



**Amutavi v Dhl Supply Chain Kenya Limited (Cause 271 of 2020)  
[2025] KEELRC 3103 (KLR) (7 November 2025) (Judgment)**

Neutral citation: [2025] KEELRC 3103 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 271 OF 2020  
HS WASILWA, J  
NOVEMBER 7, 2025**

**BETWEEN**

**JACQUELINE AMUTAVI ..... CLAIMANT**

**AND**

**DHL SUPPLY CHAIN KENYA LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The Claimant instituted this claim vide a Further Amended Memorandum of Claim dated 19<sup>th</sup> July 2023 praying for judgment against the Respondent for: -

a. A declaration do and is hereby issued that the Claimant has been wrongly classified in a lesser job group (K) by the Respondent.

b. A declaration do and is hereby issued that the Claimant ought to have been graded as job group (I) by the Respondent.

c. A declaration do and is hereby issued that the Claimant has been wrongly subjected to a lower pay grade for the period of:

Role (Claimant) Period

Transport Clerk May 2004–April 2006

Accounts Clerk May 2006 – December 2009

Payable Supervisor Jan 2010–August 2012

Contract Accountant September 2012 –June 2015 CA) A declaration do and is hereby issued that the Claimant was subjected to a lower Job Group resulting in a lower pay grade for the period of:

Role (Claimant) Period



Contract Accountant July 2015 – March 2019

Finance Controller April 2019 – May 2020

- d. A declaration do and is hereby issued that the Respondent's actions in prayers (a), (b) and (c) and CA above amount to unfair labour practices.
- e. A declaration do and is hereby issued that the Claimant is entitled to all the benefits and salaries commensurate of an higher job grade (I) sought in prayer (b) above.
- f. A declaration do and is hereby issued that the Respondent to release to the Claimant from (b) and (c) above to the Claimant all the amounts the Claimant is entitled due to the illegal acts in (a), (b), (c) and CA above amounting to KES. 57,926,336.26.
- g. An order compelling the Respondent to release to the Claimant all the monies owing in the form of withheld bonuses amounting to KES. 1,483,129.07.
- h. An Order compelling the Respondent to release to the Claimant two months' payment in lieu of notice amounting to No. Claim Amount (KES) 1. 2 Month Notice per the TermsKES. 1,342,733.33 and Conditions of Management Employment and Claimant's Termination letter.
- i. Interest at 14% on Prayer (f) above as from 2006 until payment in full.
- j. Interest at 14% on Prayer (g) above as from 2019 until payment in full.
- k. Interest at 14% on Prayer (h) above as from May 2020 until payment in full.
- l. A declaration do and is hereby issued that the Respondent's actions of unfair job grading and under remuneration amount to discrimination.
- m. A declaration do and is hereby issued that the Claimant was wrongfully terminated.
- n. A declaration do and is hereby issued that the Claimant was unfairly terminated.
- o. General Damages for unlawful and unfair termination.  
No. Claim Amount (KES)
  - 1. Unfair Termination KES. 4,146,395.40
  - 2. Unfair Termination (difference KES. 2,470,004.60 due to underpayment and under grading)
  - 3. Car Allowance: Unfair termination (KES. 120,000 x 12) (difference due to the KES. 1,440,000.00 underpayment and under grading)
- p. General Damages on underpayment pay under Prayer (M).
- q. General damages for unfair Labour Practices such as indignity and failing to PAYE upon deducting the same from money paid to the Claimant.
- r. The Respondent to release monies owed in accrued leave days KES. 78,530.22  
Difference due to under-grading – KES. 421,023.49  
Denied Pension on salary arrears paid April – May 2020 KES. 13,779.22.  
October 2007 NSSF funds deducted by respondent, not remitted to the Fund.



- s. Costs of this Suit and interest thereto.
- t. Any other award that the court may deem fit.

### **Claimant's Case**

2. The Claimant states that she was employed by the Respondent on 1<sup>st</sup> May 2004 and she worked for 16 years until her unfair termination, defamation and under payment despite the fact that she has never had any squabbles with the Respondent not even a warning letter was ever issued.
3. The Claimant states that the Respondent has a well-defined set of internal policies and procedures that offer more benefits towards the Employer-Employee Relationship compared to those under the *Employment Act*. These integral policies, guidelines and procedures include: DHL Terms and Conditions of Management Employment; Deutsche Post DHL Global Code of Conduct; DHL Job Description; and DHL Pay Bands.
4. The Claimant states that she performed her role beyond the Respondent's expectations, leading to her promotion to various roles, which resulted in salary increments throughout the rise in the ranks.
5. It is the Claimant's case that as she was promoted, the Respondent intentionally avoided applying its own policies, guidelines and resulting in her being placed in the wrong Job Group per the roles she executed, which would also result in under payment. The Respondent's the highest earning Job Group is F while the lowest earning is Job Group X for union staff.
6. The Claimant states that she was subjected to Job Group K, yet her roles those under Job Group I. Thus, she was effecting roles of a higher Job Group I under a salary of a lower Job Group K denying her correct remuneration per the Respondent's Salary Job Bands.
7. The Claimant states that she had final authority towards colleagues who were under Job Group J and K; thus, the employees under these job groups would require her authorization prior to submitting certain information to the Managing Director who was under Job Group F and she would also give instructions on what to do to those particularly in those Job Groups J and K.
8. It is the Claimant's case that it is strange that despite having such an authoritative position on intricate Respondent's operations, higher or supervisory role towards the staff under Job Group J yet those falling under those groups were earning more than her.
9. The Claimant states that in September 2012, she was confirmed as a Contract Accountant, which falls under Job Group K, earning a monthly salary of Ksh. 110,000 though the same required a salary of Ksh. 333,258.33.
10. In 2016 and 2017, the Respondent proceeded to indicate in the her was "acting capacity of the Contract Accountant," contrary to the she had already been confirmed for that particular role and was offering services as such in favour of the Respondent's commercial interests. Additionally, her performance appraisal from 2012 to 2019 noted that she had met and exceeded her scores as assessed by six different line managers under Job Group I, H, and G.
11. The Claimant states that 2015, when Allan Thuo and Caroline Mungai, the Finance Reporting Analyst, a former staff under Job Group I, exited the business of the Respondent, the Claimant was asked to take up their roles, which included being the final approver of funds.
12. She oversaw 9 Business Units (Accounts) out of the 10 that the Respondent had in Kenya; thus, handling both warehouse and transportation corporate activities. These activities were similar to those



- of the Finance Manager at the Respondent's sister company in Tanzania and Uganda that have budget lines.
13. The Claimant states that had a budget line of €6,956,000 for the year 2020, which was higher than that of Tanzania that was at €3,632,709 and close to surpass the one for Uganda that was at €8,946,052.71. The Claimant highlighted that the Respondent's sister companies at Tanzania and Uganda have low overhead costs, headcount compared to Kenya, where she was in charge and all major managerial roles were centered at Nairobi, Kenya.
  14. It is the Claimant's case that her role was equal to that of an employee at Job Group I as it was similar to those of the Finance Managers at Respondent's sister companies in Uganda and Tanzania only that the Respondent's operation in Kenya has high activities than offices in Ugandan and Tanzanian office. Additionally, she had a Budget Line for €6,956,000 like the Finance Manager at Tanzania.
  15. Further, the Claimant, and the Finance Manager Tanzania were all reporting directly to the Finance Director East Africa. The Finance Manager Tanzania was under Job Group I, which means that the correct she also belongs to is Job Group I.
  16. Since 2016, until the unlawful termination of the Claimant, she was the final approver of all Warehouse and Transport Local Purchase Orders (LPOs) for Unilever, Upfield, Procter & Gamble, Oxford University Press, General Electric, Avanti Communication, British American Tobacco Kenya PLC, Yara EA, One Planet and Nampak.
  17. The Claimant avers that his authority was above those under Job Group K and J. For instance, she would only review with a view to approve work that had been reviewed and approved by the Respondent's staff under Job Group J. The only way one would get her approval, was through someone under Job Group J.
  18. The Claimant states that on 12<sup>th</sup> November 2018, the Respondent asked a Senior Accountant, under Job Group J, to deputize her when she was on leave. The Senior Accountant's role was more towards tax but would have brief understanding of the Claimant's role since there are certain data shared with the Respondent's Senior Accountant for tax purposes.
  19. The Claimant states that on 13<sup>th</sup> May 2020, the Finance Director East Africa instructed her to have out of office response email automated notice that provides all roles and responsibilities such as providing direction and advising management, risk analysis, expense approval, among others will be taken over by a senior staff.
  20. It is the Claimant's case that she was subjected to internal trainings that involve persons under Job Group I namely: Investment Model Training by Commercial Controller MEA; Abacus Training by Commercial Controller MEA; 2020 Commercial Training– For Middle East and Africa Finance senior team; Middle East and Africa Ethical Audit; Criteria for Accounting Governance MLEMEA; 2019 Financial Essentials Training EA; Supply Chain Finance Guidance MLEMEA; Accounting Essential Training MEA; SD Training (2017) – Introduction to Pricing and Commercialization; and 2019 Commercial Expectations MEA.
  21. The Claimant states that she was subjected to meetings with members of Job Group I and above. Thereafter, upon discussions of critical factors concerning the Respondent's objectives, members of Group J and below would be invited for dinner only.
  22. The Claimant states that in any Job Group, the Pay Bands were in three categories of (a) low, (b) medium, and (c) top ceiling. This was determined by the employees experience. In 2019, when the Claimant was being paid USD 2,602 per month, the Respondent's Head of Compensation & Benefits



