that the grievant and the claimant carry a legitimate deep conviction that the respondent has systematically offended that fundamental constitutional protection of the grievant beyond mere unfair termination of a contract of service.

The court has considered the circumstances of this case. But for the unlawful termination, the grievant would have been at work in May 2011 to current time, February 2013, making a total of unfairly vanished earning of **Ksh.1, 791,526** for 22 months at the rate of Ksh. 81,433, the grievant's last gross monthly salary. The court finds that the claimant is entitled to be paid the earnings as compensation for the strict liability of the respondent's contravention of the grievant's fundamental right to participate in the union activities without intimidation and persecution, and, for keeping the grievant away from work in contravention of the cited constitutional and statutory provisions. In making this finding, the court has considered that where the court finds that the employer unfairly removed the employee, the employee is entitled to be compensated including the period of time the employee was on suspension or interdiction during the disciplinary process leading to the unfair termination.

Thus, the court upholds its opinion in **Grace Gacheru Muriithi –Versus- Kenya Literature Bureau (2012) eKLR**, in which the court stated thus, **"The respondent terminated the claimant's service by the letter dated 20<sup>th</sup> December 2010 received on 30<sup>th</sup> December 2010 and with effect from 18<sup>th</sup> May 2010, the effective date of the suspension. The issue before the court is whether the claimant is entitled to be paid for the period between the date of suspension and the date of conclusion of the disciplinary case being the date the letter of termination was delivered, that is, 30<sup>th</sup> December 2010. In opposing this claim, counsel for the respondent has cited paragraph 6.2.4 of the respondent's terms and conditions of service, 1999 which provides, thus, 'An employee under suspension will not be entitled to any salary, but may, in case of hardship, and on request be granted an alimentary allowance in such amount and such terms as may be determined by the Managing Director.'**

**The court considers that an employee on interdiction or suspension has a legitimate expectation that at the end of the disciplinary process he or she will be paid by the employer all the dues if the employee is exculpated. Conversely, if the employee is proved to have engaged in the misconduct as alleged and at the end of the disciplinary process the employee has not exculpated himself or herself, the court considers that the employee would not be entitled to carry a legitimate expectation to be paid for the period of suspension or interdiction. Thus, the court holds that whether an employee will be paid during the period of interdiction or suspension will depend upon the outcome of the disciplinary proceedings. It would be unfair labour practice to deny an employee payment during the period of interdiction or suspension if at the end of the disciplinary process the**

**employee is found innocent. Similarly, it would be unfair labour practice for the employer to be required to pay an employee, during the suspension or interdiction period if at the end of the disciplinary process the employee is found culpable. Accordingly, the court finds paragraph 6.2.4 of the respondent's Terms and Conditions of Service to be unfair labour practice to the extent that the provisions deny the employees payment even in instances where they exculpate themselves at the end of the disciplinary process. To that extent the provision offends Sub-Articles 41(1) of the Constitution; it is unconstitutional.”[2]**

5. The fifth issue for determination is whether the grievant is entitled to reinstatement. Under section 50 of the Employment Act, 2007, the court is required to be guided with the provisions of section 49 in determining an order for reinstatement or re-engagement. In the present case the grievant has expressed the wish to be reinstated. It was submitted for the respondent that, as per the provisions of subsection 49 (4) (d) of the Act, the court should take into account the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances. Thus, it was submitted for the respondent that in the instant case an order for re-engagement or reinstatement should not be made. However, counsel for the respondent did not submit on the ordinary nature of the present case, and therefore absence of exceptional circumstances as envisaged in the common law principle.

Taking into account the other provisions of section 49 of the Act, the court finds that the grievant did not in any way contribute to the termination; he had served the respondent with a clean record of service for 19 years without any break and given all his youthful service to the respondent; he was 49 years old at the time of the hearing and he expected to remain in employment unless lawfully terminated; the high unemployment rates are judicially noticeable and at his current age the grievant would not favorably compete the younger professionals who have the benefit of contemporary knowledge and skills; and the respondent knew the claimant owed the loan as advanced by the respondent repayable from salaries earned from the employment. In the circumstances the court finds that the grievant is entitled to reinstatement with effect from the date of the termination to continue serving for the uncompleted tenure of three years ending February, 2013, and to be eligible for the renewal effective 1. 03.2013, as per the contractual terms.