- Africa and as approved by the Head of Human Resource Africa that someone offering similar services as her should not be paid less than USD 4,000.
23. The Claimant states that responsibilities for purposes of the Reporting Line, in 2019, on matters Leadership Profile & Assessment was reviewed by the Respondent's Commercial Controller Middle East & Africa.
  24. It is the Claimant's case that the salary she was paid vis-à-vis the salary that ought to be paid per the Respondent's own policies and procedures thus she ought to be paid the difference of what the based on its own policies and procedures:
  25. The Claimant avers that on 2<sup>nd</sup> December 2019, she took part in the Conflict-of-Interest Disclosure as per the Respondent's Code of Conduct – Mytalent World DHL online declaration. The disclosure by was that the Respondent had contracted persons well known to her – Ell Liposhe as their Archiving Clerk and Ivanja Caterers as their vendor which in all sense did not have or create any Conflict of Interest vis-à-vis the operations of the Respondent.
  26. On 14<sup>th</sup> January 2020, the Respondent issued a hard copy Conflict of Interest form/Questionnaire to be filled by all employees, the earlier declarations were online and for Job Group K and above employees. This came after the investigation reports had been concluded in December 2019 and required that any actual or potential conflict of interest to be declared. Where an existing or potential conflict of interest exists, HR manager and line manager to outline the mitigation steps. The Claimant made a second declaration and the form was filed in her file with no further process by the HR department and Line manager.
  27. The Claimant avers that the Respondent sent reminders on 22<sup>nd</sup> January 2020 and 3<sup>rd</sup> March 2020 requiring those who had not declared their Conflict-of-Interest status to do so. This was sent after the investigations had been determined and closed in December 2019.
  28. It is the Claimant's case that having made the necessary disclosures through the appropriate channel provided by the Respondent, the Respondent had an obligation to conduct a hearing within 30 days from the date of learning of an offence or conduct a hearing within 30 days from the date of learning of an offence or after completion of the investigations. However, the Respondent did not proceed to conduct any disciplinary hearing within 30 days.
  29. The Claimant states that having closed the investigation and having generated a report by 14<sup>th</sup> December 2019, it meant that the Respondent had to conduct a disciplinary hearing on or before 5<sup>th</sup> January 2020. In violation of its own policy, the Respondent commenced the hearing on 14<sup>th</sup> April 2020 thus the Claimant asserts that she was to an unlawful and unfair disciplinary hearing.
  30. The Claimant states that the Respondent's Disciplinary Policy provides that there are three categories of handling an outcome of a disciplinary hearing, which are: educational action, corrective action, and as a last resort punitive action, where the first two channels have failed to yield results.
  31. It is the Claimant's case that the Respondent subjected her to an educational action on 2<sup>nd</sup> December 2019. Further, on 3<sup>rd</sup> February 2020, it conducted education to the entire business by DHL Africa Senior counsel and Compliance Manager Middle East and Africa.
  32. The Claimant states that these processes were only applicable post conducting investigation or a disciplinary hearing. She was subjected to educational action meaning that any difference of opinion and conflict of interest she disclosed was not grave to cause an element of punitive measures such as termination.



33. In December 2019, the Respondent's HR Business Partner EA was investigated together with the Claimant because she had an existing conflict of interest with the HR Archiving Clerk who had a direct reporting line into her. On record, the same HR partner was the HR representative on the disciplinary committee panel where she took part in the vote against the Claimant. It is the Claimant's case that an accused person cannot sit and be a judge in another's case especially where they are facing the same charges and risk being terminated.
34. The Claimant states that as per the 2016 Conflict of Interest Investigation Report against Senior Officers and Company Directors; Thomas Opiyo and Cleophas Amurono Olwambula, it was established that the two employees were in direct competition with the Respondent as they had established a company that was offering similar services (Transport & Warehousing) to the Respondent's Clients; Kenya Breweries Ltd and Unilever Kenya Ltd but they were not terminated.
35. The Claimant states that the as per the Respondent's Memo "Declaration of Interest DHL Africa" dated 29<sup>th</sup> November 2019, provided that there were at least 131 people that declared their interests (Conflict of Interest) and that "having a conflict of interest is not necessarily a problem. It is how (and how transparently) the conflict is managed that is important" and that "In case a potential conflict is identified as being a true conflict several solutions are possible which we will discuss with you."
36. It is the Claimant's case that if the Disciplinary Policy and the Memos dated 11<sup>th</sup> October and 29<sup>th</sup> November 2019 are to be considered, the Respondent is pro employee retention as compared to termination, and where termination takes effect, it is in extreme cases. However, the Claimant was terminated for unknown reasons, and if any, unsubstantiated or unjustified reasons through unfair procedures.
37. The Claimant states that she was informed by the Respondent, just before the disciplinary hearing, that the decision to terminate had already been made prior to the disciplinary hearing and what was being done for formalities only. She was further informed that her termination had been determined by Senior Management from cross-border since the termination was not based on compliance factors but the senior management such as Ruth Kamunyu Maina (Finance Director) and Lilian Inziani Odera (Human Resource Business Partner).
38. Additionally, during the disciplinary hearing session, the chair confirmed that she was under pressure from her line of reporting; Hendrik Vater (VP Controlling & Accounting MLEMEA and Chief Financial Officer MEA) to conclude the termination.
39. It is the Claimant's case that the Respondent's actions were not based on any justification rather a process initiated in a conniving way with a clear intention to terminate her.
40. The Claimant states that having received a punitive action of termination from the Respondent, when she was going to appeal, she was once again advised by the Respondent's Company Director (Aila Bernard Aliongo) that there is no chance of success on that particular appeal. However, the best way forward is to engage the Managing Director Africa, Nick Murray, for purposes of only securing a recommendation letter.
41. The Claimant states that as the appeal of the disciplinary hearing took place on a Friday, 29<sup>th</sup> May 2020, at 2:30 PM, the Payroll Manager reached out to the Claimant to review her final dues on a Tuesday, 2<sup>nd</sup> June 2020, which was even before she had received any communication on the outcome of the appeal. The Respondent had already sent her clearance/exit forms a day before the appeal hearing, which meant the outcome of the appeal had been determined already.



42. It is the Claimant's case that the Decision to terminate the Claimant was based on voting done by five people yet the panel was with only four people yet as per the Respondent's disciplinary policy the decision to terminate is supposed to be effected through one principal person.
43. Further, the Respondent's Director/Signatory and Managing Director East Africa (Tito Ochieng Okuku), Business Development Director East Africa (Aila Bernard Aliongo) and the HR Business Partner East Africa (Lilian Odera Inziani) declined to sign the disciplinary hearing minutes. Additionally, The Respondent's chair to the disciplinary hearing; Ruth Maina Kamunyu asserted that there was massive pressure from Hendrik Vater (Vice President Controlling & Accounting – Mainland Europe Middle East and Africa & Chief Financial Officer MEA) to close the termination and so her hands were tied. He had written several emails instructing termination closure.
44. The Claimant states that on 10<sup>th</sup> June 2020, the Respondent, through its Legal Manager, proceeded to issue new unsigned termination letter dated 13<sup>th</sup> May 2020, contrary to the initial one that had been signed by the Managing Director, Finance Director and Human Resource Partner. The Claimant declined to sign the new termination letter as it was suspicious to the extent that the disciplinary panelists may have wanted to disassociate from the outcome of the disciplinary hearing.
45. The Claimant states that the appeal to the unlawful disciplinary hearing was on 29<sup>th</sup> May 2020, and the outcome ought to have been the final confirmation of the unlawful and unfair termination, which was to fall on the month of June 2020.
46. The Claimant states that during the Respondent's End of Year Party, on 14<sup>th</sup> December 2019, which was after the investigations concerning Conflict of Interest, she was acknowledged as one of the best, loyal and long serving employee without any disciplinary record and was even issued monetary token via the Respondent's Mobile Money Transfer.
47. The Claimant states her termination was defamatory since it was based on lies, unjustifiable grounds, and intentionally meant to defame and ridicule her so as to make her look like a person who is not a suitable employee of any person, which to this very date, she has never secured any employment opportunity.
48. She further states that the Respondent's the publication on Nation Newspaper on 16<sup>th</sup> November 2020 made six months after she was unlawfully terminated, therefore, making it unjustifiable since there is no information indicating that she agreed to having her name, personal data and image used to make any publication.
49. She states that the publication alluded that she is immoral; untrustworthy; should not hold any public office; should not be employed by anyone; is a criminal; should be apprehended for engaging for misrepresenting to the public that it is an employee of the Respondent; and that she poses as a threat to any person she deals with. This caused her public ridicule; embarrassment; disparagement; emotional distress; likelihood of losing contractual opportunities; serious injury to her 16 years of a successful profession profile she had developed; and substantial ruin towards her reputation.
50. The Claimant states that on October 2020, the Respondent deducted KES. 210,484.25 from her final dues as PAYE but failed to remit the tax to KRA. In 2018, the Respondent deducted KES. 7,053.17 as PAYE but failed to remit to KRA. As at November, 2021 the tax had accrued interest of KES. 1,692.93. In 2015, the Respondent deducted KES. 23,471.13 as PAYE but failed to remit to KRA. As of November, 2021, the tax had accrued interest of KES. 14,082.68.



51. The Claimant states that the Respondent unlawfully withheld 2019 bonuses amounting to KES. 1,483,129.07 that are due her.

### **Respondent's Case**

52. In opposition, the Respondent filed an Amended Memorandum of Defence dated 31<sup>st</sup> October 2023.
53. The Respondent states that the Claimant was terminated on grounds of violation of the Respondent's policies regarding conflict of interest. The termination was fair, procedural and was carried out in accordance with the applicable laws.
54. The Respondent states that under Clause 3 of her letter of appointment, any promotion of the Claimant from one role to another must be in writing and must show the title and responsibilities assigned to the new grade. As per her salary review letter of 25<sup>th</sup> February 2011, the Claimant was assessed as RCS Grade K.
55. It is the Respondent's case that the Claimant was bound by the terms of her letter of appointment which provides a mechanism for changes in her salary. The Respondent admits the Claimant's change to a fixed term contract but denies that there was a norm that this would lead to a change in remuneration.
56. The Respondent denies that the Claimant raised concerns regarding the alleged underpayments or that she was ignored or issued with threats; and avers that the allegations of underpayment are an afterthought and are barred by limitation of time under Section 90 of the *Employment Act*.
57. It is the Respondent's case that the Claimant was expected to and agreed to be bound by its guidelines as well as the terms of her contract. In particular, Clause 30 of the contract which provides that any employee is expressly prohibited from engaging in any business which conflicts with the business of the company in any way whatsoever; and the Conflict of Interest/Confidentiality Clause.
58. The Respondent states that its Code of Conduct requires all employees to "maintain high ethical standards in handling conflicts of interest. They should disclose to a supervisor any relationship with persons or firms with whom [the Respondent] does business, which might give rise to a conflict of interest. Such relationships include a relationship by blood or marriage, partnership, business partnership or investment."
59. It is the Respondent's case that it requires all its employees to maintain the highest ethical standards in handling conflicts of interest by disclosing any conflicts. Specifically, employees have to transparently disclose and manage any potential or actual conflicts. Further, the Respondent regularly conducts staff trainings where employees are educated on how to handle conflicts of interest in the workplace.
60. The Respondent states that its Code of Conduct also provides for fair competition as follows: "We are committed to free enterprise and fair competition. Company business must be conducted solely on the basis of merit and fair competition. We will hire suppliers, agents or other intermediaries only by careful and fair assessment."
61. The Respondent states that on 11<sup>th</sup> October 2019, it notified all its employees that they were required to fill out a Conflict of Interest questionnaire by 25<sup>th</sup> October 2019. The Respondent later extended the deadline for filing the questionnaires to 30<sup>th</sup> November 2019, however, the Claimant failed to file her questionnaire on time and only did so after the deadline on 2<sup>nd</sup> December 2019.
62. It is the Respondent's case that it later learned, through an anonymous complaint in its SpeakUp system, that the Claimant had engaged in severe breaches of conflict of interest by: participating in



- interviews which saw her nephew get employed as an Archiving and Filing Clerk, without disclosing her relationship; and having a company owned by her sister-in-law awarded a contract to supply lunch meals to the Respondent's staff, without disclosing her relationship.
63. The Respondent states that it subsequently carried out investigations and based on its findings, it issued the Claimant with a Notice to Show Cause Letter dated 14<sup>th</sup> April 2020. The letter informed her that it believed she had engaged in conduct that violated its guidelines and asked her to show cause why disciplinary action should not be taken against her. However, the Claimant failed to satisfactorily address the allegations made against her.
  64. The Respondent states that it invited the Claimant for a disciplinary hearing on 29<sup>th</sup> April 2020 vide a letter dated 20<sup>th</sup> April 2020. The summons further informed the Claimant that she had a right to be represented at the disciplinary hearing by a fellow employee, a shop steward or member of her union; a right to call witnesses and to examine witnesses called by the Respondent.
  65. It is the Respondent's case that the Claimant attended the disciplinary hearing and was allowed to make submissions. At the hearing, the Claimant failed to provide any satisfactory reasons to answer the allegations against her. The Claimant confirmed that: she introduced her nephew to the Respondent and conducted the interview for the role of Archiving Clerk which was awarded to her nephew; she did not reveal the nature of the relationship until December 2019; she signed off the PO's for payment of Ivanja Caterers, owned by her sister-in-law; and she did not disclose her relationship with Ivanja Caterers until December 2019.
  66. The Respondent states that at the day of the hearing, the Claimant sought to introduce new evidence in the way of additional remarks and sought the panel's response. Due to the late submission, the panel considered the response in its deliberations and issued the Claimant with a detailed response in writing.
  67. The Respondent states that considering the Claimant's responses, it concluded that there was reasonable grounds to conclude that the Claimant had seriously violated its Conflict of Interest policies as well as abused her office as Financial Controller. It was clear that there was deliberate action on the Claimant's part to have her nephew hired in the business which occasioned undue advantage to her nephew in the hiring process. Further, the Claimant's nephew was moved to her department for a role which required a qualified ICD Specialist, yet the Claimant was aware that her nephew possessed no such qualification.
  68. It further found that the Claimant had violated its conflict of interest policies and her fiduciary duty as the finance controller in the case of her sister-in-law's company, Ivanja Caterers.
  69. The Respondent states that vide a letter dated 13<sup>th</sup> May 2020, it terminated the Claimant's contract and gave her one month's notice as provided in her letter of appointment. The letter also notified the Claimant that after she cleared with all departments, she should proceed to collect her Certificate of Service from the HR Department and that she had a right to appeal her termination within 5 days.
  70. The Respondent states that the Claimant appealed the decision to terminate her employment by her letter dated 20<sup>th</sup> May 2020.
  71. During the hearing of her appeal, the panel noted that the Claimant showed no remorse and accepted no responsibility for her actions in failing to timely declare an actual conflict of interest. She did not acknowledge that her actions were seen by other staff members as an abuse of her office which led to the anonymous complains and that this had a real impact on the Respondent. By its decision of 5<sup>th</sup> June 2020, the appeals tribunal dismissed the Claimant's appeal and upheld her termination.



72. The Respondent admits that it did publish on 16<sup>th</sup> November 2020 in the Daily Nation that the Claimant was no longer its employee. It avers that this publication was truthful and was not defamatory in any way and that the publication was necessitated by the Claimant's refusal to clear with the Respondent and hand over all her work apparatus, including her Work ID.
73. It is the Respondent's case that the allegations of defamation are barred by the *Limitation of Actions Act* having been brought well past the prescribed limitation period.
74. The Respondent states that the Claimant is not entitled to any compensation as her separation with the Respondent was lawful and upon expiry of the fixed term contract of employment which she duly signed.
75. The Respondent states that the disciplinary hearing was procedurally and fairly conducted. This is evident from the minutes of the hearing which the Claimant signed and confirmed as accurate. From the minutes, it is clear that the Claimant was given ample opportunity to present her case; and that she was allowed to present additional information at the day of the hearing which the committee considered and responded to afterwards.
76. The Respondent states that the Claimant was in clear violation of its conflict of interest policies and she was well aware of what such conflict entails. The Claimant had been continuously trained on what amounts to a conflict of interest and knowingly engaged in the impugned behaviour.

#### **Evidence in Court**

77. The Claimant (CW1) adopted her witness statement dated 19<sup>th</sup> July 2023 as her evidence in chief and produced her bundle of documents even date as her exhibits.
78. During cross examination, CW1 testified that the Respondent's code of conduct deals with conflict of interest which also applies to immediate family members. She was involved in the employment of her nephew but did not disclose that he is her nephew.
79. CW1 testified that Ivanja Caterer is owned by her sister in law and that they provided catering services for the Respondent and she signed the purchase order for this company.
80. CW1 testified that her termination was based in the conflict of interest.
81. CW1 testified that she was served with the NTSC which she responded to but she was given less days that what appeared in the policy. She was thereafter invited for a disciplinary hearing which she attended and was given a chance to make her case, however, they declined her supporting documents.
82. CW1 testified that she was underpaid as she should have been at Job Group 'I' but she does not have any letter showing this was her job group.
83. The Respondent's witness, Serah Nyawira (RW1) stated that she is the Respondent's HRM Business Partner. She adopted her amended witness statement dated 16<sup>th</sup> May 2025 as herevidence in chief and produced the Respondent's list of documents dated 23<sup>rd</sup> July 2020 as her exhibits.
84. Upon cross-examination, RW1 testified that the Claimant's contract provided for annual salary review, however, between 2012 to 2015 her salary was not reviewed.
85. She testified that the Claimant's responsibilities were not similar to that under Job Group 'I' as it was higher than her Job Group 'K'.



86. RW1 testified that as of June 2019, there was no process in place for employees to declare conflict of interest as acknowledged in clause 3.2.2 of its special audit of 2019.
87. RW1 testified that the Claimant took part in the conflict of interest disclosure however submitted the same after the deadline.