6. The sixth issue for determination is whether the claimant needed to expressly pray for both compensatory and reinstatement remedies and whether failure to pray for the compensatory remedies thereby disentitled him from the relief. The court has carefully considered the jurisdiction of the court and the objectives the court is established to serve. It is the court's considered opinion that the court's jurisdiction to make any order of the permissible reliefs is largely discretionary and exercisable on the basis of the material before the court and with the focus to meet the ends of justice. Subsections 49 (1) and (3) empower the Labour Officer to recommend the prescribed compensatory remedies and reinstatement or reengagement solely in his or her “**opinion**”. The word “**opinion**” has been used in its literal sense and the **Concise Oxford English Dictionary, 12<sup>th</sup> Edition** defines the word to mean a formal statement of reasons for a judgment given. The subsections therefore stress the need to give reasons for the remedy as opposed to the need for the parties to have prayed or urged for the specific remedy in issue. The subsections, in the opinion of the court, do not bar the making of the orders for compensation and reinstatement or re-engagement separately, concurrently or even in alternative; all these options for the orders can be made in an appropriate case or circumstance.

**Section 50 of the Act** requires the court to be guided by provisions of section 49 in determining disputes of termination of contracts of employment. It is the court's view that the standard of applying the “**opinion test**” as provided for in section 49 of the Act and not “**express pleading of the remedy**” will guide and inform the court in making an appropriate remedy in arriving at and granting the just remedy on the merits of the individual cases. The court is further informed that section 3 of the Industrial Court Act, 2011 declares the principal objective of the Act as to enabling the court to facilitate the just, expeditious and proportionate resolution of disputes under the court's jurisdiction. Further, subsection 20 (1) of the same Act provides thus, “**20 (1) In any proceeding to which this Act applies, the Court shall act without undue regard to technicalities and shall not be strictly bound by rules of evidence except in criminal matters: Provided that the Court may inform itself on any matter as it considers**

**just and may take into account opinion evidence and such facts as it considers relevant and material to the proceedings.”**

It is therefore the court’s considered opinion that the court may make one or other just remedy within its jurisdiction in view of the relevant and material evidence before it and provided that the making of such remedy would not be out of way as to come by surprise to the parties before the court. Further, it is the court’s opinion that a remedy could be made if such remedy is the natural or obvious likely alternative to the one expressly pleaded or, is the natural or obvious likely remedy to the injury pleaded and established as having occurred in the proceedings before the court. The court considers that to be the exception to the general rule that a litigant must expressly plead the remedy sought and courts shall not grant a remedy unless it is expressly pleaded.

Thus, failure to remedy the injury in such cases, in the opinion of the court, would be unnecessarily and unjustly glorifying technicalities at the expense of just, expeditious and proportionate resolution of the dispute. Finally, in taking such opinion, the court is guided that under Article 159 of the Constitution, the principles for the exercise of judicial authority include, that justice shall not be delayed and justice shall be administered without undue regard to procedural technicalities. In appropriate cases like the present one, the court finds that making a remedy one way or the other will meet the ends of justice without insisting that the litigant should have expressly pleaded the remedy. In view of the grievant’s entitlements as set out earlier in this judgment, it is the court’s finding that the compensatory remedies the court has found that the grievant is entitled to are the obvious likely or natural remedies in a case of unfair termination. Taking into account the pleadings and material on record in this cause, the court finds that the remedies will expeditiously serve the ends of just without delay as the parties would suffer delay if the remedies were to be denied and for the parties to come back later for the same.

In conclusion, judgment is entered for the claimant against the respondent for:

- a) a declaration that the respondent’s termination of the grievant’s contract of employment was unlawful and unfair;**
- b) the respondent to pay the grievant a sum of Ksh. 977,196 being compensation for unfair termination of the contract of employment;**
- c) the respondent to pay the grievant a sum of Ksh.1, 791,526 being compensation for the strict liability of the respondent’s contravention of the grievant’s fundamental right to participate in the union activities without intimidation and persecution, and, for keeping the grievant away from work in contravention of the cited constitutional and statutory provisions;**
- d) a declaration that the grievant is entitled to reinstatement and in the circumstances of this case, the respondent shall reengage the grievant at the terms applicable at termination or such better terms as agreed and the grievant to remain so engaged unless lawfully terminated;**
- e) the respondent to pay interest on the sums awarded from the date of this judgment until full payment; and**
- f) the respondent to pay costs of the case.**

**Signed, dated and delivered in court at Nakuru this Wednesday, 20<sup>th</sup> February, 2013**

**BYRAM ONGAYA  
JUDGE**

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[1] Industrial Court of Kenya at Nairobi, Petition No. 41 of 2012.

[\[2\]](#)Industrial Court of Kenya at Nairobi, Cause No. 44 of 2011, pages 36 and 37 of the typed Judgment on court record.