#### Claimants' Submissions

88. The Claimants submitted on four issues: - whether the Respondent undergraded and underpaid the Claimant on the diverse period of employment prior to termination; whether the Claimant's Dismissal amounts to unfair termination in law; whether the Respondent's conduct amounted to defamation of the Claimant, leading to diminished employability; and whether the Respondent's conduct amounted to harassment, intimidation, discrimination in the course of employment, and Failure to remit statutory taxes on behalf of the Claimant, as such leading to violation of the right to fair labor practices under Article 41 of *the Constitution*.
89. On the first issue, the Claimant submitted that her from the letter of promotion dated 26<sup>th</sup> May 2006 provided for promotions which came with benefits such as governed by the robust DHL Terms and Conditions of Management.
90. She submitted that the said Terms and Conditions at paragraph 10 provides for Payment and Salary Review Date and states: "Salaries are reviewed annually through the company appraisal process and salary adjustments are paid from 1st April each year. Salaries are paid monthly into the individual's bank account before the 25th of each month."
91. The Claimant submitted that this provision created both a responsibility on the part of the Respondent and a legitimate expectation on the part of the Respondent's Employees. The Claimant cited the case of *Oindi Zaippeline & 39 Others V Karatina University & Another* [2015] eKLR wherein it was held: "Legitimate expectation" is a doctrine well recognized within the realm of administrative law. In *re Westminster City Council*, [1986] A.C. 668 at 692 (Lord Bridge): "...the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation. Legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in a public body retaining a long-standing practice, or keeping a promise. An instance of legitimate expectation would arise when a body, by representation or bypast practice, has aroused an expectation that is within its power to fulfill a promise."
92. It is the Claimant's the DHL Terms and Conditions of Management is the Respondent's own policy, signed and approved by its Kenyan Business Director and Human Resource Manager. It was as such reasonable for the Claimant to expect annual salary reviews, of course subject to the Respondent's Appraisal process. Apart from the promise of annual salary review, a promotion, especially to a role with more expectations in terms of employee output, would normally be accompanied by a new salary package.
93. The Claimant submitted that her legitimate expectation was not always met, and in the subsequent promotions, she was expected to assume new roles, without a change in remuneration or any terms of employment.
94. The Claimant submitted that her appointment as a Contract Accountant from the position of Accountant Payable Supervisor in September 2012 violated the Respondent's own policies and Article 41 of *the Constitution* which provides that every person has the right to fair labor practices including



- right to fair remuneration. She asserts that the letter dated 29<sup>th</sup> August 2019 quoted “Your other terms and conditions of service remain as current”. The Respondent thereafter vide a letter dated 13<sup>th</sup> September 2013, confirming the Claimant as a Contract Accountant reporting to the Business Unit Finance Controller indicated, “In all other respects, your other terms and conditions of employment remain unchanged.”
95. She asserts that while the said letters indicated that she would still be a Contract Accountant, she was presented with new roles, new key deliverables as per the said letter and her reporting line was now the Business Analyst: East Africa Transport & Warehousing Operations. Her deliverables were also shared by the East Africa Finance Manager. Your Ladyship, while this letter clearly expanded the Claimant’s scope of work to regional reporting, the same expressly indicated “The job grade of your role remains the same as your current role and therefore there will be no changes to your remuneration, benefits or discretionary incentive scheme.”
96. The Claimant submitted that the Respondent proceeded to indicate in the year 2016 and 2017 that the Claimant’s role was “acting capacity of the Contract Accountant,” contrary to the fact that since April 2011, the Claimant had already been confirmed for that particular role and was offering services as such in favour of the Respondent’s commercial interests not to mention that her performance appraisal as from 2012 to 2019 provide that the Claimant met and exceeded her scores as assessed by six (6) different line managers under Job Group I, H, and G.
97. It is the Claimant’s submission that the Respondent’s actions, confirming her for an acting role as Contract Accountant, while she had already been confirmed for the same position in 2011, was not accidental as the same was a ploy by the Respondent to avoid putting the Claimant in the right group, which was Group K at the time, which would then entitle her to a pay rise from the KES. 110,000.00 to KES. 372,733.33. By doing this, the Respondent then substituted the legitimate pay with an “acting allowance” of 15% of the Claimant’s basic pay, which is much lower than the legitimate pay.
98. The Claimant submitted that between April 2011, and a June 2015, that she was supposed to be placed under Group K and not the said acting role and she claims any amounts in arrears as a result of the underpayment as highlighted under Schedule 01 of her submissions. After this period, she was then supposed to be placed under Group I.
99. The Claimant submitted that between 2012 to 2017 when she raised concerns about her salary, the Claimant had the understanding that whatever the pay she received was within the scale per the Respondent’s Pay Bands since all the Pay Bands details were held by the Respondent’s respective staff that were obligated to handle that information. Prior to the time she raised concerns, the Claimant would not know whether she was underpaid in any of the above periods owing to the Conflict of interest/Confidentiality Clause which bars employees from revealing or discussing staff benefits including salary structure with those below or not within the same business unit.
100. The Claimant submitted that prior to her termination, considering her nature of work and meetings, she knew that she was supposed to be placed in the Group I band and earn salary as per the said level. This knowledge was further buttressed by the Compensation Recommendation which stated: “To consider increase based on the market benchmark. If business grants the Kshs. 350,000/= steep increase then the incumbent would not be considered for the 2020 April increase. Consider bringing them to the recommendation by business. Currently the pay is at PIR 30% and thus within the acceptable range of the current RCS grade; however, to minimise chances of losing the talent to the market an uplift should be considered. Local Kenya market 3,6m-4,8m KSH -requested to move to 4,2m Ksh. Local market data indicate similar roles to earn no less than 4000Usd per month, while this employee only earns 2602Usd. Marlene supports 20% first adjustment. >Step adjustment 1. Nov2019=15,5% ,



Exclude from 2020 Merit, 2.Apr2020 = 11% Inclusive of 5,7% Annual Increase April2020 Merit Budget for Kenya 2020 = 5,7.”

101. The Claimant submitted that USD. 4000 was recommended in October 2019, and this is when she understood that she was underpaid thus she raised concerns about her salary. However, instead of resolving these concerns, the Respondent resorted to threatening and intimidating her, contrary to the Respondent’s policies.
102. It was submitted that when the Claimant was supposed to be placed in Group K between 2011 and June 2015, she was instead denied the same and given the disguise of an acting role as submitted above. When she was eventually placed in Group K, she was given new roles performed by Employees in Group I, making her perform the functions of a higher job Group while earning remuneration of a lower job group at all times. It follows then that Job Group I is where the Claimant was supposed to be placed around July 2015 until the time of unfair termination in May 2020 but she was again unfairly and intentionally declined to be placed under the correct grade, resulting in effecting roles of a higher Job Group I but a salary of a lower Job Group K. The Claimant asserts that this is a case of intentional internal flaw designed to deny her correct remuneration per the Respondent’s Salary Job Bands.
103. The Claimant submitted that her roles and responsibilities were similar to those of the Finance Managers at Uganda and Tanzania being the Respondent’s sister companies with a key difference being that the Respondent’s operation in Kenya has high activities than offices in Ugandan and Tanzanian office. The Ugandan and Tanzanian Finance Managers were under job Group I. Further, she had a Budget Line for € 6,956,000.00 and reported directly to the Finance Director East Africa like the Finance Manager at Tanzania.
104. The Claimant submitted that in any Job Group, the Pay Bands were in three categories of low, medium, and top ceiling. This was determined by the employees’ experience. In 2019, when she was paid USD 2,602 per month, the Respondent’s Head of Compensation & Benefits Africa and as approved by the Head of Human Resource Africa gave a confidential compensation recommendation for the Claimant, that someone offering similar services as the Claimant should not be paid less than USD 4,000, confirming that the Claimant was still underpaid despite salary increments in 2016 and 2017.
105. The Claimant submitted that having served for more than 16 years at the Respondent and with tremendous experience as she was entrusted with more than three quarters of the Respondent’s Clientele, she should have been under the top ceiling salary, which was Job Group I.
106. The Claimant submitted that she had final authority towards colleagues who were under Job Group J and K; thus, the employees under those particular Job Groups would require her authorization prior to submitting certain information to the Managing Director who was under Job Group F and would also give instructions on what to do to those particularly in those Job Groups J and K.
107. The Claimant submitted that even at her termination, evidence shows that the Claimant was a senior employee. The disciplinary hearing panel consisted of the senior most employees in East Africa (Grades F-H) – Finance Director EA, Business Development Director EA, HR Business Partner EA, Legal Manager EA, Managing Director EA (who took part in decision making). The Appeal Panel consisted of the senior most management staff of Africa (grades B – G)– Chief Executive Officer Africa, Senior Legal counsel Africa, HR Director Africa and Compliance manager Middle East and Africa.
108. It is the Claimant’s submission that she thus claims payment due to undergrading and underpayment in the sum of KES. 44,611,794.04.
109. On the second issue, it was submitted that the Respondent breached its disciplinary policies, evidence, including audio recordings reveal that the Claimant was targeted for termination, the Claimant



disclosed any potential conflict at the appropriate time and the process of termination was marred with irregularities and discrimination and that what really is the actual conflict of interest in this case is the fact that certain members of the disciplinary committee were persons declared guilty of running businesses that compete the Respondent, a classic case of conflict, but the said persons were never taken through a disciplinary process, rather, they left the Respondent company voluntarily.

110. The Claimant submitted that the Respondent, despite its robust policies, does not have a specific policy referred to as the “DP DHL Conflict of interest Policy” purported to have been referenced in the termination letter. Instead, issues of Conflict of interest are scattered in the Management Terms and Conditions and the Code of Conduct. If anything, the Respondent had admitted that there were no sufficient procedures on handling matters touching on Conflict of Interest through its own internal special audit.
111. The Claimant submitted that the Management Terms and Conditions provides at paragraph 30 that: “Any employee of DHL Exel Supply Chain (K) Limited is expressly prohibited from engaging in any business which conflicts with the business of the company in any way whatsoever.” The Conflict of interest and Confidentiality Clause in the last page of the Management Terms and Conditions on the other hand does not give any express provisions with respect to Conflict of interest but rather focuses on the issues of confidentiality and will therefore not be relevant to the issue.
112. The Claimant submitted that disclosure is paramount in the Respondent company on issues of conflict and where necessary, she disclosed the potential conflict as a result of her relationship with Ell Liposhe and Ivanja Caterers as required by the Respondent’s policies. After disclosure, subsequent facts led to what can only be construed as a targeted termination, breach of the Respondent’s policies and breach of the provisions of the [Employment Act](#).
113. It is the Claimant’s submission that the Respondent’s disciplinary policy reveals the 3-tier disciplinary actions. It begins with educational action, which is meant to make sure that an individual is aware that his/her behavior or performance is unacceptable and the consequences which will arise if he/she continues to perform in such a manner. Where educational action is ineffective, the Policy calls for corrective action which is a series of formal warnings which must be signed by the wrongdoer in acknowledgement of receipt, allow them an opportunity to respond and each case would consider previous offence on record when deciding a penalty. Lastly, the disciplinary policy, recommends punitive action where educational and corrective actions have failed.
114. The Claimant submitted that the implication of these disciplinary actions is that the Respondent’s disciplinary procedure is pro Employee retention as opposed to termination. According to the wording of the policy, punitive action is the last resort and even when effecting the same, the Respondent has a robust guideline which states: “A disciplinary hearing should as far as possible take place within 30 days of the employer hearing about the offence, or from the end of the investigation. If the hearing does not take place within 30 days, the employer must tell the employee or his/her representative why there is delay and give the employee or his/her representative a possible time when the case will be heard...”
115. The Claimant submitted that the Claimant never engaged in any business which conflicts with the business of the company, nonetheless, the disclosure by the Claimant on 2<sup>nd</sup> December 2019 was that DHL Supply Chain Kenya had contracted persons well known to her - Ell Liposhe as their Archiving Clerk and Ivanja Caterers as their vendor which in all sense did not have or create any Conflict of Interest vis-à-vis the operations of the Respondent, which clearly stated that conflict of interest involved engaging in business that conflicts with the company. Nonetheless, the Employees, including the Claimant, having declared their interest, the investigations were closed.



116. It is the Claimant's submission that her disclosure came as a reaction to a training on conflict of interest which was conducted, and that she acted promptly in declaring conflict of interest and as such it cannot be referred to as amounting to unreasonable delay
117. The Claimant submitted that on 14<sup>th</sup> January 2020, for the first time in history the Respondent issued a hard copy Conflict of Interest form/Questionnaire to be filled by all employees, the earlier declarations were online and for Job Group K and above employees. The Respondent thereafter sent reminders on 22<sup>nd</sup> January and 3<sup>rd</sup> March 2020, however, she did not have any new conflict to declare as she had declared her conflict disclosure of December 2019.
118. The Claimant submitted that having made the necessary disclosures through the appropriate channel provided by the Respondent, the Respondent, per its disciplinary policy, had an obligation to conduct a hearing within 30 days from the date of learning of an offence or conduct a hearing within 30 days after completion of the investigations. The Respondent did not proceed to conduct any disciplinary hearing within 30 days; however, it proceeded to conduct investigations, which was done before 14<sup>th</sup> December 2019 which meant it was to conduct a hearing by 5<sup>th</sup> January 2020.
119. It is the Claimant's submission that the Respondent did not initiate the disciplinary hearing within the timelines per its own disciplinary policy, as the hearing was commenced on 14<sup>th</sup> April 2020, in total violation of the applicable policies and procedures. Therefore, the Claimant was subjected to unlawful, and unfair disciplinary hearing.
120. The Claimant submitted that written policies ought to be applied in the same manner with respect to the employees in the workplace without discrimination. Punitive action is only applicable post conducting investigation or a disciplinary hearing. Therefore, considering that the Claimant was subjected to educational action it means that any difference of opinion and conflict of interest disclosed by the Claimant was not grave to cause an element of punitive measures such as termination, as the same was only meant to help the HR Department advise on any potential conflicts. Further, the Respondent has certain actions and waivers to the code of conduct and the Claimant, having been taken through training, believed that such waivers would apply to her.
121. The Claimant submitted that she was informed by the Respondent, just before the unlawful disciplinary hearing that the decision to terminate had already been made prior to the Disciplinary Hearing and what was being done for formalities only. Further, the Respondent's staff mentioning all these details was a member of the Disciplinary Committee and Company Director going by the name Aila Bernard Aliongo, who mentioned that his hands are tied and that he was left out of the decision-making process.
122. She submitted that she was informed that her termination had been determined by Senior Management from cross-border since the termination was not based on compliance factors but was determined by the senior management such as Ruth Kamunyu Maina (Finance Director) and Lilian Inziani Odera (Human Resource Business Partner).
123. It is the Claimant's submission that the procedure was flawed, so was the appeal process. As per the disciplinary policy the allowable time for appeal is 10 days, yet decision to terminate letter allowed only 5 days to the Claimant. The previous practice of the employer in dealing with the type of circumstances which led to the termination was equally never considered and there are no warning letters which have ever been issued upon the Claimant.
124. On the third issue, the Claimant submitted that as per the transcripts of the recording, and as already proved before court, the Claimant was picked out as a target for purposes of being terminated from



employment. As noted, the Chairperson of the Respondent during the Disciplinary Hearing declined to consider any evidence from the Claimant, therefore, the outcome of the hearing was only based on false information that tainted the Claimant's professional and personal profile.

125. It was submitted that the Respondent's action, which resulted in termination of the Claimant through unlawful and unfair procedures was defamatory since it was based on lies, unjustifiable grounds, and intentionally meant to defame and ridicule her so as to make her look like a person who is not a suitable employee of any person, which to this very date, the Claimant has never secured any employment opportunity.
126. The Claimant that vide a publication in the Nation Newspaper on 16<sup>th</sup> November 2020 which bore the Claimant's personal data including image and name, the Respondent stated: "Notice is hereby given to the members of the public that Jacqueline Amutavi (Pictured) ceased to be an Employee of DHL Supply Chain (K) Limited (the company) with effect from 13<sup>th</sup> June 2020. She is therefore not allowed to represent the company in any capacity or carry out any transactions on behalf of the company."
127. The Claimant submitted that the publication was not only defamatory but also amounted to unfair labor practice. While the Respondent's defence for the said publication is that the Claimant had not cleared with the Respondent; she asserts that she had done all clearances as submitted and that even so, failure to clear if it were true, is not a justification for making such defamatory publication in the nation newspaper.
128. The Claimant placed reliance in *Mogaka & 3 others v Munene* (Civil Appeal E012 of 2022) [2023] KEHC 18194 (KLR) which quoted with authority the case of *Alnashir Visram v. Standard Limited* [2016] eKLR where it was held that: -
- a) The big question is whether the words as published of and concerning the plaintiff are defamatory of his character and reputation. A publication is considered to be defamatory of a person's character and reputation if it conveys a meaning which is likely to either lower the persons' reputation in the eyes of ordinary reasonable members of the community; lead those people to ridicule, avoid or shun or despise the person; or injure the person's reputation in business, trade or their profession.
  - b) It is worth noting that the meaning behind the publication can be implied or express. It all depends on the context and circumstances of each case. Thus, defamation may arise from the direct meaning of words used when taken on the face value, through an innuendo from the statement itself, or from an innuendo based on known facts that are not included in the statement. It is also irrelevant whether the publisher or author intended to make a defamatory statement of and concerning the plaintiff when he or she published the defamatory words complained of. The applicable test is an objective test; whether or not the statement is defamatory is judged against contemporary community standards from the standpoint of a reasonable person.
  - c) Further, it is important to note that not all criticism or abuse is necessarily defamatory. The main issue is whether or not the ordinary person would tend to form a significantly lower opinion of the plaintiff because the plaintiff is the subject of that criticism."
129. The Claimant submitted that on 30<sup>th</sup> June 2020, the Respondent proceeded to order its own staff to detain her for unknown reasons resulting in a quite an embarrassing experience before her former



peers at the Respondent's. Considering the fact that the Claimant had been favorably praised and received accolades before her peers, seniors and juniors as one of the loyal and long serving employees of the Respondent, she had a very admiral image towards her well-wishing peers, seniors and juniors. Therefore, the act of terminating her on false grounds and information and detaining her defamed the Claimant.

130. It is the Claimant's submission that the actions of the Respondent, making a publication in the Nation Newspaper amounted to defamation which led to diminished employability. In this respect therefore, she claims damages in the tune of KES. 20,000,000.
131. The Claimant submitted that she passed the integrity test, save for the Respondent's crafty and malicious manipulation of the process to disadvantage and deny her a chance to be converted to permanent and pensionable terms of employment.
132. On the fourth issue, the Claimant submitted that it has been held time and again that discrimination is one of the violations of the right to fair labor practices. Section 5 of the *Employment Act*, 2007 commands the employer to ensure equal opportunity and eliminate all forms of discrimination in the workplace; and prohibits an employer from discriminating against any employee because of race, gender, or ethnicity. It also provides for equal remuneration for work of equal value.
133. The Claimant submitted that as per the 2016 Conflict of Interest Investigation Report against Senior Officers working for the Respondent it was established that employees were in direct competition with the Respondent as the two Senior Officers Thomas Opiyo and Cleophas Amurono Olwambula, had established a company that was offering similar services (Transport & Warehousing) to the Respondent's Clients; Kenya Breweries Ltd and Unilever Kenya Ltd but these employees were not terminated.

The Claimant asserts that the conflict by the two Senior Officers above was more grave, however, the Respondent applied its principle that having a conflict of interest is not necessarily a problem and retained these employees. In contrast, the Claimant was readily terminated despite disclosing conflict for the purposes of educative action despite the fact that she had never received in the least, a warning from the Respondent.

134. The Claimant further submitted that the Respondent has equally subjected the Claimant to losses resulting from non-remittance of the requisite taxes to the Kenya Revenue Authority (KRA). The total loss the Claimant has incurred is KES. 210, 484.25 which the Respondent deducted but never remitted to KRA.
135. The Claimant submitted that the Respondent established an employee bonus scheme that the Claimant took part in as an employee of the Respondent. The Claimant's performance resulted in earning a bonus of KES. 1,786,428.00 for the year 2019, of which only KES. 303,298.92 was paid. Balance owed is KES. 1,483,129.07 which the Respondent has intentionally and unlawfully withheld.
136. The Claimant submitted that the Respondent stated in the termination notice that she would be paid for all outstanding leave days. During Clearance, however, she was denied the said payment in the sum of KES. 652, 278.88 on the grounds that Human Resource (HR) had not signed off; the said amount remains unpaid to date.
137. It is the Claimant's submission that the Court awards damages for violation of the right to fair labour practices through discrimination in the sum of KES. 1,000,000.00. It cited *Waweru v Ackerman & another* (Employment and Labour Relations Petition 51 of 2022) [2023] KEELRC 3031 (KLR) court awarded damages for violation of the right of fair labour practices in the tune of KES. 500,000.00 where the Claimant's right to fair labour practices was violated.



## Respondent's Submissions

138. The Respondent submitted on six issues: whether the termination of the Claimant's employment was grounded on fair and valid grounds; whether the Claimant's allegations of alleged underpayment and/or discrimination had any basis, whether factually or legally; whether the process for the Claimant's dismissal was lawful and fair; whether the Claimant's allegations of defamation, harassment, intimidation had any basis, whether factually or legally; is the Claimant entitled to any reliefs sought in the Further Amended Memorandum of Claim; and who should bear the costs of this claim?
139. On the first issue, the Respondent submitted that the Claimant was terminated on the grounds of violation of the Respondent's policies as well as the terms of the contract. The Claimant was well aware of the policies and guidelines of conflict of interests as the Respondent regularly conducted staff trainings where employees were educated on how to handle conflict of interests in the workplace. The employees were also required to complete a conflict-of-interest questionnaire to disclose any actual or apparent conflict of interests.
140. The Respondent submitted that despite the Claimant's knowledge of these policies, she actively participated in the recruitment of her nephew, Ell Liposhe as an Archiving and Filing Clerk within the Finance Department and also in awarding a contract of supply of lunch meals to her sister-in-law's company, without disclosing her relationship with them. As the Finance Controller, the Claimant was expected to uphold the highest standards of integrity and honesty. However, her actions compromised the integrity of both the recruitment and procurement processes within the company.
141. The Respondent submitted that the Claimant introduced her nephew, Ell Liposhe and participated in the interview process that led to his recruitment as an Archiving and Filing Clerk in the Finance Department, without disclosing her relationship with him. The Claimant still failed to disclose the relationship with Ell even after he was employed as an Archiving and Clerk. At no point did the Claimant disclose her relationship until December 2019 when the Respondent notified all the employees to fill the conflict-of-interest questionnaire. The Claimant only submitted her questionnaire after the extended deadline on 2<sup>nd</sup> December 2019.
142. The Respondent submitted that the Claimant's nephew was moved to her department for a role which required a qualified ICT Specialist upon her recommendation. He was recruited as a qualified ICT Specialist, yet the Claimant was well aware her nephew possessed no such qualification.
143. The Respondent submitted that the Claimant awarded the contract for supply of food meals to the Respondent's staff to Ivanja caterers, a company owned by her sister-in-law, without disclosing her relationship to the Respondent. She also authorized payments to Ivanja Caterers without disclosing her relationship until December 2019.
144. It is the Respondent's submission that there existed actual conflict of interests which ought to have been disclosed in accordance with the policies, Code of Conduct as well as the terms of the contract. However, the Claimant did not reveal her relationship with Ell Liposhe, her nephew, nor with Ivanja Caterers until much later in December 2019.
145. The Respondent submitted that Claimant's obligation to report and act on any matter of conflict of interest is well documented in the Respondent's Code of Conduct as well as the terms and conditions of the contract. In addition, the Respondent regularly conducted trainings on its employees on matters of conflict of interest and how to handle them in the workplace. The conflicts of interest policy have always been in place to allow the employees to disclose any potential and actual conflict of interests. As such, the Claimant was fully aware that the recruitment of her nephew and the procurement of



- the services from Ivanja Cateres created an actual conflict of interest which she should have disclosed but failed to do so.
146. The Respondent submitted that the Claimant admitted during her disciplinary hearing that she was involved in the recruitment of her nephew, Ell Liposhe, but never disclosed her relationship with Ell to her fellow interviewer. She further admitted that Ell did not possess the necessary qualifications for the role of ICT Specialist, yet was appointed for that position. In addition, the Claimant admitted that she never disclosed her relationship with Ivanja Caterers, the company owned by the sister-in-law, at the procurement process until much later in December 2019. The Claimant's actions are therefore a clear violation of the Respondent's policies and as such the decision to terminate the Contracts' contract was based on reasonable and justifiable grounds.
  147. It is the Respondent's submission that the decision to terminate the Claimant's employment was a reasonable response in the particular circumstances and falls squarely within the band of what a reasonable employer may have done in the circumstance. The Claimant had numerous opportunities to disclose the conflict of interest, but she failed to do so. It is evident that the Claimant was aware of the conflict-of-interest policies but deliberately chose not to disclose the conflict, thereby breaching the Respondent's policies and Code of Conduct.
  148. On the second issue, the Respondent submitted that the Claimant was employed by the Respondent's predecessor as a transport clerk. At the time of the Claimant's termination of employment, the Claimant held the position of Finance Controller. As per the terms and conditions, the employee is classified under the DPWN Role Classification System grading system and any promotion from one grade to another must be in writing and must show responsibilities assigned to the new grade. The Claimant was classified under RCS Grade K. The Claimant admitted that she was indeed placed under RCS Grade K and was indeed given a job profile and description. During the course of employment, the Claimant carried out duties that were within her capability to perform and within her job description and grade.
  149. The Respondent submitted that the Claimant's allegation that she was wrongly classified under job grade K are unfounded. The job profile outlines the duties and responsibilities of the Claimant during the course of employment. The document relied upon by the Claimant is a job advertisement and not a job profile, as confirmed by RW-1. A job advertisement is separate and distinct from a job profile and as such the Claimant cannot rely on the said document to prove that she was wrongly classified. The job advertisement was for a position of a senior role and outlined the responsibilities of the role to attract suitable candidates. In contrast, the Claimant was properly classified and assigned clear roles and responsibilities throughout her employment. The documents are two separate documents and thus the Claimant cannot rely on the said job advertisement to prove that she was wrongly classified.
  150. It is the Respondent's submission that the Claimant cannot rely on the 2019 compensation recommendation to imply that she was wrongly classified. The document is a mere proposal on salary adjustments and not a binding decision and thus cannot form the basis of an entitlement. It further confirms that adjustments are subject to business considerations. In any event, the document confirms that at that time, the Claimant's job grade was still RCS Grade K and not Grade I.
  151. The Respondent submitted that any promotion and transfer were communicated to the Claimant in writing. The documents relied upon by the Claimant were not promotion letters but rather transfer letters and letters notifying her of the change in title and reporting line. It asserts that the Claimant was fairly remunerated for the position she held as well as the acting positions to which she was appointed.
  152. The Respondent submitted that on 4<sup>th</sup> January 2016, the Claimant was appointed to act for UKL/OUP/SBL with a 15% acting allowance, which she accepted by signing the letter. On 18<sup>th</sup> February



- 2017, she was again appointed to act for Unilever and P&G with the same allowance, which she accepted by signing the letter. These acting appointments related to different supply chains and not the same portfolio, as the Claimant has sought to suggest. Further, on 31<sup>st</sup> April 2017, the Claimant was confirmed into the substantive role as accountant Unilever, P&G and others, graded RSC K, with her salary reviewed accordingly. There is therefore no evidence to demonstrate that the Claimant had been confirmed in any position in 2011 and as alleged, thus the allegations are false, misleading and without basis. The Claimant was thus fairly remunerated even during the acting positions to which she was appointed. Therefore, the Claimant's claim for unfair remuneration has not basis in law or fact.
153. It is the Respondent's submission that Clause 10 of the terms and conditions does not create a guarantee of increments but only provides for discretionary reviews subject to appraisal outcomes and business considerations. The Claimant benefitted from such a salary review in April 2012 and April 2017 when her salary was increased. In addition to that, bonuses are a discretion of the Respondent's management and the allegations that the same were withheld are without basis, both in law and in fact.
154. The Respondent submitted that even if the Claimant sought to advance her case under the doctrine of legitimate expectation, her claim does not meet the requirements in law. It cited *National Director of Public Prosecutions v Phillips and Others* and relied upon in the case of *South African Veterinary Council v. Szymanski* 2003 (4) S.A. 42 (SCA) the Court held that the law does not protect every expectation, but only those which are "legitimate." as follows:- "For legitimacy to arise, the representation must be clear, unambiguous, and devoid of relevant qualification; the expectation must be reasonable; it must have been induced by the decision-maker; and it must be one which the decision-maker was competent and lawful to make."
155. The Respondent submitted that the terms and conditions do not provide a clear and unambiguous promise of annual increments but expressly qualify adjustments as being subject to appraisals and business considerations. The Claimant could not, therefore, have had a reasonable or legitimate expectation that increments were automatic.
156. The Respondent submitted that the Claimant's remuneration was governed by her contractual terms and conditions and the same would be notified to the Claimant. Therefore, the Claimant's claim for discrimination and/or unfair remuneration has not basis in law or fact. It cited the Supreme Court in the *Law Society of Kenya v the Attorney General & COTU* Petition No.4 of 2019 court quoted the Court of Appeal decision in *Barclays Bank of Kenya LTD & Another v Gladys Muthoni & 20 Others* [2018] eKLR that held as follows; "... Discrimination means affording different treatment to different persons attributable wholly or mainly to their descriptions... whereby persons of one such description are subjected to ... restrictions to which persons of another description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.... Discrimination also means unfair treatment or denial of normal privileges to persons because of their race, age, sex ... a failure to treat all persons equally where no reasonable distinction can be found between those favoured and those not favoured."
157. The Respondent submitted that is not sufficient for the Claimant to cite discrimination, but the Claimant has to prove that she was unfairly discriminated. The Claimant has not provided evidence to prove that she was discriminated against or that she performed any duties beyond her scope of employment.
158. The Respondent submitted that the Claimant's claim of Kshs. 44,611,794.04 as pleaded in her Further Memorandum of Claim is arbitrary and unsubstantiated. There is no explanation afforded for the Court to explain how that random figures claimed was arrived at, and further there are no supporting documents to support the claim. The Claimant has simply failed to show that she is entitled to any



claim as regards any alleged underpayment, and her claim in that respect should be dismissed with costs to the Respondent.

159. On the third issue, the Respondent cited the Court of Appeal in *Postal Corporation of Kenya v K. Tanui* [2019] eKLR the

Court set out the parameters for a procedural fairness as follows;

“Four elements must thus be discernible for the procedure to pass muster:-

- (i) an explanation of the grounds of termination in a language understood by the employee;
- (ii) the reason for which the employer is considering termination;
- (iii) entitlement of an employee (o the presence of another employee of his choice when the explanation of grounds of termination is made;
- (iv) hearing and considering any representations made by the employee and the person chosen by the employee.”

160. The Respondent submitted that it satisfied the legal threshold as set out in *Postal Corporation of Kenya supra*. The Claimant was duly notified of the grounds and reasons for the disciplinary process. This is discernible as she duly responded to the Notice to Show Cause. It is worth noting that the Respondent allowed the Claimant’s request for an extension of time to respond to the Show Cause Letter. The Claimant attended the disciplinary hearing and was given an opportunity to make submissions. In addition, the Claimant exercised her right to appeal the decision to terminate her from employment and was given an opportunity to present her appeal before the disciplinary panel and the outcome of appeal was communicated to the Claimant.

161. The Respondent submitted that the Claimant has not produced any evidence to demonstrate that she was denied representation during the disciplinary hearing. The allegation that the outcome was predetermined is equally unfounded and has no factual basis. The Claimant’s reliance on alleged audio recordings is questionable in authenticity and weight, and in any event, the evidence of her admitted misconduct was overwhelming. The Claimant breached the Respondent’s policies on conflict of interest and was given an opportunity to be heard in accordance with the law. Therefore, the procedure for the Claimant’s termination was fair and in accordance with the provisions of the law.

162. On the fourth issue, the Respondent submitted that the Claimant’s allegations of defamation, diminished employability and the attempted reliance on her long service award are misconceived and without basis, both in law and fact. Firstly, the Claimant committed serious breaches of the policy on conflict of interests which resulted to her dismissal from employment, after due process have been followed. Secondly, the long service award is irrelevant to the established misconduct of the Claimant. Thirdly, the newspaper notice was a factual business communication and not a defamatory publication, as alleged or at all. There was therefore nothing defamatory about the newspaper notice; it was in fact a business communication based on factual information.

163. The Respondent submitted that an award for long service recognizes the year of service at the company and prior contribution but does not stop an employer from taking appropriate disciplinary measures on employee’s misconduct. The Claimant abused her office by recruiting her nephew within the Finance Department and further engaging the services of Ivanja Caterers, a company owned by her sister-in-law, without disclosing the relationship to the Respondent. Her actions were clearly a breach of the Respondent’s policies and Code of Conduct thereby leading to her dismissal after due process had been followed.



164. The Respondent submitted that the Claimant has failed to demonstrate that the words used in the publication could reasonably be understood as defamatory by right-thinking members of society. The notice merely communicated a factual cessation of employment. The burden of proof lies with the Claimant, but no evidence has been produced to demonstrate that the publication conveyed a defamatory meaning or caused reputational harm. It cited *Amondi v Daily Nation Newspapers (Subsidiary of Nation Media Group)* (Civil Appeal E736 of 2021) [2023] KEHC 1217 (KLR), the Court, in citing Halsbury's Laws of England (4th Ed, Vol 28, p 23), held as follows:- "In deciding whether a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary man. Having determined the meaning, the test is whether, under the circumstances in which the words were published, a reasonable man to whom the publication was made would be likely to understand them in a defamatory sense."
165. On the fifth issue, the Respondent submitted that the Claimant has failed to discharge the legal burden of proof as her claim is based on unsubstantiated allegations with no evidence. On the other hand, the Respondent has proved that the Claimant was terminated from employment on valid and justifiable grounds, after a lawful and fair procedure has been followed. Therefore, the Claimant is not entitled to any of the reliefs sought in the Further Amended Memorandum of Claim.
166. The Respondent submitted that parties to a contract are bound by the terms of their contractual agreement and a Court cannot rewrite a contract between the parties unless coercion, fraud and undue influence is pleaded and proved. The Claimant was paid her remuneration as per the terms of the contract and is thus not entitled to any other benefits or salaries as alleged or at all. The Claimant was not wrongly classified in a lesser job group nor was she subjected to a lower pay grade as alleged or at all. The Respondent's actions therefore do not amount to unfair labour practices, and as such the Claimant is not entitled to the declaratory orders as sought in prayers (a) to (f) and prayers (m) to (o) of the Claim and the same should be dismissed.
167. The Respondent submitted that the Claimant is not entitled to any alleged outstanding payment as sought in prayers (g) (h) and (s1) of the Claim. The Respondent paid the Claimant her remuneration as per the terms of employment. At the time of termination of the Claimant's employment, the Claimant was paid all her terminal dues and as such she is not entitled to any such notice or accrued leave days as alleged under prayer (h) and (s1). In addition, bonus is at the discretion of the management and based on the performance of the employee and is therefore not an automatic entitlement. As such, the Claimant is not entitled to any outstanding payments as alleged.
168. The Respondent submitted that having demonstrated valid and fair reasons for termination after having followed due process, the Claimant is not entitled to any general damages as claimed under prayer (p), (q) and (r) of the Claim. Section 49 of the *Employment Act* does not provide for an award of general damages in employment claims. This Court, therefore, lacks jurisdiction to award general damages in employment claims.
169. The Respondent submitted that the funds for NSSF were deducted and remitted to the Fund in accordance with the law. The funds were remitted to the Fund in accordance with the law and as such the claims should be dismissed.
170. On costs, the Respondent submitted that the Claimant having failed to prove its case against the Respondent should not be awarded costs of the suit. The Respondent should be awarded costs.
171. I have examined all the evidence and submissions of the parties herein. The issues for this court's determination are as follows:
1. Whether the claimant was unfairly graded by the respondent.



2. Whether the claimant was unfairly terminated by the respondents.
3. Whether the claimant is entitled to the remedies sought.

#### **Issue No. 1**

172. The claimant avers that in September 2012, she was confirmed as a Contract Accountant, which falls under JG K earning a monthly salary of Kshs 110,000 though the expected salary was kshs 333,258.33/-.
173. From the documents the claimant provided in court, on 29/9/2012, the claimant was issued with a letter transferring her to Consumer Technology Business unit as Contract Accountant – Safaricom with effect from September 1<sup>st</sup> 2012 reporting to Business Unit Finance Analyst – C X T.
174. The other terms and conditions of service remained the same. She was issued with her new role profile applicable to the new position. The claimant’s employment was governed by the respondents DHL terms and conditions of employment for management, staff DITH excel supply chain (K) ltd (page 47ff) of the bundle . From the letter of 20/5/2018 (pg 1 of bundle), the claimant was placed under management staff.
175. The claimants employment was also governed by the respondents DEUTSCHE Post DHL Global Code of Conduct (pg 6-77) of the bundle and the job description issued to her found at pg 124 of the bundle.
176. The pay bands at page 103 of 418 the bundle also applied to her. Under the terms and conditions at para 10 (pg 54) salaries were reviewed annually through the company appraisal process and salary adjustments paid from the 1<sup>st</sup> April, each year.
177. The claimant has averred that due to this provision, she had a legitimate expectation that her salary would be reviewed annually. The law however protects expectations that are reasonable and legitimate. (see Onyancha & Another. v RTU E017 of 2033 (2024) KEELRC 8(KLR) 23<sup>rd</sup> January 2023.
178. The submissions by the claimant is that this expectation was not met and in some instances she was expected to assume new roles without change in remuneration or any term of employment.
179. The claimant has referred to her letter of promotion of September 2012 which confirmed her to the position of Contract Accountant but leaving all other terms the same. In the said letter (pg 151-155) of the bundle, the claimant was actually promoted as submitted by the claimant but transferred to another unit as Contract Accountant. All other term of employment remained the same.
180. In 2013, 13<sup>th</sup> September the claimant was informed that her role title changed to Contract Accountant - DAY/PSI reporting to Business Unit Finance Controller – UKL/chemonics and BAY. Her terms of service also remained the same. On 6/7/2015, the claimant was again issued a letter changing her job title and reporting time. (pg 153). Her job grade remained the same though. Vide a letter of 3/11/2015, there was also some organisation changes affecting the entire accounts department and the claimant was moved to Contract Accountant – Uniliver OUP, and P & G.
181. In a letter of 15/10/2015 the claimant was also informed of the change in her role and responsibilities (pg 155). She was informed that she was being placed on job title Contract Accountant, UKi OUP &P & G. There was also no change in remuneration benefits on discretionary incentive scheme at that point. The claimant read and signed against the letter confirming she understood the contents thereof.



182. Despite these letters and changes in claimant's profile/title, the claimant has not indicated to this court whether her salary was changing over time. From the evidence however, the claimant's salary was initially at 27,152/- and was moved to 29,000 as per the letter of 26/5/2006. It is also true as per the claimant's evidence the salary at the time of termination was kshs 342,532.96 an indication that she had periodic pay rises over the period.
183. On 4/1/2016, the claimant was now appointed as Ag Contract Accountant – UKL/OUP/SBL effective 1<sup>st</sup> January 2016. She was informed that during the acting period she would be entitled to an acting allowance of 15% of her basic monthly pay. The claimant submits that she had already been confirmed to the role contract accountant and so the appointment of acting contract accountant was absurd.
184. It is however true that the position the claimant held in 2015 was Contract Appointment :UKL, OUP & P & G. The position offered on 4<sup>th</sup> January 2016 was however different being Ag Contract Appointment: UKL/OUP/SBL. The claimant still signed receipt of the said contract and accepted the terms and thereof she was also given another acting position in February 1<sup>st</sup> 2017 as Acting Contract Accountant Unilever, P & G and others with effect from 1/1/2017 to 31/3/2017 and which she also accepted and signed against. The roles may have overlapped but it is evident that the claimant was compensated accordingly.
185. On 31/4/2017, the claimant was now confirmed into the role of Accountant Unilever P & G and others. Her salary was also reviewed upwards to 2,685,144 per annum but other terms and conditions of employment remained the same. The claimant also signed and accepted the role and signed against it.
186. Despite the claimant submitting that she was to be on a higher grading, the salary variations over time show that she did not remain stagnant as submitted and was all along compensated for the roles she prayed.
187. The issue of whether to put her under JG K or L do not imply underpayments in view of the fact that the respondents retain the prerogative of how to organise /reorganise and grade staff and the claimant does not have mandate to determine her own grade. The claimant had submitted that prior to her termination, she knew that she was supposed to be placed in the Group I band and earn salary as per the said level and this knowledge was as per the compensation recommendation at page 121 of her bundle.
188. At page 121 of the claimants bundle is indeed compensation recommendation dated 3/10/21 and to be effective 1/10/2019. There is however no evidence that this recommendation was approved or sanctioned.
189. The submission by the claimant that at termination the roles of the claimant were at job group I, it is my finding that even the duty of placing employees on a particular scale is a prerogative of the employer and that the court cannot micro manage an employer and take over the role of human resource and determine the scales of employment. The claimant may have felt and rightly so that she deserved better but it is true that she was offered salary at the lower level and she signed and accepted it.
190. It is my finding then that her complaint of underpayment cannot therefore be sustained and especially now that she had accepted the level offered and stayed on it.

## **Issue No. 2**

191. The claimant has also averred that she was unfairly and unlawfully terminated. The claimant was served with a show cause letter dated April 14<sup>th</sup> 2020. The letter raised issues of conflict of interest on account of employment of Eil Liposhe as an Archiving and Filing Clerk within the finance department and



Ivanja caterers owned by Janet Alusa. The allegations were that Eli Liposhe was claimant's nephew and Janet Alusa owner of Ivanja Caterers was claimant's sister in law and that in both cases the claimant failed to declare the said relationships before recruitment.

192. The claimant responded to the said allegation vide a letter of 21/4/2020 and indicated that she disclosed the same and she refers to the memo at page 320 which was to the entire Africa dated 29/11/2019 wherein they were informed to declare interest by 30/11/2019. She also indicated that she never engaged in any business in conflict with the respondent. She further indicted that the code of conduct document was new to her and only came to her attention after the training on December 2019. She also indicated that she disclosed that Ivanga caterers was being run by her sister in law. She averred that at page 307 and 308 of her document she made the declaration on 2/12/2019. She indicated that her termination was based on conflict of interest. She says 131 people declared their interest and it is only two who were terminated.
193. On this issue of conflict of interest the claimant indeed made her declaration. It is also true that she never engaged in any business which was in conflict with DHL or rivalling DHL.
194. RW1 was cross examined on this issue of conflict of interest and she indicated that as at June 2019, there was no process in place for employers to declare conflict of interest. That this was introduced in 2019 as per page 353 and employees in JG 'K' and above were the ones to declare. She avers that the claimant made the declaration but after the deadline. She also indicted that conflict of interest was only a problem depending on how it was managed.
195. Having considered these submissions, the issue of conflict of interest by claimant is an issue introduced in 2019 and the claimant indeed made her declaration in December 2019. This was not a matter which directly conflicted with the respondents business or her performance of her job.
196. It is my finding that the reason was not a valid reason to warrant termination because she finally made her declarations as expected. It is also true that the respondent did not have a conflict of interest policy and the only reference to conflict of interest what is provided in was management terms and conditions which provide that:
- “ any employee of DHL Exel Supply chain (K) Limited is expressly prohibited from engaging in any business which conflicts with the business of the company in any way whatsoever”.
197. The respondents have not demonstrated that the employment of Eli and the business of Ivanga caterers did in fact conflict with respondents business and therefore terminating claimant on this basis was without valid reason.
198. After the show cause letter the claimant was invited for a disciplinary hearing. The claimant has averred that the process she was subjected to was unfair and in breach of the DHL disciplinary policy. The claimant pointed out that the respondent's disciplinary policy had a 3 tier process for discipline. (a) education (b) corrective (c) punitive action and that termination was a last resort. The policy also provided as follows:
- “ a disciplinary hearing should as far as possible take place within 30 days of the employer hearing about the offence or from the end of the investigation. If the hearing does not take place within 30 days the employer must tell the employee or his/her representative why there is delay and give the employee or his/her representative a possible time when the case will be heard.”



199. The claimant aver that after making her declaration and the respondent having generated a report by December 14<sup>th</sup> 2019 the respondent should have conducted their disciplinary process within 30 days. That however the respondent conducted their disciplinary hearing after 14/4/2020 when the disciplinary hearing commenced. The claimant aver that she was therefore subjected to an unfair process.
200. It is indeed true that this is the process envisaged for as disciplinary process. It is also true that the claimant failed to follow their process and as per the transcripts availed to this court before the disciplinary hearing, the claimant learnt that a decision had already been made to terminate her prior to any hearing. This was disclosed to the claimant by a staff member of the respondent who was a member of the disciplinary committee and company director called Aila Bernard Alingo.
201. During the hearing as per the said transcripts, the chair also confirmed that she was under pressure from her line of reporting to conclude the termination. It is therefore true that the intention and action to terminate the claimant were premeditated. The claimant appealed her termination but by May 28<sup>th</sup> 2020 she was already sent clearance documents a day before the hearing of her appeal.
202. Having considered the processes of the respondents and the process the claimant was taken through, it is my finding that the claimant was subjected to a flawed process contrary to section 41 of the [employment act 2007](#) which states as follows:
41. (1). Subject to section 42 (1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.
203. Having found lack of valid reason to warrant termination of the claimant and having found that the disciplinary process was flawed, I find the termination of the claimant was unfair and unjustified.

### **Issue No. 3**

204. As to the remedies sought by the claimants, having found her termination as unfair and unjustified, I exercise my discretion and based on long service to the respondents and the targeted termination for her, I find 10 months salary as compensation is justified and I award her the same accordingly =  $10 \times 345,532.96 =$  Kshs 3,455,329.6/- I also award her 1 month notice the claimant having been issued with only 1 month's notice = Kshs 345,532.96 /-
- Total awarded is Kshs 3,800,862.56/- less statutory deductions.
205. The respondents will pay costs of this suit plus interest at court rates with effect from the date of this judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER 2025.**

**HELLEN WASILWA**

**JUDGE**

